

Living Through the Tension:  
Religion and Public Policy in the Thought of Gilbert Meilaender

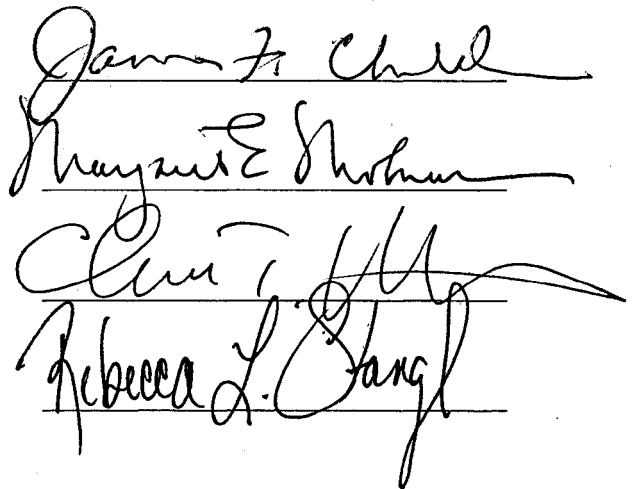
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### **Abstract**

The purpose of this dissertation is to examine and evaluate the position of Gilbert Meilaender on the appropriateness of appealing to religious reasons as support for one's position on issues of public policy. The dissertation establishes that, while Meilaender often discusses public policy issues directly or indirectly from a distinctively Christian perspective, he argues that such discussions are unavoidable, appropriate and consistent with toleration for other views in a pluralistic democracy. While this may create a certain amount of tension within pluralistic democracy, it poses no serious threat to social stability and can be both civically virtuous and respectful of other views.

The dissertation first surveys the ongoing debate on the place of religious reasons in supporting or opposing public policies, delineating three basic positions on the question and exploring the views of representatives of each position. It then moves to an analysis of Meilaender's conception of Christian ethics which informs his position on the question of religion and public policy. Two salient themes emerge in this analysis: tension and limits. These two themes play an important role in the third part of the dissertation which explicates Meilaender's specific position on the place of religious reasons in supporting or opposing public policies. Meilaender's position is further illuminated through considering some of his publications and his work with government-sponsored bioethics commissions. The last part of the dissertation evaluates Meilaender's position by placing him in conversation with others from a variety of perspectives on this question and closes with some final comments on Meilaender's view. I conclude that his position is both consistent with his conception of Christian ethics and that it is respectful and tolerant of the views of others.

### **Acknowledgments**

I would be remiss if I did not acknowledge the many individuals without whom the completion of this project would never have seen the light of day. I am eternally grateful for the advice, encouragement and support of the following through this long and arduous process.

I first want to thank Dr. Gilbert Meilaender who patiently endured my questions and probing through pages of correspondence and who spent a summer's day discussing religion and public policy with me. I hope this dissertation accurately represents your position and is honoring to your work.

I thank the members of my dissertation committee for their insightful comments that helped this to be a more tightly argued and clearly written work. I especially want to thank Dr. James Childress for his patience and guidance throughout my entire doctoral studies and in particular his continued support as I labored on this dissertation. His impact on me professionally and personally has been incalculable.

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I want to single out two individuals have been most important to me through this venture. Sally Southall read through the initial proposal for this project and gave me a good deal of astute advice. I deeply appreciate her constancy, support and friendship. My colleague Dr. David



Baggett read through this entire dissertation twice making editorial comments and suggestions. It is no overstatement to say that there is a good chance that none of this would have happened if he had not been there pushing me to finish. Thank you, Dave for your friendship and wise counsel. It is finished – let's eat.

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## Chapter One

### Religious Reasons and Public Policy: A Background Survey

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

*United States Constitution, Amendment 1*

It is a limitation and denial of faith not to seek its expression in both a personal and public manner, in such ways as will not only influence but transform the social order. Faith demands engagement in the secular order and involvement in the political realm. *"God Alone is Lord of the Conscience: A Policy Statement Adopted by the 200<sup>th</sup> General Assembly," The Presbyterian Church (USA) 1989*

## Introduction

The relationship between religion and politics has been controversial since the founding of the modern democratic state. In recent decades the conversation has focused to a great extent on appeals to religious reasons as support for positions on public policy issues. The question is generally stated as follows: In a liberal pluralistic democratic society where mutual toleration of all views is necessary for the stability of the state, and is considered civically virtuous in that it demonstrates due respect for one's fellow citizens, is it appropriate to appeal to reasons based on private religious views in supporting or opposing public policies, many of which are coercive to those of different religious beliefs? The basic conflict is between the need to be tolerant of all views on the one hand, and the right to hold one's own religious beliefs and to make decisions in accordance with those beliefs, on the other.

The purpose of this dissertation is to examine and evaluate the position of Gilbert Meilaender on the use of religious reasons in discussing and formulating public policy. My goals are threefold. I first will delineate Meilaender's position on religious reasons

and public policy and attempt to show that his position is cogent and coherent with elements of his theory of Christian Ethics. My second goal is to examine how Meilaender applies his theory in his publications and presentations on public policy, particularly involving bioethics. I will specifically examine his activity with the President's Council on Bioethics. Finally, I will offer an evaluation of Meilaender's position by placing him in dialogue with other select individuals who have written on various aspects of this topic. I plan to establish that, while Meilaender often argues from a distinctively Christian perspective, his position is consistent with toleration for other views in a pluralistic democracy. While his position might create some tension within our pluralistic democracy, it poses no serious threat to social stability and is both civically virtuous and respectful of those outside the Christian community.

I have selected Meilaender for a number of reasons. First, he is a well-known and respected figure in Christian Ethics. He has published fifteen books as well as numerous articles in the field and has taught on the faculties of the University of Virginia and Oberlin College and is currently the Richard and Phyllis Duesenberg Professor of Christian Ethics at Valparaiso University. Secondly, many of his writings deal with issues important to public policy discussions, specifically in the area of bioethics, where he often writes exclusively from his religious perspective. Thirdly, and perhaps most importantly, he has been at the center of several public discussions on bioethics where he has had opportunity to write and testify specifically from his perspective as a Christian. Many of these presentations were delivered before and within government-sponsored commissions and committees. He has prepared papers and testified before the National Bioethics Advisory Committee appointed by President William J. Clinton and currently

serves on the President's Council on Bioethics under President George W. Bush.

Therefore, we can examine and evaluate how he puts his principles into practice.

My conclusion will be that Meilaender's answer to the question of religious reasons and public policy is one which affirms and maintains the particularity of a Christian ethic, proposes public policy from within that ethic, and yet maintains the toleration and respect necessary for a stable liberal democracy.

The first two chapters of this dissertation establish a background to understand and evaluate Meilaender's position on the use of religious reasons in supporting or opposing public policies. The first chapter surveys the contemporary discussion on the use of religious reasons in supporting or opposing public policy, while the second chapter examines salient themes in Meilaender's conception of Christian ethics.

Chapter One opens with a narrative designed to elicit a number of questions concerning the place religion should play in reasoning about public policies. I examine several answers by tracing the debate, concentrating first on the writings of John Rawls. I examine a number of significant responses to Rawls and conclude with Christopher Eberle's "ideal of conscientious engagement."

This chapter also defines important terms and propose a conceptual scheme from which to categorize and evaluate the different views on this issue. The phrase "supporting or opposing public policies" refers to a broad range of activities that include formulating one's position on public policies, publicly promoting one's position on public policies, deciding and voting on public policies and implementing public policies. I use the phrase "principle of self-restraint" to refer to the view that one should refrain from appealing to religious reasons as justification for supporting a coercive public

policy.<sup>1</sup> By a “coercive” public policy I mean one that restricts the liberties of citizens to engage in some activity. There are two forms of the principle of self-restraint: a strong form which advocates that one should refrain from appealing to religious reasons altogether and a weaker form which advocates that one should refrain from appealing to religious reasons alone. I will use the phrase “justificatory liberalism” to refer to the stance of those who advocate either form of the principle of self-restraint.<sup>2</sup> I propose that there are three major positions concerning justificatory liberalism: exclusionism, inclusionism and exclusivism.<sup>3</sup> I am aware that there is a certain artificial aspect to this conceptual scheme. Some writers fall into more than one category, and the categories might blend at times. Also, within these categories there are substantial differences among individual writers. However, the overall structure is valid and functions well as a heuristic device.

Two caveats are necessary at this point. First, my purpose here is to survey differing positions on the use of religious reasons in supporting or opposing public policy and not to provide a detailed evaluation or response to each author. It is outside the scope of this dissertation to assess the strengths and weaknesses of each writer discussed in this

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<sup>1</sup> I am using the term in much the same way as Christopher Eberle uses “doctrine of restraint” in *Religious Conviction in Liberal Politics* (Cambridge: Cambridge University Press, 2002), 68.

<sup>2</sup> I have borrowed this term from Gerald Gaus and Christopher Eberle. However it is significant to note that their uses of the term are not conceptually identical. I am using the term as Eberle uses it.

<sup>3</sup> Michael Perry uses similar language to what I am using here in *Under God: Religious Faith and Liberal Democracy* (Cambridge: Cambridge University Press, 2003). However there are some significant differences. He has only two categories: inclusionists and exclusionists. While we both use “exclusionists” to refer to those who believe religious reasons should be completely excluded from supporting or opposing public policies, he uses “inclusionism” to describe those who want to include religious reasons. I divided this second group into two camps: “inclusionists” are those who include religious reasons as long as some form of self-restraint is also present and appealed to and “exclusivists” are those who hold that appeals to religious reasons are sufficient in supporting or opposing public policies exclusive of appeals to public reasons.

chapter. While some evaluative comments are necessary, my primary purpose is merely to identify the relevant distinctions represented by the different positions on this question. Second, due to time and space I cannot consider every author who has written on this subject. I propose to select only a few representative authors of each of the differing positions. My criterion for selection is based on those who have made important contributions to the particular position they represent.

### **A Didactic Narrative**

It is the not-too-distant future. The United States Supreme Court hears a case that causes them to overturn the 1973 *Roe v. Wade* decision on abortion. The question of the legality of abortion has passed down to the state level. In Virginia the state legislature considers placing a proposition (P54) on the ballot restricting abortions to only those necessary to save the life of the mother. If P54 passes it will become a state law. Such a law is coercive in that it would restrict the rights of women to procure an abortion in all but the rarest and most extreme of emergencies. The issue is hotly debated over several days in the legislature. During the debate state legislators take to the podium and voice their reasons for the particular position they hold on P54. Among the advocates, delegate Phil Hastings takes the podium and states that he believes abortion is an abomination to God and that is why he is voting in favor of the proposition. Another delegate, Nelson Drake, holds the same view as Hastings, but refrains from publicly sharing his reason. However when the time comes to vote both delegates vote on the basis of their religious convictions. P54 narrowly passes the legislature and appears on the November ballot.



There is intense campaigning on both sides of the issue before the election.

Southern Baptist pastor Jim Farmer preaches a sermon advocating passage of the proposition. He quotes portions of the Bible defending the right to life of the unborn and proclaims, "Any faithful Christian will vote in favor of this proposition." Susan Turner is sitting in the pew and agrees with the points Pastor Farmer makes. She reasons "God is against abortions. That's reason enough for me to vote for this new law outlawing them." Later while talking with some friends over lunch, some of whom do not hold her religious beliefs, she shares her position on P54 and her religiously-based reason for advocating its passage. She urges her friends to vote for the proposition as well. That evening delegate Hastings gives an interview on the local television news program, again stating that abortion is against the laws of God. Meanwhile, Rabbi Murray Fox tells his congregation that, while abortion as a form of birth control is inappropriate, God would not want a woman to suffer through a pregnancy imposed on her or that she might be too young to handle. He advocates that his congregation vote against this proposition as it does not allow for these kinds of situations.

Finally Election Day arrives and all of these individuals vote on the basis of their religious reasons alone. P54 barely passes and becomes law. However, almost immediately afterward the ACLU challenges the constitutionality of the new law. The case comes before the Virginia State Supreme Court. Justice Samuel Towns is one of the judges hearing the case. As a Roman Catholic he also holds strong religious beliefs about the immorality of abortion. He is struggling with the place his beliefs should play in his legal reasoning.

The above narrative elicits a number of questions concerning the place religion should play in reasoning about public policies that restrict the liberties of citizens. These questions can be considered from two perspectives. First is the sense of the specific activity involved. Activities in which appeals to religion are made in relation to public policy fall into at least four types: appealing to religious reasons in (1) formulating one's own private position on an issue in public policy; (2) sharing one's position in the public arena; (3) voting for particular public policies; and (4) implementing and maintaining public policies. While all four of these activities are discussed below to some degree, we are primarily concerned with appealing to religious reasons in public discourse (2) and appealing to religious reasons in voting for public policies (3).

The second perspective refers to one's social standing in relation to public policy. We can delineate at least four stances in the above narrative: as citizen; as legislator; as judge; and as cleric. When we combine these two perspectives, several questions arise. Among them are the following: Is it appropriate for citizens to appeal to religious reasons in voting on coercive public policies? Is it appropriate for citizens to raise religious reasons in public discourse with other citizens who do not hold the same religious beliefs as they do? Is it appropriate for clerics to promote their religious views on public policy from the pulpit? Do legislators have an obligation to refrain from appealing to religious views when voting on particular public policies when they might have religious objections? Should legislators refrain from raising religious reasons when speaking on the policy in a public forum? When judges pass down decisions from the bench, should they refrain from publicly raising religious reasons? Is it even appropriate

for judges to appeal to their religious reasons in the privacy of their thoughts in considering an issue of public policy?

While there are many wide and varied proposed answers to the above questions, we can place most of these into three positions: exclusionism, inclusionism and exclusivism.

### **Exclusionism**

Exclusionism generally holds that, at least when it comes to voting on public policy, appeals to religious reasons should be excluded from the public arena. Some exclusionists apply this obligation to formulating and sharing one's views on public policies as well. Within exclusionism religion is seen as a private arena and an inappropriate basis for one's reasons concerning public policy. Thus these writers advocate a strong view of the principle of self-restraint. There are a number of recent writers on the popular level who advocate this position such as Richard Dawkins, Sam Harris and Christopher Hitchens.<sup>4</sup> We will examine the writings of two influential philosophers: John Rawls and Richard Rorty.

#### *John Rawls and "Political Liberalism": No Religious Reasons Allowed (on issues of basic justice or constitutional essentials)*

It is difficult to overstate the influence of the writings of John Rawls on modern political philosophy. He was especially influential concerning the use of public reasons

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<sup>4</sup> See Richard Dawkins, *The God Delusion* (New York: Houghton Mifflin Co. 2006); Sam Harris, *Letters to a Christian Nation* (New York: Alfred A. Knopf 2006); and Christopher Hitchens, *God is not Good: How Religion Poisons Everything* (New York: Twelve 2007).

in supporting or opposing public policies. Rawls outlined his original stance in his book, *Political Liberalism*.<sup>5</sup> He saw this book as updating, clarifying and reformulating his earlier work, *A Theory of Justice*.<sup>6</sup> He writes:

A main aim of *Political Liberalism* . . . is to show that the idea of a well-ordered society in *Theory* may be reformulated so as to take account of the fact of reasonable pluralism.<sup>7</sup>

Rawls later revised his view on public reason. This revision actually moves him into the inclusionist position and will be discussed below. Since his original discussion is historically significant and is the catalyst for many other discussions on the use of religious reasons, it is important to present and understand it.

The primary concern of John Rawls is justice and the stability of society. His goal is to achieve a well-ordered society. The well-ordered society is a fair system of cooperation where all members accept a political conception of justice. His fundamental question is: "How is it possible for there to exist over time a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrines?"<sup>8</sup> Rawls suggests that the solution to this problem is found in a political conception of justice. Rawls contrasts a "political" conception of justice from a conception that is based upon a particular comprehensive doctrine.

By "comprehensive doctrine," Rawls means a view that "includes conceptions of what is of value in human life, as well as ideals of personal virtue and character, that are

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<sup>5</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press 1992).

<sup>6</sup> John Rawls, *A Theory of Justice* (Oxford: Oxford University Press 1971).

<sup>7</sup> John Rawls, *Political Liberalism*, expanded edition (New York: Columbia University Press 2005), xxxv-xxxvi, xli.

<sup>8</sup> Rawls, *PL*, 4.

to inform much of our nonpolitical conduct."<sup>9</sup> Comprehensive doctrines include both religious views and non-religious comprehensive views such as utilitarianism or Kantian deontology. However a purely political conception differs from a comprehensive theory because "it is a moral conception worked out for a specific subject."<sup>10</sup> In this case the subject is the basic structure of a pluralistic democratic society. Rawls holds that a conception of justice that is purely political is what was missing in his original conception as laid out in *Theory*.<sup>11</sup>

Because it is a political conception, it is a freestanding view that is not committed to any one specific comprehensive view, but has its basis in certain fundamental ideas pervasive within our culture. These fundamental ideas are the result of an overlapping consensus of differing comprehensive views on basic ideas of justice, most of which can be found in our democratic constitution.

There are two key ingredients to Rawls's political conception of justice to insure its success. First is the "liberal principle of legitimacy." Rawls states this principle as:

[The] exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational.<sup>12</sup>

There is a reciprocal criterion behind this principle needed for it to function in the well-ordered society: "our exercise of political power is proper only when we sincerely believe

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<sup>9</sup> Ibid., 175.

<sup>10</sup> Ibid.

<sup>11</sup> "The argument in *Theory* relies on a premise the realization of which its principles of justice rule out. This is the premise that in the well-ordered society of justice as fairness, citizens hold the same comprehensive doctrine, and this includes aspects of Kant's comprehensive liberalism, to which the principles of justice as fairness might belong. But given the fact of reasonable pluralism, this comprehensive view is not held by citizens generally, any more than a religious doctrine, or some form of utilitarianism." Rawls, *PL* expanded edition, xl.

<sup>12</sup> Rawls, *PL*, 217.

that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification of those actions."<sup>13</sup>

The second key ingredient of the political conception of justice is the idea of the overlapping consensus. An overlapping consensus "consists of all the reasonable opposing religious, philosophical, and moral doctrines likely to persist over generations and to gain a sizeable body of adherents in a more or less just constitutional regime, a regime in which the criterion of justice is that political conception itself."<sup>14</sup> The necessity of an overlapping consensus arises not just because those with comprehensive moral views must seek some common good for reaching a consensus about principles of justice. Rawls is anxious to avoid the idea of an overlapping consensus as merely a *modus vivendi*. The actual circumstances of living in a democratic society provide individuals with motivation for accepting a political conception that develops from within and is in agreement with their own comprehensive doctrine and is not in conflict with others' comprehensive doctrines.

Rawls's political conception of justice provides stability for society because it is non-controversial in at least two respects. First, because it has its basis in the fundamental ideas of a democratic society that all citizens share, it is acceptable to a wide variety of differing comprehensive views. What are these fundamental ideas? The central organizing idea, according to Rawls, is that of "society as a fair system of cooperation over time from one generation to the next."<sup>15</sup> This is the stability principle. The second way the political conception is non-controversial is that it makes no

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<sup>13</sup> Rawls, *PL* expanded edition, xlv.

<sup>14</sup> Rawls, *PL*, 15.

<sup>15</sup> *Ibid.*, 14.

controversial claims about any reasonable comprehensive views. It is neither skeptical nor indifferent to the claims made by these views but rather seeks to provide a basis for determining which issues can be removed from a political agenda and which cannot.

To maintain the stability of society, Rawls proposes that, when it comes to issues of basic justice and constitutional essentials, citizens should appeal only to "public reasons" in decision-making or voting and should restrain themselves from making appeals to any reason based on comprehensive views. Public reasons are those which "appeal only to presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial."<sup>16</sup> Rawls holds not only that this applies to our own personal justification for the decisions we make, but even to discourse with others about those decisions:

The ideal of public reason does hold for citizens when they engage in political advocacy in the public forum, and thus for members of political parties and for candidates in their campaigns and for other groups who support them. It holds equally for how citizens are to vote in elections when constitutional essentials and matters of basic justice are at stake. Thus the ideal of public reason not only governs the public discourse of elections insofar as the issues involve those fundamental questions, but also how citizens are to cast their vote on these questions. Otherwise, public discourse runs the risks of being hypocritical: citizens talk before one another one way and vote another.<sup>17</sup>

Therefore, in order to maintain stability, Rawls applies the principle of self-restraint: citizens have a "duty of civility" to restrain themselves from appealing to "nonpublic reasons," those based on comprehensive views, and should appeal only to public reasons specifically on issues pertaining to constitutional essentials or basic justice. By "constitutional essentials" Rawls means two things: fundamental principles

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<sup>16</sup> Ibid., 224.

<sup>17</sup> Ibid., 215.

that specify the general structure of government and the political process and the equal rights and liberties of citizenship.

It is important to note that Rawls is not saying one should never appeal to one's comprehensive doctrines in reasoning about coercive public policies. He writes, "Citizens and legislators may properly vote their more comprehensive views when constitutional essentials and basic justice are not at stake; they need not justify by public reason why they vote as they do or make their grounds consistent and fit them into a coherent constitutional view over the whole range of their decisions."<sup>18</sup> Rawls lists a few examples of political questions that are not subject to the principle of self-restraint such as tax legislation, statutes protecting the environment or establishing national parks. However, while one is not compelled to appeal to public reason alone for these public policies, Rawls holds that it is highly desirable that one do so.<sup>19</sup>

Finally, Rawls would hold that the principle of self-restraint on constitutional essentials and basic issues of justice applies to all citizens alike no matter what their position or status. The principle applies to average citizens and even more strongly to legislators and judges. In fact, Rawls points to the Supreme Court as the exemplar of public reason.

*Richard Rorty: Religion as a Conversation-Stopper*

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<sup>18</sup> Ibid., 235.

<sup>19</sup> Ibid., 215.



Richard Rorty addresses the place of religious reasons in the public arena in a short 1994 essay entitled “Religion as a Conversation Stopper.”<sup>20</sup> The essay is a critique of aspects of Stephen Carter’s book, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion*.<sup>21</sup> In this essay Rorty extols what he calls the “Jeffersonian compromise” achieved during the enlightenment. “This compromise consists in privatizing religion – keeping it out of what Carter calls ‘the public square’, making it seem bad taste to bring religion into discussions of public policy.”<sup>22</sup> According to Rorty, the main reason that religion should be privatized is that it is a conversation-stopper. His point is that once religion is introduced into the conversation about public policy, not only is it in “bad taste,” there is no place for the conversation to go among those who do not hold similar religious beliefs. Instead discussions and arguments need to be based on *shared* premises between believers and non-believers.

Rorty identifies two significant epistemological problems with raising religion in discussions of public policy. First, he questions the concept of a “religious argument” or “religious form of dialogue,” both terms used by Carter. He claims that a religious argument amounts to no more than an argument that appeals to religious sources – an argument with premises that express the will of God. However, it is possible to accept the same premises for purely secular reasons. Therefore, according to Rorty, the origin of the premises is irrelevant as long as they lead to the conclusion offered.

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<sup>20</sup> Richard Rorty, “Religion as a Conversation Stopper,” *Common Knowledge* Vol 3, No.1, 1994, 1-6; reprinted in Richard Rorty, *Philosophy and Social Hope* (New York: Penguin Books, 1999), 168-174 ; referred to hereafter as *RCS*.

<sup>21</sup> Stephen L. Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion* (New York: Basic Books, 1993).

<sup>22</sup> Rorty, *RCS*, 169.

Rorty's second epistemological problem is with Carter's use of the term "moral knowledge." If one accepts the standard definition of knowledge as "justified true belief" then Rorty claims that we should be suspicious of those who claim to have "moral" knowledge. In the public square of a pluralistic democracy, justification is always up for grabs when it comes to morals rather than say, science.<sup>23</sup>

While some differences exist between Rorty and Rawls, Rorty sees himself in the tradition of Rawls when it comes to the basis for a proper justification for a particular public policy. For Rawls this justification comes from the overlapping consensus and the liberal principle of legitimacy with its criterion of reciprocity. Rorty appeals to something akin to this in the consensus of the people. He writes:

The only test of a political proposal is its ability to gain assent from people who retain radically diverse ideas about the point and meaning of human life, about the path to private perfection. The more such consensus becomes the test of a belief, the less important is the belief's source.<sup>24</sup>

In 2003 Rorty wrote an article revising and refining his earlier position.<sup>25</sup> In this article he attempts to draw a distinction between parishes or individual congregations and "ecclesiastical organizations." He defines the latter as "organizations that accredit pastors and claim to offer authoritative guidance to believers," and claims that "only the latter are the target of secularists like myself."<sup>26</sup> However, it is not easy to delineate exactly to whom the term "ecclesiastical organizations" is referring, for Rorty uses it to refer to a wide range of organizations and individuals. While Rorty does list some specific denominational organizations, such as Catholic bishops and Mormon authorities,

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<sup>23</sup> Ibid., 173.

<sup>24</sup> Ibid.

<sup>25</sup> Richard Rorty, "Religion in the Public Square: A Reconsideration," *Journal of Religious Ethics*, Vol 31, No 1, 141-149.

<sup>26</sup> Ibid., 141.

he also broadens the term to refer to televangelists in general, specific individuals such as Jerry Falwell and Joseph Ratzinger and “all other religious professionals who devote themselves not to pastoral care but to promulgating orthodoxy and acquiring economic and political clout. We think that it is mostly religion above the parish level that does the damage.”<sup>27</sup> Whomever he is referring to here, Rorty believes such organizations are responsible for large amounts of misery and suffering as they “maintain their existence by deliberately creating ill will”<sup>28</sup> towards those who are not members of their organizations. Rorty hopes that such organizations will wither away and that all religion will be reduced to the parish level. The disappearance of ecclesiastical organizations will leave a gap in the lives of believers but, according to Rorty, that gap will be filled through the advancing of humanity toward the fulfillment of social ideals totally apart from religion.

Rorty does not seem to have the same problem on the parish level, but that is because he seems to view individual parishes as having little effect or input on the political thought of their congregations. For Rorty, the individual parish is a harmless institution whose role is only to “help individuals find meaning in their lives and to serve as a help to individuals in their times of trouble.”<sup>29</sup> One wonders what Rorty would say about the individual parish pastor who speaks out in favor or against a public policy such as Pastor Farmer in our narrative. Would Rorty elevate him to the level of an “ecclesiastical organization” because he is claiming to “offer authoritative guidance” to

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<sup>27</sup> Ibid.

<sup>28</sup> Ibid., 142.

<sup>29</sup> Ibid. I believe that Rorty seriously overestimates the role of ecclesiastical organizations and underestimates the role of individual congregations in their influence on the political thinking of most religious believers.

the believers in his flock? Isn't that what Rabbi Fox was also doing? One might question if the distinction between parish and ecclesiastical organization is really relevant to the issue.

Rorty confuses the matter further when he discusses the relation between religion and contemporary liberalism. At first Rorty seems to affirm that the individual believer is perfectly justified in supporting a public policy concerning the redistribution of wealth on the basis of what he believes is God's will as found in a particular religious text. He writes, "I can think of no law or custom that would hinder him from doing so that would not hinder me from citing passages in John Stuart Mill in justification of the same legislation."<sup>30</sup> However, he then refuses the same believer any justification in citing scripture in supporting his view of same-sex marriage laws. He argues that while the law may not forbid such justification, "custom *should* forbid it."<sup>31</sup> He goes on to state:

Citing such passages should be deemed not just in bad taste, but as heartlessly cruel, as reckless persecution, as incitement to violence. Religious people who claim a right to express their homophobia in public because it is a result of their religious convictions should, I think, be ashamed of themselves, and should be made to feel ashamed. Such citation should count as hate speech, and be treated as such.<sup>32</sup>

Rorty himself admits that he is at a loss at arriving at a criterion to distinguish between the two examples. When it comes to a principle for differentiating between approving the first example while vehemently rejecting the second, he simply says "I do not have one."<sup>33</sup>

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<sup>30</sup> Ibid., 143

<sup>31</sup> Ibid., emphasis his.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid..

A few other questions are also left unanswered here. First, clearly Rorty is speaking of individual believers making such claims in these examples. His judgment, especially in the second example, is not against an “ecclesiastical organization” but against any individual believer who does not support same-sex marriages. This seems inconsistent with his earlier claim that ecclesiastical organizations are “only the target of secularists.”

A second problem with Rorty’s claim is that it is not clear whether his problem is with believers holding certain beliefs about homosexuality and same-sex marriage, or with believers vocalizing such beliefs in the public square. At one point he speaks of people voicing their opposition to same-sex marriage and quoting certain religious texts while doing so. So it seems that his problem is with people vocalizing their opposition. However, he later goes on to say “The absence of such laws should not prevent us from responding to the claim that homosexual sodomy is an abomination with ‘How dare you make your religious convictions an excuse for inflicting this kind of suffering on your fellow-citizens?’”<sup>34</sup> Here it seems that Rorty is more concerned with the holding of these beliefs and perhaps voting on the basis of them whether vocalized or not. There is a lack of clarity here.

A third problem with Rorty’s position at this juncture refers to the term ‘custom’. Rorty acknowledges that, while the law should not forbid anyone from citing such texts in support of a public policy, ‘custom’ should forbid it. It’s hard to make sense of what Rorty means by ‘custom’. He certainly means more than politeness or other such social conventions. For him the offense incurred here hardly seems on the same level as

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<sup>34</sup> Ibid.

talking with your mouth full. He claims it is beyond “bad taste” and is, in fact, “heartlessly cruel.” It seems he wants to place such actions into a normative moral category of either moral inappropriateness or just simply morally wrong. As a believer in Mill, he might argue that such beliefs or statements do not fulfill the principle of utility. At any rate, by using ‘custom’ it remains unclear as to exactly what wrong has been done in this case.

Rorty attempts to clear up some of these confusions towards the end of his essay. His problem apparently is not with Christians (or other religious believers presumably) having specifically religious reasons for supporting or opposing public policies like redistribution of wealth or same-sex marriage. He states the problem as “I cannot think of myself as engaged in such a discussion if my opponent *simply* quotes the Bible, or a papal encyclical at me.”<sup>35</sup> Rorty seems to claim that it is *merely* appealing to some authority that he has problems with.

If this is true it may clear up some of the confusions raised above. The first is confusion about the criteria. The criterion becomes being able to reason, discuss and argue from and about a text as opposed to merely quoting one. Since reasoning seems to be his main point, the confusion concerning believing or vocalizing is cleared up in that he is not just referring to vocalizing but how we reason about these issues and use authority as part of that reasoning. Finally, it may clear up the question of the individual vs. ecclesiastical organizations. Rorty may be saying that when individuals merely quote authorities they are doing little more than just parroting authorities that should remain outside the public square.

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<sup>35</sup> Ibid., 147.

One wonders what Rorty would think of people who believed they could produce a well-reasoned argument against same-sex marriage incorporating scripture. Whether they are successful or not is one question, but would Rorty at least allow them a hearing? Perhaps he might allow such an argument as long as it encourages conversation and doesn't attempt to close it down. He writes "We should do our best to keep the conversation going without citing unarguable first principles, either philosophical or religious."<sup>36</sup> How long one can argue a point without ultimately appealing to some ultimate basis is certainly debatable.

#### *Exclusionism and P54*

How would these representatives of exclusionism evaluate the actions of the characters in our narrative? Exclusionists would claim almost all of the persons in our narrative were acting inappropriately. Rawls would certainly hold that Delegate Hastings should not have spoken out in the legislature stating his religious reasons in support of P54. While delegate Drake acted appropriately in not raising his religious reasons publicly, Rawls would hold that both he and Hastings acted inappropriately in voting in favor of P54 if their reasons were religious and they did not have a public reason for their vote. While he does not specifically address legislators, Rorty would also hold both of these representatives in contempt if they voted on the passage of P54 on the basis of purely religious reasons, especially if they merely accepted some authority for their view and did not reason or argue it out.

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<sup>36</sup> Ibid., 148-149.

While he doesn't specifically address clergy, Rawls would probably claim that Pastor Farmer also acted inappropriately when he spoke from the pulpit endorsing P54, as did Rabbi Fox. Rorty does address clergy but it is difficult to determine how he might evaluate either Farmer or Fox. If they are just addressing their individual "parishes" he might allow them to make the comments they made as long as they were not just parroting some source. If they could support their respective positions by appeals to arguments and reasons he might be more favorable to their speaking out to their congregations.

Both representatives of exclusionism would say there is nothing wrong in Sue Turner formulating her private view based on religious reasons, though Rorty would want to see her do more than merely appeal to some authority for her views. Rawls has no problem with how she formulates her view, though she should not vote for it on that basis exclusively. They both might say it is inappropriate for her to share her reasoning with others in the public arena (i.e. outside of friends, family or her religious community) or they might allow sharing without advocating that others vote on the basis of her religious reasons. All of the individuals in our narrative were definitely acting inappropriately in voting for P54 purely on religious reasons according to the exclusionist position. Rawls would hold that abortion comes under the category of a basic issue of justice<sup>37</sup> and that it is wrong to vote to restrict a woman's access to an abortion on the basis of a religious reason. One should have a public reason for casting such a vote.

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<sup>37</sup> Rawls, *PL*, 243.



Finally, as for Judge Towns, Rawls makes it clear that he should not allow his religious reasons to play any part in his judgment concerning the constitutionality of the new law restricting abortions. Justices are the exemplar of public reasons.

### **Inclusionism**

Inclusionism holds in general that appeals to religious reasons are not always inappropriate, but one is civically obligated to adopt the principle of self-restraint in some form at least some times. Writers in this school hold to a weak version of the principle of self-restraint. This position represents the majority of those writing on this issue today. Because this view is so broad, there are many different variations and a wide continuum exists as to how this view is applied. Some, like Audi, insist that one must include at least one appeal to public reasons in support of one's view on public policy issues. Others, like Greenawalt, hold that self-restraint concerning religious appeals is obligated when it comes to what he calls "imposition reasons," reasons that are specifically aimed at imposing on another's religious beliefs and practices, and may be appropriate in other situations as well. The main distinction between this position and the previous is that inclusionism is generally open to religion playing some part in one's reasoning about public policy. While there are several writers who hold this position, we will look at three representatives of this view: Robert Audi, Kent Greenawalt, and a revised version of John Rawls.

*Robert Audi: Religious Reasons May be Allowed  
(as long as one secular reason is present and motivating)*

Robert Audi begins his discussion on the relationship of religion and public policy by affirming the value of the liberal democratic society as a society worth preserving. He presents both secular and religious justifications to argue that liberal democracies are a good.

There are broadly moral arguments that support liberal democracy – a liberal democratic state – as a form of government. A liberal state might be held to be the only kind that preserves freedom and provides adequate scope for individual autonomy. . . . But it also seems to me that religious institutions – churches for short – might for internal reasons, want to subsist in a liberal state. They might, for one thing, religiously endorse a moral case for a liberal state. But they might also see such a state as best for their own flourishing.<sup>38</sup>

For Audi, the problem is not whether religion and politics mix; they already are mixed.

The problem is how to mix them well.

Audi believes that any “full blooded” liberal democracy will only be successful if it supports a strong conception of the separation of church and state. Religious liberty is a central element in any free society and one can only achieve religious liberty if church and state are both free to function apart from each other. Such a conception has ramifications for the state as well as religion. As far as the state is concerned, separation of church and state will entail at least three principles: 1) the libertarian principle, 2) the equalitarian principle, and 3) the neutrality principle. Each of these deserves some attention.

The libertarian principle holds that the state must not constrain the practice of any religion without compelling justification and guarantees at least three things: freedom of religious belief, freedom of worship and the freedom to engage in the rites and rituals of

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<sup>38</sup> Robert Audi, “The State, The Church and The Citizen,” in *Religion and Contemporary Liberalism*, ed. by Paul J. Weithman (Notre Dame: University of Notre Dame Press, 1997), 38.

one's religion.<sup>39</sup> The equalitarian principle holds that the state may not give preference to one religion over another. If the state shows partiality, the preferred religion will dominate in power and this eventually impairs the equal treatment concept inherent in a liberal democracy. The neutrality principle holds that the state should not favor nor disfavor religion *as such*. It should remain neutral between the religious and non-religious. Such a principle is necessary to curb the possibility of religion gaining power and unfairly dominating those who are non-religious. Audi is concerned about the power that religion can hold on people and the unique potential for undue influence. Freedom of religion entails the freedom *from* religion that some may prefer. The government respects those who choose not to be religious by holding to this principle.

A strong conception of the separation of church and state also has ramifications for the religious believer. In Audi's discussion of the sources from which believers get their religious obligations (scripture, tradition, ecclesiastical authority), he notes that many of our religious obligations may have non-religious content to them. For example, the obligation to tell the truth doesn't apply only in a religious context, but in secular contexts as well. A significant point for Audi's argument concerning the relationship of religion and public policy is the recognition that these sources are independent of each other and that there is often an overlap between religious and secular sources of one's moral obligations.

We should now expect that there is sometimes not only a *plurality of different obligation grounds* for a kind of conduct, but also the religiously and secularly *mixed obligational overdetermination*, the kind that occurs when there are both

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<sup>39</sup> Audi has a caveat that engaging in rites and rituals can be restricted if they violate the basic moral rights of others. Sacrificing children on an altar is not protected by the libertarian principle.

sufficient religious reasons *and* sufficient secular reason for a kind of conduct, for instance truth telling.<sup>40</sup>

This leads Audi to recognize that a reasonable religious believer would expect to find an overlapping consensus of multiple sources for beliefs about moral obligations, both religious and secular, and that he should seek to find such a consensus if one is not readily apparent. Traditional theism holds that God structured the world and us as free human beings so that there is a humanly accessible secular path, through rational inquiry, to the discovery of moral truths, especially far-reaching truths that have socio-political consequences. Therefore it is reasonable for a believer to seek to find common ground with non-believers concerning moral judgments, especially dealing with socio-political issues.

Not finding a consensus of secular and religious reasons on such issues should lead the reasonable believer to adopt an attitude of fallibilism in imposing a legal obligation on others on the basis of religious reasons alone. Why should one be a fallibilist concerning religious arguments rather than secular ones? Audi justifies this by claiming that religious “arguments seem (even) more subject than the former [secular arguments] to cultural influences that may distort scripture or tradition or both, more vulnerable to misinterpretation of religious texts or to sheer corruption across time and translation; and more likely to bias stemming from political or other non-religious aims.”<sup>41</sup> Audi holds that believers should adopt this attitude of fallibilism under at least

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<sup>40</sup> Robert Audi, “Liberal Democracy and the Place of Religion in Politics,” in *Religion in the Public Square: The Place of Religious Convictions in Political Debate*, Robert Audi and Nicholas Wolterstorff (Lanham, MD: Rowan and Littlefield, 1997), 13.

<sup>41</sup> Audi, “The State,” 52

two conditions: if the moral obligation refers to issues that are non-religious in content and if one cannot find a good secular ground for the obligation.

Audi incorporates the idea of seeking consensus into his conception of civic virtue and the civically virtuous citizen. Civic virtue is more than just obeying laws; it also involves promoting those things that are good for the welfare of the community as a whole. Civic virtue involves responsible political participation which includes promoting reasonable positions on issues, discussing problems with others, and voting on issues in a reasonable manner. A civically virtuous citizen in a pluralistic liberal democracy resists using coercion unless one is justified in doing so. He/she prefers persuasion as a means to achieve social cooperation. What we are persuaded to do (or believe) we do freely and autonomously. Therefore, "Virtuous citizens will seek grounds of a kind that any rational adult citizen can endorse as sufficient for the purpose."<sup>42</sup> This does not mean that coercion is never necessary, but on those occasions when it is necessary, it must be for an adequate rationale. This rationale "implies intelligibility of a certain kind . . . more to the point, it implies secularity."<sup>43</sup>

A religious believer who is civically virtuous will commit to what Audi calls a *theo-ethical equilibrium* in considering moral matters of public policy. Audi defines this as "a rational integration between religious deliverances and insights and, on the other hand, secular ethical considerations, including sociopolitical principles of the kind that determine the level of permissible freedom in a democracy."<sup>44</sup> The test for such equilibrium is, if one arrives at a religious demand that goes against one's secular ethical

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<sup>42</sup> Ibid., 48

<sup>43</sup> Ibid.

<sup>44</sup> Robert Audi, *Religious Commitment and Secular Reason* (Cambridge: Cambridge University Press, 2000), 130.

reasoning, then that is cause to suspect error in one's religious reasoning. In the same way, if one arrives at a moral conclusion based on secular ethical reasoning that goes against one's religious reasoning (based on scripture, tradition, etc.) one should be suspect of one's secular ethical reasoning. The idea behind the theo-ethical equilibrium is overtly theological: In traditional theism (where God is omniscient, omnipotent, omnibenevolent, and respects the freedom of his creatures) one should expect that there will be equilibrium between one's religious reason and one's secular ethical reflection. A reasonable believer, who cannot reach such equilibrium on a particular public policy involving coercive laws, should be reluctant to support such a policy.

Given the theo-ethical equilibrium, Audi spells out two other principles that derive from his concept of civic virtue. Most importantly is the *principle of secular rationale*: "One has a prima facie obligation not to advocate or support any law or public policy that restricts human conduct, unless one has and is willing to offer at least one adequate secular reason for his advocacy or support (say one's vote)."<sup>45</sup> This is the principle of self-restraint similar to that of Rawls and Rorty. However, the difference with Audi is that this does not mean one cannot appeal to one's religious reasons in discussing and promoting a particular public policy. In fact Audi allows for religious reasons to be evidentially adequate and motivationally sufficient in public decision and discourse. It just means that civic virtue requires that at least one adequate secular reason be present as well. This is an epistemological principle for it refers to what counts as adequate justification for one's moral beliefs in supporting or opposing public policies. According to Audi, a "secular reason" is a reason that "does not evidentially depend on

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<sup>45</sup> Audi, "The State," 55.

the existence of God (or on denying it) or on theological considerations, or on the pronouncements of a person or institution *qua* religious authority.”<sup>46</sup> Hence, Audi holds to a weak version of the principle of self-restraint.

Audi's other principle is the *principle of secular motivation*. One must not only *know* a secular reason for one's view on public policies; civic virtue demands that one is sufficiently *motivated* by that reason. By “sufficiently motivated” Audi means that (a) this reason (or these reasons) explains one's actions and (b) one would act on this even if, all things being equal, all other reasons were eliminated. The idea behind this principle is that one is disingenuous if one puts forward an adequate secular reason for a coercive policy but is not motivated by that reason.<sup>47</sup> Other motivations may be present, even religious ones, but one must be sufficiently motivated by the secular reason. While the secular rationale principle is epistemological, the motivational principle is a virtue principle – one is not being civically virtuous if one does not follow this principle. This is why Audi prefers to think in terms of civic *virtue* rather than civic *duties*. Virtue allows motivations to play a large part in determining the appropriateness of one's actions.

Audi is especially restrictive when it comes to ecclesiastical and clerical neutrality. His principles in these cases do not follow the theo-ethical equilibrium as established for individual believers. Concerning churches as institutions, his policy, the *principle of ecclesiastical political neutrality*, states: “In a free and democratic society, churches committed to being institutional citizens in such a society have a *prima facie*

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<sup>46</sup> Ibid.

<sup>47</sup> While I am not in agreement with Audi on the necessity for a secular rationale in addition to religious reason, I do believe he is correct that one should be sufficiently motivated by the reasons one offers whether secular or religious and to offer a reason and not be motivated by it is indeed disingenuous.

obligation to abstain from supporting candidates for public office or pressing for laws or public policies that restrict human conduct.”<sup>48</sup> He is not saying that churches may not take a public stand on moral issues when they have socio-political concerns. However, churches should not, as institutions, endorse a specific coercive public policy or candidate. As an example, while a church may speak on the morality of homosexuality in a general sense, it should not publicly endorse any specific laws restricting homosexual activity. Audi believes that any strong concept of separation of church and state must include the non-political activity of the church as an institution. This principle also does not mean that churches as religious institutions should not encourage political participation.<sup>49</sup>

As far as clerics are concerned, the principle is similar to that of ecclesiastical neutrality with some important qualifications. First, clerics have an obligation to recognize a distinction, especially in making public statements, between their personal views and those of their office as clergy. Second they have an obligation to prevent any political aims they might have from dominating their professional conduct. Finally clerics have an obligation to avoid officially supporting coercive public policies or candidates for public office. Because it is not always easy to delineate when one is speaking personally or professionally, Audi holds that it is appropriate that clergy refrain from speaking on political issues.

*Kent Greenawalt: No Self-Restraint Except for Imposition Reasons  
(though it may be appropriate in public discourse)*

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<sup>48</sup> Ibid., 64.

<sup>49</sup> “Civic indolence may be criticized both as a failing in a religious obligation to improve the world and as a moral vice in citizens.”, Ibid., 66.



While Audi is concerned with establishing principles for the role of the virtuous citizen, Greenawalt argues "in favor of principles of restraint that correspond substantially with those that I claim now exist, ones that are much more nuanced than those commonly proposed by theorists."<sup>50</sup> Greenawalt is being pragmatic in that he is seeking for a principle that will work in the liberal democracy we now have. He suggests that the starting point for the discussion is the present state of affairs. First, ordinary citizens should feel free to rely on religious convictions when they consider difficult political issues unless a substantial reason emerges why they should not. Second, while legislators and executives should seek to resolve issues by appeals to public considerations, they may also, at times, rely on their religious views. On rare occasions, even judges may privately rely on religious reasons for judicial decisions. However, the same freedom may not apply to public discourse on political issues. Judicial decisions should always be cited in terms that are "broadly public" as should "quasi-public" citizens, like newspaper editors and leaders of large corporations. Religious groups may also present positions in terms of religious reasons.

Greenawalt grounds freedom from self-restraint in the basic principles of a liberal democracy arguing that liberal democracy itself does not restrict such freedom. Therefore one must provide substantial reasons apart from merely appealing to the idea of liberal democracy to support principles of self-restraint. He examines, among others, both Audi and Rawls and finds that their arguments are not adequate in providing such reasons.

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<sup>50</sup> Kent Greenawalt, *Private Consciences and Public Reasons* (Oxford: Oxford University Press, 1995), 7.

According to Greenawalt, Audi places too much emphasis on the non-establishment aspect of the separation principle to the point where it overrides the full use of our freedom to choose.<sup>51</sup> Requiring believers to restrain themselves from appeals to religious beliefs in political decision-making seriously hampers their religious freedom and this can only be justified by very strong reasons. Greenawalt doubts that Audi can make this case. In fact it is possible, says Greenawalt, for the state to come down on the side of particular issues which may be broadly based on a religious view without worrying about establishment issues. Just because the state agrees with a broadly religious viewpoint on a particular issue does not constitute the endorsing of any single religion. Therefore, there is not always a need for a rigorous secular rationale.

Greenawalt raises a number of problems with Rawls's position as well, perhaps the most significant being the question of whether the political conception of justice can be as free floating as Rawls suggests. Greenawalt wonders if one can divorce oneself so easily from one's comprehensive views.

People have great difficulty trying to face particular issues free of the push of their religious or other comprehensive views. It requires exceptional discipline to do so with any success. It is doubtful whether one should recommend to ordinary people a self-restraint that is so hard to perform.<sup>52</sup>

This is especially tricky when it comes to understanding what a basic issue of justice or a constitutional essential might be in a given situation. Greenawalt suggests that an individual's comprehensive view might lead him to a different understanding of a constitutional essential from what he would reach if he were only to consider political values. "In more typical cases people will not try to figure out what the political values

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<sup>51</sup> Ibid., 67.

<sup>52</sup> Ibid., 138.

alone would indicate; their judgment will be infused by their transcendent perspectives.”<sup>53</sup>

Greenawalt also raises the difficulty in making a distinction between constitutional essentials on the one hand and either interpretations of essentials or other "ordinary" political issues on the other hand. The line of distinction is not nearly as clear as Rawls may wish it to be. In addition to blurring the distinction there is also the problem of the relationship between constitutional essentials and other issues. "An issue, such as, say, fetal research and implantation, may not be about constitutional essentials, but its discussion may involve some *arguments from* constitutional essentials, such as the appropriateness of abortion.”<sup>54</sup> Greenawalt concludes that Rawls has not produced an argument adequate to insist that the principle of self-restraint is necessary.

As far as his own positive argument, Greenawalt appeals to a number of very practical points to argue his case. First, there is no realistic way to regulate what reasons people will use in making their own private decision concerning political issues. It is highly unrealistic to believe that they will not appeal to comprehensive views including religious views. Greenawalt believes this is mostly due to the reciprocity issue: people are reluctant to give up their religious reasons in private decision making because they don't trust the opposing view to do the same.<sup>55</sup>

Second, not only is it unreasonable to expect people to forsake their comprehensive views, Greenawalt believes that it may not be psychologically healthy for

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<sup>53</sup> Ibid., 117.

<sup>54</sup> Ibid., 118, emphasis his.

<sup>55</sup> Ibid., 138-139

them to do so. He argues that it is natural for people to give extra weight to their own personal experiences, including religious experiences.<sup>56</sup>

Third, and related to these first two reasons, is what Greenawalt refers to as the "feasibility of application." He suggests that "the issues are intermixed and people cannot comfortably extirpate sources of understanding for constitutional essentials that they properly bring to bear for other issues, even when they can determine which of the two kinds of issues is presented and the blending is not a difficulty."<sup>57</sup> It is just too much to ask of the average citizen to make these kinds of distinctions. Principles for reasoning must be ones that most people can live up to. Therefore, absent of any compelling reason, citizens should be free to appeal to religious reasons in making political decisions.

What compelling reasons might exist that would warrant self-restraint? Greenawalt holds that there are some principles of self-restraint even in private decision making that a good citizen should practice. The most significant of these are "imposition reasons": any reason whose aim is imposing on another's religious belief or practice.<sup>58</sup> While some might argue any appeal to a religious reason is an imposition on others' religious views, Greenawalt asserts that an imposition reason is not just appealing to religious reasons, but instead is "seriously discouraging, or aiming to discourage, the holding of other religious views or the practice of those religions."<sup>59</sup> If my reason to vote against an issue is that I think it will discourage the practice of a particular religion, then that would be an imposition reason and would be inappropriate for me to appeal to

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<sup>56</sup> Ibid., 50.

<sup>57</sup> Ibid., 127.

<sup>58</sup> Ibid., 57.

<sup>59</sup> Ibid., 59.

as a good citizen. However, I may rely on non-imposing religious reasons for my vote on an issue and again Greenawalt asserts that such reliance is not necessarily endorsing any particular religion.

Another area where Greenawalt believes self-restraint might be appropriate is in public discourse concerning one's religious reasons for a political issue. In general, Greenawalt thinks that restraint in most discourse is unnecessary and, in fact, it is healthy for a society to have a sharing of differing comprehensive views. But at times this openness must be balanced with self-restraint. Unlike our private decisions, which are often difficult to delineate and limit, what we publicly advocate is more evident and therefore we can and do have more control over what we say. Therefore, we have more responsibility in public advocacy in how we perform our role as a good citizen. Greenawalt believes that in personal conversations among family, friends and colleagues reference to any reason on any issue is entirely appropriate. However, as our public discussion broadens, a continuum of self-restraint becomes apparent. Out of respect for other views it may be inappropriate for citizens and "quasi-public" citizens (media reporters and editors, corporation executives, etc.) to appeal to religious reasons in political discussions. Therefore it would be appropriate in these situations to use some form of self-restraint, though Greenawalt refuses to be hard and fast on any of this, noting that these principles contain some amount of flexibility.<sup>60</sup>

This discussion raises a question about the sincerity issue. Doesn't the good citizen have an obligation to be sincere in his public discourse about his reasons for advocating a particular view on a political issue? Greenawalt allows that, at least on the

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<sup>60</sup> Ibid., 164.

citizen level, one is not required to make a full disclosure of one's reasons for public policy choices. Greenawalt answers the claim of insincerity and deceitfulness by appealing to people's expectations: people rarely expect full disclosure and therefore one is not deceptive in not offering full disclosure.<sup>61</sup> Greenawalt comments that, in holding such a position, "I may have failed Audi's test of secular motivation."<sup>62</sup> There is no "may" about it. Audi requires that one is not only required to offer at least one secular reason, but one is required to be sufficiently motivated by that reason apart from other religious reasons. Using religious and comprehensive reasons in private decision implies approval of being motivated by such reasons - something that Audi would not allow if religious reasons are the only motivating factor. In fact Audi's secular motivation is a means of guaranteeing sincerity. Greenawalt deals with sincerity by claiming that selective nondisclosure is not insincere.

Finally, what of those in special roles in society: legislators, judges and the clergy? When it comes to formal legislative actions like adopting statutes, it would be appropriate for legislators to appeal only to public reasons. He also believes that self-restraint should be practiced in legislative discourse on public policy decisions:

When legislators speak on political issues they represent all their constituents. Their explicit reliance on any controversial religious or comprehensive view would be inappropriate. If they argue in terms of reliance on comprehensive or nonaccessible grounds, the losers are likely to feel imposed upon in the sense of being excluded, even if the specific issue does not involve imposition.<sup>63</sup>

When it comes to personal reasons outside of public discourse, he is more open to legislators appealing to religious reasons if they are appropriate. However, because they

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<sup>61</sup> Ibid., 139.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid., 157.

are representatives of the people they "should afford more weight to a position that is grounded in public reason (when that position is otherwise similar), than to a position grounded in a controversial comprehensive view."<sup>64</sup>

Similar to Rawls, Greenawalt holds that judges are the model of constrained sources. This is certainly the case in official justifications and in their official opinions. However, Greenawalt seems to allow for the possibility that judges may, at times, rely on personal moral convictions. These personal moral convictions can include religious convictions. Even these decisions and opinions should always be framed in terms of public reasons. Greenawalt suggests a limit to these moral convictions: they should be based preferably in shared premises, rather than religious or comprehensive views. He allows that judges may sometimes rely on religious convictions, but they "should be very hesitant to do so."<sup>65</sup>

What of the church as an institution and of clergy? On the institutional level, Greenawalt believes most churches as institutions should not be involved in politics, whether in supporting candidates, or favoring/disfavoring public policies. Conversely, on the individual level it depends on the particular activity the clergy is engaged in. As far as preaching to their congregations, the level of specificity determines appropriateness. Certainly clergy are expected to preach about morality in general or about specific moral issues even if those issues have political implications. No matter if a particular local candidate is running on a pro-life or pro-choice platform, it is perfectly appropriate for a minister to speak on the moral issue of abortion. However, Greenawalt does believe

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<sup>64</sup> Ibid., 161.

<sup>65</sup> Ibid., 143

some restraint may be necessary when it comes to specific candidates or policies: “Of course, no *sharp* line divides morality from politics, but there is a difference between telling people that an active homosexual life is sinful and telling them they should support criminal sanctions for that behavior.”<sup>66</sup>

Lastly, the following comments by Greenawalt concerning church/clergy involvement can generally capture his entire position on religious reasons and public policy: “I believe that the most one can sensibly propose in this area are provisional principles of restraint, principles that may be overridden by urgent contrary reasons.”<sup>67</sup>

### *The Revised John Rawls: Public Reason Revisited*

In 1997 Rawls wrote an article revising and clarifying portions of his idea of public reasons.<sup>68</sup> The article was republished in *The Law of the Peoples*<sup>69</sup> and the ideas of the article were to be incorporated into a new revision of *Political Liberalism*.

Unfortunately Rawls passed away before that new version was completed. Rawls believed this article was the best statement he had written on public reasons and political liberalism: “It contains a number of new ideas and alters greatly the nature of the role of public reason. In particular, I stress the relation of public reason and political liberalism to the major religions that are based on the authority of the church and sacred text, and therefore are not themselves liberal.”<sup>70</sup> It is outside the scope of our purpose here to examine every change and addition Rawls made to his original stance. However, there

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<sup>66</sup> Ibid., 174.

<sup>67</sup> Ibid., 173.

<sup>68</sup> John Rawls, “The Idea of Public Reason Revisited,” *The University of Chicago Law Review*, Vol. 64, No. 3 (1997), pp. 765-807.

<sup>69</sup> John Rawls, *The Law of the Peoples* (Cambridge: Harvard University Press), 1999.

<sup>70</sup> Rawls, *PL*, expanded edition, 438.



are some significant changes and clarifications that we need to discuss that move Rawls from exclusionism to inclusionism.

The first revision is Rawls's emphasis on those to whom public reasons apply. He refers to these persons as the "public political forum."

It is imperative to realize that the idea of public reason does not apply to all political discussion of fundamental questions, but *only* to discussions of those questions in what I refer to as the public political forum. This forum may be divided into three parts: the discourse of judges in their decisions, and especially of the judges of the supreme court [sic]; the discourse of government officials, especially chief executives and legislators; and finally, the discourse of candidates for public office and their campaign managers, especially in their oratory, party platforms, and political statements.<sup>71</sup>

This is a significant difference from the position he advocated in *Political Liberalism*.

His original claim was: "The ideal of public reason does hold for *citizens* when they engage in political advocacy in the public forum, and *thus* for members of political parties and for candidates in their campaigns and for other groups who support them."<sup>72</sup>

In his original work, the reasoning went from the requirement for citizens to a requirement for political professionals. In this new version the requirement is for political professionals. Or so it seems.

From the quotation above one might get the initial impression that Rawls holds that public reasons apply only to legislators, executives, and judges and not to the average citizen. However, that is not what the rest of the article seems to advocate. First, while Rawls makes this claim in the beginning of the article he rarely addresses legislators and executives again in the entire article (though he does spend some time discussing judges). Instead he spends the vast majority of the article addressing citizens. Second, what he

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<sup>71</sup> Rawls, *Justice*, 133, emphasis mine.

<sup>72</sup> Rawls, *PL*, 215, emphasis mine..

says about the reasoning of citizens is interesting. He asks, "How though is the ideal of public reason realized by citizens who are not government officials?"<sup>73</sup> His answer is "Ideally citizens are to think of themselves *as if* they were legislators and ask themselves what statutes supported by what reasons satisfying the criterion of reciprocity, they would think it most reasonable to enact."<sup>74</sup> Later he raises the bar even higher and states that "public reason sees the office of citizen with its duty of civility as analogous to that of judge with its duty of deciding cases."<sup>75</sup> This is significant in that Rawls holds "that the idea of public reason applies more strictly to judges than to others."<sup>76</sup> There is a dissonance here that is difficult to resolve. Rawls seems to want to advocate public reasons "only" for government officials, and yet "ideally" wants to put all citizens in that role. In fact, that is how he treats citizens throughout the rest of the article. So whether there is an actual shift in his position or not on this score is debatable.

Rawls also wants to clarify any misconceptions concerning the nature of public reason especially in relation to "secular reasons." He writes, "I define secular reason as reasoning in terms of comprehensive nonreligious doctrines."<sup>77</sup> According to Rawls, secular reasons are too broad and too wrapped up in moral doctrines to serve as public reasons. Liberal principles and values, while having "intrinsic moral value" are based on a free floating political conception of justice not tied to any specific comprehensive doctrine. Examples of such political values (as opposed to moral values) are those we find in the preamble of the *United States Constitution*: "a more perfect union, justice,

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<sup>73</sup> Rawls, *Justice*, 135.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid., 168.

<sup>76</sup> Ibid., 134.

<sup>77</sup> Ibid., 143.

domestic tranquility, the common defense, the general welfare, and the blessing of liberty.”<sup>78</sup>

The most significant adjustment Rawls makes in the revision to his original account in *Political Liberalism* is the addition of a “proviso” to his duty of civility to appeal to only public reasons for supporting or opposing public policies.

Reasonable comprehensive doctrines, religious or nonreligious, may be introduced in public political discussion at any time, provided that in due course proper political reasons – and not reasons given solely by comprehensive doctrines – are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support.<sup>79</sup>

This is a major shift from the idea that citizens should “appeal *only* to presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial.”<sup>80</sup> What justification does Rawls offer for such a shift? Rawls offers two.

First, the introduction of reasons based on comprehensive doctrines has value as they support the political conceptions and provide them with a social basis. It helps citizens see that the roots of the political conception can be found in their own comprehensive doctrines. Therefore, according to Rawls, appeals to comprehensive doctrines in addition to public reasons confirm the idea of an overlapping consensus and the principle of legitimacy. Rawls's second justification is that this confirmation itself strengthens a citizen's resolve to honor the duty of civility and follow the ideal of public reason. Rawls offers two forms of discourse where one can employ religion in support of

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<sup>78</sup> Ibid., 144. I find Rawls's discussion of the political conception having intrinsic moral value while not being tied to any specific comprehensive doctrine unpersuasive. From where do these principles derive their *moral* value? See Wolterstorff on this below.

<sup>79</sup> Ibid., 152.

<sup>80</sup> Rawls, *PL*, 224, emphasis mine.

policies. One is 'declaration', where we state our own religious reasons as a way of showing how we can endorse the political conception of justice. The other is 'conjecture' where we speculate how those of other religious beliefs might be able to endorse a political conception of justice from their own comprehensive doctrine.

With the proviso, Rawls allows religious reasons to play a factor in supporting and opposing public policies. However, a significant question now arises: Why would any religious believer agree to the principle of self-restraint even in this weaker form? To understand Rawls's answer one must remember, as he made clear in *Political Liberalism*, that he not only desires religious believers to adopt a political conception of justice, but that they do so for the right reasons. He does not want religious believers to accept it merely as a *modus vivendi*. Rawls's answer is that religious believers need to accept a principle of self-restraint because it is the only way to guarantee religious liberty. Religious liberty only functions in a liberal democracy if the liberties of all citizens are equally recognized. Since a reasonable pluralism exists in modern liberal democracies, no one comprehensive doctrine can be allowed to dominate or be given unequal status over others. By adopting the principle of self-restraint all religious believers agree to restrain appeals to their own comprehensive doctrines and appeal only to premises all can commonly reason from. Rawls writes, "In endorsing a constitutional democratic regime a religious doctrine may say that such are the limits God sets to our liberty."<sup>81</sup> While some have found it interesting that Rawls makes a religious appeal for agreeing to adopt public reasons, this is merely an example of the use of religion as conjecture for discourse as was described above.

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<sup>81</sup> Ibid., 151.

Religious believers might wonder how far this appeal to religious liberty can be pressed. At one point Rawls writes, “In a reasonable comprehensive doctrine, in particular a religious one, the ranking of values may not be what we might expect.”<sup>82</sup> Rawls's point is, while it may be that there are transcendent values and normally such values would be superior to worldly values, it doesn't follow that transcendental values override the worldly values. “In fact, a *reasonable* comprehensive doctrine is one in which they are not overridden; it is the unreasonable doctrines in which reasonable political values are overridden. This is a consequence of the idea of the politically reasonable as set out in political liberalism.”<sup>83</sup> However, many religious believers find this troubling. What if one's religious values come into conflict with political values? According to Rawls, not only does that make one's religious values “unreasonable” by fiat, but one must sacrifice values one believes to be superior for those one believes to be inferior all for the purpose of social cooperation in the well-ordered society. For many religious believers such consequences are not worth the price of betraying their ultimate loyalties, nor are all of them convinced that this is the best way to secure such desired consequences anyway.

As an example of such concerns, take the following statement by Rawls:

“Churches cannot practice *effective intolerance*, since, as the principles of justice require, public law does not recognize heresy and apostasy as crimes, and members of churches are always at liberty to leave the faith.”<sup>84</sup> The meaning of “effective intolerance” is not clear. However, such language may justifiably raise concerns for religious believers.

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<sup>82</sup> Ibid., 173.

<sup>83</sup> Ibid., emphasis his.

<sup>84</sup> Ibid., 158-159, emphasis mine.

Some religious believers hold to various concepts of church discipline in which members can be chastised, removed, disassociated, or excommunicated on the basis of doctrinal beliefs or moral practices that are not in accord with church teachings. Suppose a particular believer does not want to leave the church. Is the church violating their rights and liberties by forcing disassociation in this case? What does one say in the case of a believer who is a practicing homosexual in a church that teaches such behavior is sinful and those who practice such a behavior cannot remain as members of the church and yet the believer does not want to leave? Is the church guilty of “effective intolerance” if it forces the believer to leave the church? Are they now endorsing an “unreasonable” comprehensive doctrine? Such questions trouble many religious believers.

Despite these and other questions I believe we can affirm that, with the addition of the proviso, Rawls has made the move from exclusionism to inclusionism.

### *Inclusionism and P52*

Returning to our opening narrative, how might inclusionists evaluate the actions of the characters in our opening narrative? As far as delegate Hastings, all three members of inclusionism would hold that it was inappropriate for him to publicly share his religious reasons from the podium. Public or official discourse by a legislator should appeal only to public or, in Audi’s case, secular reasons. The one exception Rawls might allow is raising religious reasons for conjecture purposes. However as far as simply holding such reasons and voting on them, as in the case of both delegates Hastings and Drake, there might be some latitude. Audi and Rawls would probably allow this as long as at least one public reason is present and accessible. For Audi that reason must also be

motivating while Rawls would allow such a reason to be present but would prefer the public reason to dominate. Greenawalt would not require a public reason to be present, though he thinks it would be appropriate, as long as the religious reason is not an imposition reason.

As far as clergy speaking from the pulpit, as in the case of Pastor Farmer and Rabbi Fox, there is a good deal of agreement here. Audi would say that, while it's appropriate for clergy to speak out in general on the morality of abortion, as representatives of their respective religious organizations they should refrain from supporting or opposing any specific legislation, policy or candidate for public office. Therefore he would oppose the actions of both Rabbi Fox and Pastor Farmer. Rawls also believes that it is not inconsistent with public reason for churches to teach on moral issues in general and hold positions that are not in accord with those that public reason may dictate. He does not specifically address the issue of clergy in the pulpit and so it is difficult to know how he might evaluate the actions of Farmer and Fox. He may give more latitude to them than Audi depending on the meaning and implementation of "effective intolerance" discussed above. Like Audi, Greenawalt also believes that it is usually inappropriate for churches as institutions and clergy as representatives of those institutions to get involved with supporting or opposing specific policies and candidates. However he would cite two qualifications. First, clergy are certainly allowed to formulate their own positions without employing the principle of self-restraint. They may also share these in private conversations outside of their representative roles (though he cautions pastors about this). Second, while Greenawalt believes it is *usually* inappropriate for clergy to support or oppose specific policies or candidates from the

pulpit, he holds that it is not *always* inappropriate. There may be times when a situation is so overwhelming that a pastor must speak out.

The inclusionist view of Sue Turner again allows for religious reasons to play a part in her reasoning about the proposition. Like the legislators above, Audi and Rawls will allow religious reasons to play a part as long as at least one public or secular reason is present, and at least for Audi, motivating. Audi would also hold that she should be a fallibilist if there is a conflict between her religious and public reasons. Rawls allows for religion with the proviso, but places his emphasis on the idea that the citizen should consider herself like a legislator or judge and therefore the public reason should dominate. Greenawalt holds that Sue is perfectly justified in voting on the basis of her religious reasons and is not obligated to adopt the principle of self-restraint unless her reasons are imposition ones. He may say that restraint might be appropriate when it comes to discourse depending on how broad the audience is. In the situation provided in the narrative, assuming that Sue is talking with personal acquaintances, Greenawalt would probably have no problem with her appealing to religious reasons even if some of them did not hold the same religious beliefs.

Finally, when it comes to Justice Towns, all would affirm that appeals to religious reason are inappropriate, and for Audi and Rawls would violate a duty of civility. They both hold strongly that judges are the exemplar of public reasons. Greenawalt agrees for the most part, but is open to the possibility that a judge may, in rare circumstances, appeal in his own reasoning to religious and moral beliefs. However, these should not be a part of his official judgment or written opinion.



### **Exclusivism**

Exclusivism holds that appeals to public reasons are not necessary. One is free to support one's view on public policies on the basis of any reasons exclusive of public reasons, including religious reasons. Exclusivists argue that the principle of self-restraint unjustly restricts religious believers and marginalizes a very important, if not primary, area in their life: their religious beliefs. In addition, for many believers religion has much to say about public policy. Many exclusivists argue that they have a religious obligation to speak out about public policies and to insist that they restrain themselves from appealing to such reasons is ultimately a violation of their freedom of religion. Other exclusivists claim that, if this is truly a pluralistic society, then religious believers should be allowed to speak out and vote on the basis of their most important convictions. They argue that respect is not achieved by reaching a consensus through sacrificing cherished beliefs, but by sharing those beliefs with others and in the end voting and yielding to the process and decision of the electorate.

It is important to note that, while exclusivists argue that one is free to appeal to any reason for justification of one's support or opposition concerning a particular public policy, including religious reasons, this does not imply that one *must* appeal to religious reasons at any time. Exclusivism claims that religious reasons are sufficient for one's support of public policies, but they are not claiming they are necessary for one's support. One could theoretically be an exclusivist and never appeal to a religious reason for a particular public policy. Exclusivism is simply maintaining that one is allowed to appeal to a religious reason if one has a rational basis for doing so but he never has to. If one is convinced by secular reasons he is free to appeal to those also with or without any

reference to religious reasons. The particular position one adopts on the issue of the use of religious reasons in supporting public policy really has nothing to do with the actual reasons one may use in supporting a particular policy. This is not the case with exclusionism and inclusionism which are much more restrictive as to what reasons one can appeal.

While this position has been growing in adherents in recent years, we will examine two significant representatives of exclusivism, Nicholas Wolterstorff and Christopher Eberle.

*Nicholas Wolterstorff: All Reasons are Welcome  
(including religious reasons)*

Whereas Rawls's concern is justice and the stability of society, Wolterstorff's concern is the "role of the citizen in a liberal democracy; how that role should be perceived."<sup>85</sup> Wolterstorff approaches the principle of self-restraint from the default position of religious liberty. It is up to those who believe that self-restraint is necessary to prove their case. If they cannot do so then, by default, no principle of self-restraint should be imposed on those who appeal to religious reasons. Therefore Wolterstorff spends most of his time critiquing those who have argued for the principle of self-restraint.

The idea of a liberal democracy encompasses four elements for Wolterstorff: equal protection for all citizens, equal freedom for all citizens, government neutrality

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<sup>85</sup> Nicholas Wolterstorff, "The Role Of Religion in Decision and Discussion on Political Issues," in Robert Audi and Nicholas Wolterstorff, *Religion in the Public Square: The Place of Religious Convictions in Political Debate* (New York: Rowman and Littlefield, 1997), 67

towards diverse religious views, and ultimate power vested in each citizen with an equal voice. Wolterstorff's discussion concerns primarily the last two elements.

Wolterstorff recognizes that "government neutrality" can be understood in at least two ways: (1) separation of government and religion or (2) impartial treatment of government towards religion. This distinction is important in that the second allows for a relation between government and religion as long as government treats all religions equally and is neutral towards any one religious perspective. The first understanding does not allow government to relate to religion at all. Wolterstorff believes that the second understanding is the proper way to interpret the neutrality aspect of a liberal democracy.

Second, the fact that all citizens have an equal voice concerning public policy raises the question: "How should citizens espouse their religiously-based political views in the public square and act thereon?"<sup>86</sup> Wolterstorff forms the answer from modern political liberalism as a negative principle: citizens are not to debate public policy issues or make decisions on such issues on the basis of religious beliefs. Instead such debates and decisions are to be based on an independent source from any religious or comprehensive perspective. He refers to this as the "independent-basis position" which states that "The source must be such that it is *fair* to insist that everybody base his or her public political discourse, and political decisions, on principles yielded by that source."<sup>87</sup> Wolterstorff notes that there are a number of variations to the liberal position but that they all agree on two points: (1) the goal of political debate/decision making should be

<sup>86</sup> Nicholas Wolterstorff, "Why We Should Reject What Liberalism Tells Us About Speaking in Public for Religious Reasons," in *Religion and Contemporary Liberalism*, ed. by Paul J. Weithman (Notre Dame: University of Notre Dame Press, 1997), 163.

<sup>87</sup> Wolterstorff, "Why," 166.

equal justice and (2) the independent-basis concept as stated above is the appropriate means of obtaining this goal.

However, Wolterstorff says a paradox exists between the independent-basis position and the idea of liberal democracy. Part of the idea of a liberal democracy is the freedom of citizens to hold religious beliefs and to rely upon those beliefs to make a number of decisions including views concerning public policy issues. In fact, for many religious persons, the dictates of their religious views require appealing to religion in deciding public policy and to disallow such appeals violates their freedom of religion.

Wolterstorff puts the paradox this way:

It's my own conviction that, when it comes to the political issue of poverty, I ought to act and vote on the basis of my religious convictions – that conviction being itself a religious conviction on my part. Should anyone try to stop me from voting, and acting politically, on the basis of my religious convictions, that would violate the free exercise of my religion. Accordingly, if honoring the freedom and equality of citizens did require adherence to the independence-based principle, then honoring the freedom and equality would also require non-adherence.<sup>88</sup>

Such a restraint on a citizen's religious freedom necessitates compelling reasons.

Wolterstorff examines such reasons and does not find them compelling. His examination includes three basic areas: the danger of appealing to religious reasons, the adequacy of an independent source to serve as a basis for such decisions, and the cogency of the rationale for restraining appeal to religious reasons.

The first argument for restraint comes from the idea that there is a danger in allowing politics to become embroiled with religion. Wolterstorff offers a number of reasons why he does not believe this reasoning works. First is the historically conditioned argument. There was a time when there was a real danger of religious

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<sup>88</sup> Ibid., 177.

oppression and for the sake of social stability a restraint on religion in political discussion was warranted. However, liberal democracy is historically conditioned and changes in its needs and problems as society changes. What was warranted in the 17<sup>th</sup> century is not necessarily warranted in the 21<sup>st</sup> century. We now have a history of religious toleration and the fears of social instability are largely exaggerated. In fact, much recent social instability is due, not to religion, but other secular views. “So far as I can see, the slaughter, torture and generalized brutality has been conducted in the name of one and another secularism: nationalisms of many sorts, communism, fascism, patriotisms of various sorts, and economic hegemony.”<sup>89</sup> He also points out that many good reforms have been intimately associated with religion: abolitionism, civil rights, resistance movements in Nazi Germany and communist countries, and against apartheid in South Africa. Wolterstorff acknowledges that there is going to be disagreement about public policy, but that will be true regardless of what reasons are given. He concludes, “Liberalism’s myopic preoccupation with religious wars is outdated.”<sup>90</sup>

As far as sources to serve as a basis for public policy decisions, Wolterstorff finds the sources offered by justificatory liberals to be both naive and idealistic. Rawls’s independent source, the shared political culture, or *consensus populi*, is simply too vague and general to be adequate as a source for public reasons. First, there is in actuality much disagreement concerning many issues in the *consensus populi* among many people regardless of their respective religious persuasions even on constitutional essentials and issues of basic justice.<sup>91</sup> Secondly, Rawls’ view of “reasonable” is naive implying that

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<sup>89</sup> Ibid., 167.

<sup>90</sup> Ibid.

<sup>91</sup> Wolterstorff, “Role,” 97-98.

one's reasoning abilities can be completely separated from one's comprehensive doctrine. Perhaps some philosophers are able to step back and separate themselves from their comprehensive doctrines (and Wolterstorff doubts even that) but certainly the average citizen cannot do that.

However, his main criticism is that an independent-basis provides us with no source for upholding the very political values liberalism wants to extol. Justificatory liberals' insistence on the independent-basis position demonstrates a highly idealized view of our political culture. Wolterstorff believes that this threatens the fate of liberalism itself. The cardinal value of liberalism is that of citizens as free and equal. But on what is this value based? "If someone asks *why* should I believe that all normal adult members of my society are free and equal, *what reason* is there for believing it, no answer is forthcoming. The liberal can observe that, as it just so happens, we do believe this. But this *We-ism* is not an answer to the *why believe* question."<sup>92</sup> Wolterstorff's point is that without an ontological basis in which to ground these political values, one rooted in some comprehensive doctrine, they have no basis at all. The fact that "we just happen to do this" is not an answer.

Finally, Wolterstorff also challenges the rationale of the principle of restraint on a number of levels. First, the religious believer finds himself silenced when it comes to religious reasons for supporting public policies. He must base his reasons on those acceptable by the *consensus populi*. However, what if he believes that society is in need of reform, for example recognizing the rights of the poor for basic human goods? On

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<sup>92</sup> Wolterstorff, "Why," 179.

what basis can he justify that belief to his fellow citizens? This leads to the well-known reformer's dilemma:

A large proportion of my fellow citizens deny that the poor have any such rights as I believe they have. Should someone extract principles of justice from the consensus populi which entail that the poor do have such rights as I believe they have, I would on the basis of that entailment, conclude that her analysis was a *mis-analysis*. I cannot appeal to the *consensus populi*; the challenge facing me is to try to reform it.<sup>93</sup>

Secondly, justificatory liberals also claim that if a person appeals to religious reasons, then he is not treating others who do not hold those religious reasons as equals. We violate the freedom and equality of citizens when we appeal to private reasons and not those common public reasons that all can endorse. Wolterstorff raises a number of criticisms on this view of respect. He questions why one must find a *universal* reason that *all* citizens can endorse. One usually appeals to reasons that are persuasive to the particular individual or group being addressed. Reasons that one person might find persuasive are not going to be reasons another would. There is no reason why I must find universally common reasons for all citizens.

Wolterstorff also wonders whether we are really violating a person's equality and freedom by offering reasons or voting on reasons they may not find accessible. He agrees that, in a one sense, a person is not giving equal weight to another's opinion when he decides to go with his own view. However this sense is not really relevant as individuals are always acting in that manner when they hold that their reasons, religious or otherwise, are superior to those offered by others. In fact, to hold that I must only offer reasons that all persons could agree with ends up denying one of the basic ideas

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<sup>93</sup> Ibid., 174.

inherent in a liberal democracy: the idea of debate and vote. Wolterstorff writes, “What’s wrong with explaining to Wendy my religious reasons for thinking that involuntary avoidable impoverishment is a violation of rights, even though I don’t expect her to accept those reasons? How does that violate her freedom and dignity?”<sup>94</sup>

In a liberal democracy we show respect in giving each person an opportunity to offer his or her opinion in debate and discussion and then arrive at a solution by voting in fair procedures. Each vote is equal in weight and we end up acquiescing to the majority (taking into account certain conditions concerning minorities). Respect does not mean that all must agree in the end or even that we must all use reasons that others find accessible. Respect means we listen and consider the opinions and arguments of others and then vote for what we believe is right. In fact, claims Wolterstorff, the liberal position is actually showing disrespect when it disallows reasons that are important to religious persons from being part of the debate or decision. We end up disrespecting individual persons by stripping them of their particularity – their own beliefs, religious and otherwise, that make them uniquely them. Wolterstorff writes:

Is there not something about the person who embraces, say, the Jewish religion, that I, a Christian, should honor? Should I not only honor her as someone who is free and equal, but *as* someone who embraces the Jewish religion? . . . Does such honoring not require that I invite them to tell me how politics looks from their perspective - and does it not require that I genuinely listen to what they say?<sup>95</sup>

Having rejected the liberal position, Wolterstorff then offers his own “consocial” position. This position agrees with the liberal position that the goal for debate/decisions concerning public policy is justice; however, it disagrees in these two respects: (1) the

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<sup>94</sup> Ibid., 175.

<sup>95</sup> Wolterstorff, “Role,” 111, emphasis his.



meaning of state neutrality should be interpreted as impartiality and not as separation and (2) there should not be any unjustified restraint on reasons, privately or publicly, for one's position on a public policy issue. While Wolterstorff does not believe Rawlsian arguments constitute compelling reasons for citizens to restrain themselves, he agrees that some kinds of restraints are appropriate. These are restraints of manner, extent and goals, not of content or reasons.

As far as manner, Wolterstorff argues that discussions should be conducted under virtues of civility. While not laying out all the specifics of these virtues he suggests that, along with respectfully sharing one's own reasons, "They require listening to the other person with a willingness to learn and to let one's mind be changed."<sup>96</sup> His second restraint deals with the extent of one's reasons. "The debates, except for extreme circumstances, are to be conducted and resolved in accord with the rules provided by the laws of the land and the provisions of the Constitution."<sup>97</sup> While it is possible to argue for changes in the Constitution, Wolterstorff says these should be rare and are normally beyond the extent of public policy discussions. His third restraint concerns the goal of discourse and reasoning. The goal is political justice, not one's own interests. This is similar to Greenawalt's "imposition reasons." If one's goal is to offer reasons merely to support one's own self-interest, or to impose on the interests of others, then that is inappropriate.

Finally, Wolterstorff addresses the question of those in public office: legislators, executives and judges. Does the same freedom to appeal to religious reasons without

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<sup>96</sup> Ibid., 112-113.

<sup>97</sup> Ibid., 113.

restraint apply to them? He makes a distinction between executives and judges on the one hand and legislators on the other. The distinction is important for Wolterstorff because legislators play a distinct role in the normal process in how a democratic society reaches its decisions about the laws that shall govern the interactions of its citizens while executives and judges exercise their roles after the society has reached its decision.<sup>98</sup>

Executives and judges cannot appeal to their own reasons as they are assigned primarily the duty of fulfilling, administering and adjudicating the will of what has already been decided by the people. Therefore they do not have the freedoms outlined above. This is not to deny that often interpretations and judgments are made in the task of administering and adjudicating. While it is difficult to imagine that comprehensive perspectives do not play any role in interpretations and judgments, the executive and judge are acting on behalf of the community. So which interpretations and judgments are permissible? Wolterstorff answers: "Let the citizens themselves answer that question. . . by elections, recalls, referenda, protest movements and so forth."<sup>99</sup>

Legislators are different from executives and judges as they are in the job of creating public policy. They do not just administer or adjudicate; they represent the citizen in deciding public policy. Is a legislator only to vote the way his constituency desires or does his own personal judgment come into play?<sup>100</sup> Wolterstorff acknowledges that there is some debate on this question and arrives at no firm resolution. He does

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<sup>98</sup> Ibid., 117.

<sup>99</sup> Ibid., 118.

<sup>100</sup> One is reminded of the quote by the British statesman Edmund Burke, "Your representative owes you not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion." Edmund Burke, "Speech to the Electors of Bristol, Nov. 4, 1774," quoted in *The Quotable Conservative* ed. by Rod L. Evans and Irwin M. Berent (Avon, MA: Adams Media Corporation, 1995), 41.

acknowledge that if legislators can appeal to personal or private reasons, then religious reasons should not be restrained anymore than other personal reasons.

*Christopher Eberle: Religious Reasons Alone are Allowed  
(as long as one maintains the ideal of contentious engagement)*

Christopher Eberle states his thesis on the issue of religious reasons and public policy succinctly:

A citizen has an obligation sincerely and conscientiously to pursue a widely convincing secular rationale for her favored coercive laws, but she doesn't have an obligation to withhold support from a coercive law for which she lacks a widely convincing secular rationale.<sup>101</sup>

Eberle explains his position in a detailed, complex and comprehensive argument of which we will only be able to highlight the major salient points.

Eberle begins by distinguishing two questions often conflated in discussions about religious reasons and public policy. First, is it morally appropriate for a citizen to support or oppose public policy concerning coercive laws on the basis of his religious convictions? Second, is it appropriate for him to support or oppose the same on the basis of religious convictions alone? Eberle believes that almost all writers today answer yes to the first question while saying no to the second. Therefore the real debate for him concerns appealing to religious reasons exclusively to justify one's position on coercive public policies.

Justificatory liberals appeal to the principle of self-restraint in answer to the second question which Eberle formulates as follows: "the norm of respect imposes on

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<sup>101</sup> Christopher J. Eberle, *Religious Conviction in Liberal Politics* (Cambridge: Cambridge University Press, 2002), 10.

each citizen an obligation to discipline herself in such a way that she resolutely refrains from supporting any coercive law for which she cannot provide the requisite public justification.”<sup>102</sup> However, in order for justificatory liberals to rationally defend the principle of self-restraint they must do two things: (1) They need to offer compelling moral reasons why such a self-restraint is necessary, and (2) they need to offer an adequate conception of what a public justification is. Eberle examines these two requirements and finds them insufficient to compel citizens to adopt the principle of self-restraint. Since our topic is primarily the principle of self-restraint, we will limit our discussion only to his evaluation of the first requirement.

Eberle delineates significant aspects of justificatory liberalism. Eberle believes that what drives justificatory liberals is the problem of social harmony. A modern liberal democratic society contains two elements that produce the potential for serious conflicts: (1) the power in citizens to establish coercive laws against other citizens and (2) the pluralism of world views. Taken together these elements result in a disparity between the coercive laws one citizen regards as morally appropriate and those his fellow citizens regard as appropriate.<sup>103</sup> In order to solve the problem of social harmony, justificatory liberals require that citizens respect each other when it comes to coercive laws. Public justification ensures this respect.

A key aspect in understanding the force of Eberle’s overall argument is his distinction of public justification from rational justification. A person is rationally justified in holding a belief when two elements come together: (1) they have arrived at

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<sup>102</sup> Ibid., 12.

<sup>103</sup> Ibid., 50.

the belief through a rational means (appropriate use of the laws of rational inference, a proper examination and perusal of the best available evidence, etc.) and (2) the belief is in accord with the person's evidential set, those beliefs and experiences he assumes to be true.<sup>104</sup> Because evidential sets can vary from person to person, a rational justification is highly perspectival. This is why it is perfectly reasonable for person A to disagree with person B about a belief, C, and still acknowledge that B is rational in his belief about C.

Eberle also distinguishes between a rationally justified belief and the ability to justify that belief to others. It is possible for a person to be justified in holding a belief and not be able to provide reasons that others would find convincing. Eberle writes:

To *justify* *p*, a citizen must do something by way of providing some sort of evidential support: paradigmatically, she must present some explicitly articulated argument that has *p* as a conclusion. To *be justified* in assenting to some proposition a citizen need not show anything: merely seeing a tree, or recalling a past event, or feeling depressed, may suffice to justify her in assenting to *p*.<sup>105</sup>

Not all rational justifications are public justifications. A public justification occurs when a person is able to justify to others that a belief merits their support which requires that he articulate arguments that others find compelling for the belief. One of Eberle's main points here is that a justification does not have to be public to be rational. He also raises another important implication in the relationship of rational and public justifications: the importance of discourse with other citizens about the reasons we hold. He writes, "A citizen can determine whether his rationale articulates in the appropriate manner with his compatriots' distinctive points of view only if he apprises himself of their points of view, and that requires hearing them out."<sup>106</sup>

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<sup>104</sup> Ibid., 61

<sup>105</sup> Ibid., 63, emphasis mine.

<sup>106</sup> Ibid., 65.

The belief that respect requires public justification conceals a conflation of two principles that Eberle wants to consider separately.

*The principle of pursuit:* a citizen should pursue public justification for his favored coercive laws.

*The doctrine of restraint:* a citizen should not support any coercive law for which he lacks a public justification.<sup>107</sup>

Eberle affirms the first of these principles in his idea of conscientious engagement. Justificatory liberals not only affirm the second principle, but in fact argue that it logically follows from the first principle. A citizen has an obligation to pursue public justification and if that pursuit ends in failure then the citizen has an obligation not to support a coercive law. Eberle claims that this is a *non sequitur*. The obligations are not mutually entailing. While the second principle might require the first, the first principle does not require the second. Since the principle of pursuit does not lead to the doctrine of restraint then the doctrine will have to be justified by some other compelling reason. Eberle sees two reasons offered by the justificatory liberal in defense of the doctrine: (1) respect for one's fellow citizens demands it and (2) it is necessary in order to maintain a stable society. The largest amount of Eberle's task is spent on the respect question. What is required in respecting one's fellow citizens?

Eberle states that "a citizen respects his compatriots as persons only if he accords due moral weight to the fact that they are persons, which in turn requires this fact to make a moral difference to the way he acts."<sup>108</sup> Respecting someone as a person is to recognize that things matter to her. Among the most important things that matter to persons are coercive laws. In a liberal democracy persons value freedom and coercion is a denial of

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<sup>107</sup> Ibid., 68

<sup>108</sup> Ibid., 86.

that value. It is also true that in a pluralistic democracy coercion is sometimes necessary. Therefore when citizens are deciding to implement coercive laws on other citizens, respect for those citizens demands that those who are deciding reflectively consider what they are doing and arrive at rational reasons for doing so. According to Eberle, while these do not have to be public reasons, we should at least pursue reasons that our fellow citizens can understand even if they might disagree. However, if we do not find reasons they can follow, as long as we have attempted a public justification and as long as the reasons we hold are rational in the sense we explicated above, we have shown respect to our fellow citizens.<sup>109</sup>

This becomes the basis of Eberle's "ideal of conscientious engagement" which incorporates the following six constraints:

- (1) She will pursue a high degree of rational justification for the claim that a favored coercive policy is morally appropriate.
- (2) She will withhold support from a given coercive policy if she can't acquire a sufficiently high degree of rational justification for the claim that that policy is morally appropriate.
- (3) She will attempt to communicate to her compatriots her reasons for coercing them.
- (4) She will pursue public justification for her favored coercive policies.
- (5) She will listen to her compatriots' evaluation of her reasons for her favored coercive policies with the intention of learning from them about the moral (im)propriety of those policies.
- (6) She will not support any policy on the basis of a rationale that denies the dignity of her compatriots.<sup>110</sup>

While we cannot discuss each of the points in detail a couple brief comments are in order. Concerning the first two points the meaning of "rational justification" is that as explicated above. It is rational to her, but may not be rational to her compatriots. The

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<sup>109</sup> Ibid., 98.

<sup>110</sup> Ibid., 104-105

fourth point is Eberle's principle of pursuit. Such pursuit is required, but success is not required to meet this obligation of respect. Finally, a citizen may be guilty of not discharging her moral obligations by not maintaining the ideal of conscientious engagement, but that doesn't mean she has necessarily violated the equality or freedom of another person.<sup>111</sup>

Eberle also wants to make clear what respect does not require. He criticizes the arguments of a number of justificatory liberals who claim that respect requires the doctrine of restraint. It is outside the scope of our survey to discuss his response to each author.<sup>112</sup> However, we would be negligent if we did not briefly look at Eberle's response to two of the authors we have surveyed, Robert Audi and John Rawls.

According to Eberle, Audi's primary argument for respect is based on a role reversal between citizens. The idea is that if an individual treats his compatriots with equal dignity to himself, then he should be able to reverse roles with them. I can only coerce others on the basis of my religious reasons if I am willing to allow them to do the same. But none of us would agree to being coerced on the basis of religious reason we don't agree with, so we can't do it to others. Therefore such coercion does not show respect.

Eberle agrees that citizens might resent being coerced by laws, but the key point has to do with the reasons for that resentment. Referring to Audi's "sacred dandelion"

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<sup>111</sup> Ibid.

<sup>112</sup> Eberle does give one general response in which he says that the initial plausibility of the doctrine of restraint is probably due more to rhetoric than argument. Most of the issues to which the doctrine appeals concern emotionally charged issues (abortion, homosexuality) opposed by groups that are, on the whole, unpopular to academics (religious fundamentalists and Christian evangelicals). He suggests a case in which those two factors are not involved and wonders if the doctrine would be appealed to similarly. Ibid., 112-113. Wolterstorff makes use of a similar tactic in "Why We Should Reject What Liberalism Tells Us about Speaking and Acting in Public for Religious Reasons," 162, (which is the cause for some consternation for Rorty. See "Religion in the Public Square: A Reconsideration," 142-143).



argument, in which religious citizens pass a law outlawing mowing lawns because they believe the dandelion is sacred, Eberle points out that the reasons many citizens would resent such a law is not because the reasons offered are religious, it is because they are not rational. The dandelion believer does not need a public justification, but he needs to have a rational justification and Eberle doubts one is forthcoming. Eberle also observes that what citizens often resent is not the *reason* for the coercive law, but the *content* of the law. One would resent such a law no matter what reasons were offered for it, religious or non-religious. Eberle writes: "Suppose an environmentalist group has successfully lobbied to have a law that forbids me to mow my lawn on the basis that dandelions are an endangered species."<sup>113</sup> Here is a purely secular reason yet most citizens would still resent such a law. His point is that citizens in general would have no problem with allowing their compatriots to support or oppose a coercive law on the basis of their religious reasons as long as they have maintained the ideal of the conscientious engagement.

Eberle criticizes Rawls for his "strains of commitment" argument. His main point is that Rawls's "liberal principle of legitimacy," which includes the doctrine of restraint, cannot pass the test of his own "original position" thesis. Rawls's original thesis, as a part of *justice as fairness*, states that one method to arrive at a just society is to place ourselves in the original position behind a veil of ignorance in which we are stripped of all knowledge of our own race, gender, status and religion. Since we will live in the society we institute behind the veil, we will establish policies that are the most just for all regardless of the properties mentioned above. One of the things we do know from behind

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<sup>113</sup> Ibid., 139.

the veil are the strains of our commitments: we know enough general human psychology to know what we can endure and what we cannot. If we did not know at least this then no choice would make any sense.

In establishing such a society it is obvious that there will be traditional theists who see their obligation to God as overriding and totalizing. This means the scope of their obligation to God involves their reasoning about public policies and that obligation might mean overriding their obligation to the state. For most theists this is more than just a theological belief that I just happen to adopt. It forms much of the basis of my moral identity. Would such a theist be willing to adopt the principle of legitimacy? Eberle says not if there is a better alternative and the ideal of conscientious engagement is a better alternative. Since such a theist is possible, then it is possible behind the veil I might be such a theist. Therefore, due to the strains of my commitments, I could not adopt the principle of liberal legitimacy for I would not be able to endure it and maintain my moral identity as a traditional theist.

While we have not been able to examine each of Eberle's criticisms against other justificatory liberals,<sup>114</sup> he arrives at the same conclusion with each of them: they have not provided a compelling argument for why citizens should adopt the doctrine of restraint as necessary for respecting one's compatriots. Absent a compelling argument, Eberle affirms that one is not disrespecting fellow citizens in supporting or opposing coercive public policies on the basis of religious reasons alone as long as one has maintained the ideal of conscientious engagement.

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<sup>114</sup> Eberle also criticizes arguments produced by Lawrence Solum, Charles Larmore, and Gerald Gaus,

Another reason some justificatory liberals argue for adopting the doctrine of restraint is that introducing religion into the public square is dangerous and divisive for society. Eberle takes on these issues separately. First, he understands the danger argument in its most plausible form to be the “claim that a widespread rejection of privatization [of religion] has a *realistic prospect* of generating religious conflict in the contemporary United States.”<sup>115</sup> However, in order to make the case that there is realistic prospect of religious strife here and now, the justificatory liberal must give an account of how that can happen. This involves a massive amount evidence and no one has presented anything like the kind of empirical argument needed to make the required case.<sup>116</sup> This could only happen if we completely ignore the constitutional guarantee of religious liberty. There simply is no evidence of a realistic prospect of that occurring.

While the prospect of constant religious strife is not likely in our current liberal democracy, the same may not be said for the prospect of divisiveness. The divisiveness argument basically claims that the privatization of religion renders the political community morally better off, all things considered.<sup>117</sup> We would be less divisive in privatizing religion than not. However, this is a utilitarian calculation that requires the justificatory liberal to identify all the moral consequences of both privatizing and not privatizing and then to determine that society is morally superior privatizing than not. Both tasks would be extremely difficult to successfully perform to the satisfaction of most persons. This is complicated by the fact that justificatory liberals often confuse divisions caused by religious citizens who do not maintain the ideal of conscientious

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<sup>115</sup> Ibid., 157, emphasis his.

<sup>116</sup> Ibid., 160.

<sup>117</sup> Ibid., 173.

engagement with divisions caused by the failure to privatize. Eberle believes citizens can significantly reduce divisiveness by maintaining the ideal. There may still exist disagreement, but disagreement is not divisiveness. He also raises two undesirable consequences to privatization of religion: (1) We inhibit the religious liberty of theistic believers who see their obligations to God as overriding and totalizing and require them to violate their fundamental commitments; (2) Requiring believers to marginalize their beliefs may cause religious citizens to withdraw from active political involvement. Both of these are consequences that are not desirable and may create an even more unstable state of affairs. Therefore Eberle concludes that neither the danger nor the divisiveness arguments support the doctrine of restraint. Not finding any compelling arguments why the principle of self-restraint is necessary, Eberle concludes that the requirement is not met and therefore it is appropriate for a citizen to appeal to religious reason alone as long as she maintains the ideal of conscientious engagement. Eberle himself realizes that we may never reach consensus on many of the intractable issues facing our society. But we should be able to achieve a reasonable acquiescence. Perhaps that is the best we can hope for.

#### *Exclusivism and P54*

We are now in a position to see how an exclusivist would evaluate the characters in our narrative. It is significant to note at this point that Eberle does not comment on the different roles of citizen, clergy, legislator, and judge. He seems to imply that the ideal of conscientious engagement applies no matter what role is being considered. Therefore we can only speculate from that basis what he might say.

First, what of the legislators? Both Wolterstorff and Eberle seem to imply that neither delegate is obligated to restrain appeals to religious reasons in voting on P54 even if they do not have a public reason. Eberle, holding to the ideal of conscientious engagement, would say that they should at least pursue a public reason and attempt to communicate their reasons with the colleagues. Wolterstorff is not clear, but would probably hold that if one holds that legislators may appeal to any personal reasons, religious reasons are just as allowable. As far as delegate Hastings speaking from the podium, I think both might allow this given the same qualifications. I believe both Wolterstorff and Eberle would suggest that the *manner* in which he speaks would make all the difference. Assuming he has maintained the ideal and is in keeping within a virtue of civility, he is free to express his religious reasons as long as he does so in an epistemically humble and respectful manner.

As far as the clergy is concerned, neither representative of exclusivism addressed the issue of clergy speaking from the pulpit. I believe they would both want to give clergy the widest latitude as long as they keep within the bounds of the ideal of conscientious engagement and the virtue of civility. Both Eberle and Wolterstorff recognize the idea of the traditional theist whose obligation to God is overriding and totalizing. Therefore we could speculate and say that they would hold that it is not inappropriate for Pastor Farmer and Rabbi Fox to state their own positions on P54 from the pulpit. However, in doing so it is incumbent upon them to advise their congregation that they should not vote purely on the authority of a cleric, but to consider the arguments for and against the proposition and arrive at a rational conclusion for reasons they believe

are justifiable. Such a statement would go a long way to fulfill the ideal of conscientious engagement and the virtue of civility.

As far as Sue is concerned, both writers would say she has no obligation to adopt the principle of self-restraint and, if she pursues a public justification and fails to find one, is free to vote on the basis of her religious reason. Eberle especially would be cautious here only in the manner in which Sue reached her decision. If she is voting purely on the basis of the sermon by Pastor Fox then she is not maintaining the ideal of conscientious engagement. However, if she maintains all six of the principles incorporated in that ideal and keeps the three restraints involved in Wolterstorff's virtue of civility, then she is doing nothing wrong in appealing to religious reasons alone.

Finally, what of Judge Towns? Wolterstorff did specifically address judges. Since they are often merely adjudicating the will of what has already been decided by the people, judges normally cannot appeal to their own reasons. However, Wolterstorff acknowledges that there are times when they must use their own judgment and interpretation and therefore on rare occasions may need to appeal to personal judgments. If a judge is allowed to appeal to any personal judgment, then religious reasons can be included among those personal judgments. Is the case of P54 such a time? I think Wolterstorff might affirm that it is. Eberle does not speak of justices, but I think he might agree with Wolterstorff at this point, again emphasizing the need to maintain the ideal of conscientious engagement. I would venture to say that Eberle might add that the chances of such a case coming before the bench like the challenge to P54 in which there is no public justification at all would be extremely remote.

## **Conclusion**

The purpose of this chapter has been to survey the contemporary literature on the use of religious reasons in supporting or opposing public policy in order to establish a background from which we can understand and evaluate Meilaender's position on this issue. We have seen that, in general, the issue can be divided into three distinct positions. Exclusionism adopts a strong view of the principle of self-restraint and says that religious reasons are excluded from having any part in supporting or opposing at least some coercive public policies. All appeals should be to some form of public justification. Inclusionism adopts a weak version of the principle of self-restraint and allows for religious reasons to play a part in one's reasoning about coercive public policies as long as either one secular or public reason is present or as long as one's reasons are not imposition reasons. Exclusivism rejects both forms of the principle of self-restraint and allows for any reason, including religious reasons, when justifying a coercive public policy as long as one is maintaining the virtue of civility or the ideal of conscientious engagement.

The question now is, under which view would we best place Meilaender? In order to answer that question we need first to understand the Christian ethics that drives Meilaender's thinking.

## Chapter Two

### Meilaender's Conception of Christian Ethics

A Christian is a perfectly free lord of all subject to none. A Christian is a perfectly dutiful servant of all, subject to all.

Martin Luther, *Freedom of a Christian*

The overarching rubric by which we interpret what is happening in spheres such as family, work, and politics is this: They are places where God, having set us free through his pardoning grace, sets before us others who need our care and faithful commitment. And they are schools of virtue in which, by Gods empowering grace our faith begins to learn the meaning of faithfulness.

Gilbert Meilaender, *Faith and Faithfulness*

### Introduction

The purpose of this chapter is to analyze a number of significant elements in Meilaender's conception of Christian ethics that will enlighten our understanding of his approach to the question of religion and public policy. After a brief introduction we will consider two themes that dominate much of Meilaender's writing and that will form a perspective from which we can investigate his conception of Christian ethics: "tension" and "limits." Using these themes we will then analyze a number of important aspects to Meilaender's conception of Christian ethics: his two-tiered ethic, his theological anthropology, the problem of Christian moral development, and the relationship of rules, virtues and consequences in Christian moral thinking. Finally we will explore one of the primary practices where Meilaender has attempted to apply his approach to Christian ethics, bioethics.

It should be noted at the beginning that Meilaender does not present us with a "theory" of Christian ethics as that term is normally used. An ethical theory is usually



characterized as a comprehensive system unified by one or more overarching principles that can be used to develop and evaluate moral rules and activities. Utilitarianism with its utility principle or Kantian deontology with its categorical imperative are examples of ethical theories. Meilaender does not present any particular theory of Christian ethics nor does he offer any unifying principles to which one can appeal when confronting the moral life. While he holds that Christian ethics is basically deontological, he does not propose a particular method or model of moral decision-making.

While he does not provide us with a theory of Christian ethics, one can locate a number of themes within Meilaender's writings that, taken together, present a cohesive conception of Christian ethics. While Meilaender himself would shun any claim of comprehensiveness, he does present us with a basic framework with which we can "think about the moral life from within the life of faith."<sup>118</sup> He conceives of Christian ethics as governed by the question, "What sort of persons should we be and what ought we do to serve our various neighbors?"<sup>119</sup> and sees its primary task as seeking to discern the will of God for human conduct.

Because of his non-systematic approach, Meilaender writes mostly in the manner of short essays and articles rather than lengthy volumes. Many of his books contain reprints of articles gathered together thematically. Hence any analysis of his thought

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<sup>118</sup> Gilbert Meilaender, *Faith and Faithfulness: Basic Themes in Christian Ethics* (Notre Dame: University of Notre Dame Press, 1991), ix.

<sup>119</sup> Gilbert Meilaender, "The Place of Ethics in the Theological Task," *Currents in Theology and Mission*, Vol 6, No. 4 (August, 1979), 197.

must garner a number of sources.<sup>120</sup> However, there is continuity to his writings that summarizes well his conception of Christian ethics:

I characterize the Christian life as one of faith that gives rise to faithfulness. Christians believe that in Jesus God cared for us. Eternally secure, we are set free to be his agents in caring for others. Put simply, the grace of God frees us to love.<sup>121</sup>

The duality of "faith" and "faithfulness" is just one way Meilaender expresses the key concept that encompasses the moral life of the Christian. He expresses this duality a number of different ways in his writing. The relationship within this duality is intimate and symbiotic but also produces the chief dialectical tension which seems to be a permanent fixture of the moral life for the Christian while in this world. Working through this tension is the key theme of much of Meilaender's work.

Meilaender writes out of the Lutheran tradition, which shapes much of his conception of Christian ethics. However, he is critical of how that tradition has developed and often refers to the "characteristic Lutheran inability to articulate a clear vision of the moral life."<sup>122</sup> In an article responding to the 1986 *Study of Issues Concerning Homosexuality* by the Lutheran Church in America<sup>123</sup>, Meilaender addresses the issue of ambiguity in current Lutheran moral thinking.

The committee prefers to leave us wrestling with ambiguity, and it commits the chief Lutheran sin (in ethics) of using a sense of ambiguity rather than the gospel to make us feel good. . . . This is the sin displayed most often in Lutheran

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<sup>120</sup> Fortunately, Meilaender has shortened our work considerably by gathering a number of his essays together in a few volumes: *Faith and Faithfulness: Basic Themes in Christian Ethics*, *The Limits of Love*, *The Theory and Practice of Virtue*, and *The Freedom of a Christian*. These four volumes present the substance of his conception of Christian ethics.

<sup>121</sup> Ibid.

<sup>122</sup> Gilbert Meilaender, "Review essay on Lutheran Ethics: Reclaiming the Quest for Holiness," *Lutheran Quarterly*, XIII, no. 4, (Winter, 1999): 484

<sup>123</sup> Lutheran Church in America. "A Study of Issues Concerning Homosexuality." Report of the Advisory Committee of Issues Relating to Homosexuality. 1986.

approaches to moral problems, and we should note what it does: it turns our attention, however subtly, away from those who were our concern and back upon ourselves - to *our* moral seriousness, *our* moral struggle. This is, in my experience, one of the least attractive features of a good bit of Lutheran ethics.<sup>124</sup>

In order to overcome the problem of ambiguity in Lutheran ethics, Meilaender believes Lutherans must wrestle with a key theological issue: the relationship of faith, our present status of being declared righteous in Christ, and faithfulness, our moral and spiritual development in this present life. He argues that in order for Lutherans to understand what is required in personal relationships as well as wider society, they must overcome a theological problem: they must "learn to talk not just of faith, but also growth in righteousness, of the shape and form of a truly God-pleasing life, of the quest for holiness in the Christian life."<sup>125</sup> This summarizes well the overall goal of Meilaender's works in Christian ethics.

### **Tension and Limits**

The relationship of faith and faithfulness is an example of the two themes that dominate and unify Meilaender's works on Christian ethics. First is the theme of *tension*. The primary task of Christian ethics is seeking to discern the will of God for human conduct. This task sets up a dialectical tension that permeates all of Meilaender's writings in Christian ethics, though he often formulates it in different terms and metaphors. While it is most prominent in his discussion of the moral development of the

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<sup>124</sup> Gilbert Meilaender, "Is it Really Lutheran?," *Dialog: A Journal of Theology*, 26, no. 1, (Spring 1987), 147.

<sup>125</sup> "Lutheran Ethics," 485.

Christian, it arises out of his theological anthropology and affects his two-tiered ethics as well as his political thought.

The main source of this tension is twofold. First, there is the transcendent/finite tension. Meilaender writes, "We are made for God and not simply finite beings – but we are not to try to be gods. The tensions created by that duality are the stuff of much that is most troubling in the moral life."<sup>126</sup> Using the metaphor of narrative, Meilaender notes that, as finite beings, our story is time bound and yet we seek that which is timeless, so we encounter tension. He writes:

Every moment of experience is itself in tension, for memory (of the past) and anticipation (of the future) are the tension of every moment of experience. Past and future, memory and anticipation, are themselves present. Hence, the present moment is "tensed". Tensed - and therefore filled with tension.<sup>127</sup>

The second source of this tension comes out of the fact that, as Christians, we are both sinners and saints. Meilaender uses the metaphors of dialogue and journey as one way to express this tension. Should we view Christian ethics in terms of a dialogue between law and grace, in which God declares the individual sinner or saint, or should we view it as a journey in which the individual gradually transforms from sinner into a saint through one's own effort? "If the gospel announces that sinners are pardoned and that God is pleased with them, what more could possibly need doing? Why should we talk about these pardoned believers needing to learn to follow Christ, to obey the command of God, or to grow in grace and virtue?"<sup>128</sup>

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<sup>126</sup> Gilbert Meilaender, *The Limits of Love* (University Park, PA: Penn State Press, 1987), 9.

<sup>127</sup> *Ibid.*, 24.

<sup>128</sup> Gilbert Meilaender, *The Freedom of a Christian* (Grand Rapids: Brazos Press, 2006), 10.

For Meilaender, this tension is a normal and necessary part of the moral life for the Christian. While we can work to reduce it, we can never fully resolve it in this life.<sup>129</sup> Tension affects every aspect of the Christian life including how one lives and moves within the public square. Following Luther, Meilaender affirms that we have a dual citizenship in two kingdoms which often conflict. However, while this tension in the public square often makes dealing with others difficult, it does not mean that cooperation and conciliation are not possible. What it does mean is that the Christian must learn to *live through the tension* which, I submit, is the key theme in Meilaender's conception of Christian ethics.

The second theme that dominates Meilaender's writings is the theme of *limits*. In fact, one of the main contributing factors to the tensions of the moral life is our failure to recognize our limits and to live through them. As finite beings, we are by nature limited beings. Limited in what we *can* do and, according to Meilaender, limited in what we *should* do. However, we are often tempted to live and act beyond the limits God has placed on us. We fall into the original sin of attempting to live beyond our limits and be God.

Perhaps most tempting are our attempts to live beyond our limits in the name of Christian love. Meilaender is extremely concerned about this trend in recent Christian thinking. He writes, "My focus is on the limits of love – limits to what we can accomplish, limits to what we should do in good cause, limits to our attempts to be more than finite creatures. Much of the pang and pathos of Christian vision, and many of the

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<sup>129</sup> "The tension between these two pictures of the Christian life cannot be overcome, nor should we try to overcome it." Meilaender, "Place of Ethics," 201

greatest temptations for faith arise from the need to make the best of the moral limits our nature places on us.”<sup>130</sup> One cannot justify an action simply because it is done in the name of Christian love. While some might be tempted to perform actions such as assisted suicide or destroying embryos for research purposes out of Christian “love of neighbor,” Meilaender claims that even this is limited by faithfulness to God and our recognition that we are finite creatures who cannot, and should not, do just anything in the name of ending suffering and promoting love.

For Meilaender then, the Christian moral life is one of faithfulness to God which grows out of our faith in God and is characterized by living through the tensions produced by our dual citizenship in two kingdoms, the transcendence and finiteness of our human nature, and the limits of our finite and sinful nature. As we shall see below the means by which we “live through the tension” is by appealing in faith to the pardon and power of the grace of God. We turn now to several of the factors in Meilaender's conception of Christian ethics that further elaborates and develops these themes.

### **Meilaender's Concept of the Two-Tiered Christian Ethic**

The first element in Meilaender's conception of Christian ethics we need to examine is the view of Christian ethics as singular and its relationship to any general ethics which originates outside of the Christian community. By saying that Christian ethics is singular Meilaender means that it is developed from within the life of faith and not from any neutral or universally shared starting point. It is an ethic based on the

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<sup>130</sup> *Limits*, 9.

biblical narrative and the narrative of the Christian community.<sup>131</sup> This singularity does not mean we cannot seek common moral ground with those outside of the community. We can and must do so. However, Meilaender affirms that there is a tension present between these two conceptions of a singular and particular ethic and a universal or general one. To see why, we need to analyze Meilaender's discussion of these two ideas.

Meilaender describes two forms of the moral life. The first form is the *habitual* form. In this form moral decisions are not the product of ethical reflection but are developed from habits of behavior established over time within a community and, therefore, are generally taken for granted. The moral life is transmitted through immersion in a particular culture. We first learn our native language, not by appealing to the rules of grammar, but by living immersed in a community that employs that language. This is analogous to how the habitual form claims we learn the moral life. The chief benefit of this form of the moral life is stability for individuals and society over time. The chief danger of this form is a gradual degeneration of morality due to the lack of a critical ability or willingness to transcend one's culture and analyze and evaluate its moral practices. Meilaender believes this could even degenerate over time into mere superstition and become unable to deal with external challenges. While this form was more common in pre-modern times, it is not the form we mostly observe today, though it has its proponents.

The second form of the moral life is the *reflective* form. In this form moral activity is not the product of habit but is based on the reflective application of certain

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<sup>131</sup> Gilbert Meilaender, "The Singularity of Christian Ethics," *The Journal of Religious Ethics*, Vol 17, No. 2 (Fall 1989), 95.

moral criteria such as specific ideals and rules for one's actions. One first arrives at a moral system, and then applies that system to moral practice. Unlike the habitual form, this form is critical and self-reflective. Rather than promulgated through the community, this form is transmitted by intellectual training in moral reasoning about rules and ideals. Each individual acts as self-consciously aware of his moral grounds and is prepared to defend them if challenged. Meilaender claims that the chief benefit of this form is that it provides a certain amount of assurance in how to think about the moral life. However, the chief danger of this form is that it contributes to an uncertainty in how to actually act in a moral situation. He writes, "The constant encouragement of self-reflection undermines the ability to act habitually and confidently. The pause of reflection that is always needed before one acts can paralyze."<sup>132</sup> Whereas the first form is in danger of a slow degeneration, if collapse comes to the reflective form, it will be sudden.

Meilaender affirms that neither of these appears in pure form in any contemporary society. Most communities are a mixture. The question he wants to explore is, in Christian ethics, which one should predominate? The first form sees persons as finite – located in a particular time and place; the second sees persons as unlimited and free to transcend one's historical conditioning. The tension between these two leads to a choice: "Should the emphasis in Christian ethics fall on generality, on the attempt to find common ground with all ways of life? Or on singularity, on the attempt to think through the peculiar shape of the Christian life?"<sup>133</sup> Meilaender believes the first option would involve the dissipation and absorption of the Christian moral life into larger society

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<sup>132</sup> Meilaender, *Faith*, 6.

<sup>133</sup> *Ibid.*, 9.



resulting in a "cultural Christianity," a result he rejects. The second would resolve in renewed attention by the church into its own way of life.

Meilaender believes that Christian ethics is a singular and particular ethic and is most typically a type of the habitual form of the moral life. This means that, on the conceptual level, it assumes that there is not nor should there be any continuity between Christian ethics and the morality of general society. However, while advocating the singularity of Christian ethics as the best approach to the moral life for Christians, Meilaender recognizes that the tension between these two forms is not resolved and continues to express itself in a number of ways.

First, the habitual form of the moral life has limits that need to be worked out. While it has benefits over the reflective form, which Meilaender believes is ultimately inadequate to generate and sustain any stable moral life, the habitual form fails to make a place for man's freedom and transcendence. If one's moral development is simply habitual, passed down through the community with little reflective thinking, then human freedom is endangered. It allows no place for humans to be able to transcend their historically conditioned position. Most importantly it does not allow one to find common moral ground with those in other positions. Meilaender notes that, while there are some aspects of the Christian moral life which are important because they are deeply embedded in the biblical narrative and community practices, there are also some elements of the Christian way of life that are essential to almost any shared common life. There is common moral ground that cannot be absorbed by Christian thinking alone. By virtue of God's creation humans share a common nature and therefore are not completely limited

by their historically conditioned contexts. We are free to transcend them and to seek common moral ground.

Meilaender affirms that this tension, between the historically conditioned habitual form and the transcendent reflective form, provides both instability and dynamism in the Christian life, "for our effort must be not simply to think them together but to *live* them together."<sup>134</sup> There is no set guideline or principle for living a moral life of tension, it is part of our freedom. Moral tension will never be fully overcome in our earthly life.

Meilaender writes:

This [tension] means instability - since no social structure can be perfected or can offer an abiding city. And it means dynamism - since, short of the coming kingdom, even stable Christian communities can be only "on the way." We should not ask more than this as a Christian way of life.<sup>135</sup>

A second way tension comes from adopting a view of Christian ethics as singular is that it can communicate the idea that ethics is ultimately relative. Returning to the native language example, if we think of moral development like how we learn our native tongue, we might be led to the erroneous conclusion that, because languages vary from culture to culture, so too might morality. Just as the grammatical rule to avoid split infinitives is, by and large, a happenstance of our language, so the moral obligation of faithfulness to one's spouse might just be a contingency of our cultural development. Meilaender wants to affirm the singularity of a Christian ethic but avoid the relativism often seen as inherent in such a singularity. He appeals once more to the commonality we share with others which is grounded in our shared nature. "There is at least some common moral ground available to people in quite different social circumstances, just as

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<sup>134</sup> Meilaender, *Faith*, 13-14, emphasis his.

<sup>135</sup> Meilaender, "Singularity", 103.

translation of languages *is* possible, and this common ground cannot simply be absorbed by Christian vision."<sup>136</sup>

Meilaender points to a third way tension arises in adopting the habitual form: it implies that the moral life is a possession already in hand and marginalizes our radical dependence on God. The habitual form communicates the idea that the community appears to sustain itself. Moral instruction is merely passed on from one generation to the next. Meilaender acknowledges that there is much truth here. Character must be sustained by communities and conduct does form character. However, this is not an appropriate manner in which to think of Christian ethics. It does not allow for the freedom and need of God to effect real moral transformation. While the comparison between learning to be a Christian and learning one's tongue is in many ways instructive, it has a tendency is to make that way of life our possession and to devalue our radical dependence on God's grace. It seduces us into thinking that we are on so familiar a footing with the divine mystery that we need only reach out for a faith that is readily available.<sup>137</sup> The Christian community does not sustain itself but is sustained by the free grace of God and the habitual form must make room for the freedom of God to work in the life of the believer.

While acknowledging the tensions created by adopting a singular view of Christian ethics, Meilaender does not attempt to resolve them but claims that we must "live through them" by adopting a two-tiered Christian ethic. Christian ethics is in part singular, built on the biblical narrative of God's dealings with his people, and in part

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<sup>136</sup> Meilaender, *Faith*, 12.

<sup>137</sup> Meilaender, "Singularity," 106.

general in that it seeks and expects to find common ground and universal elements shared with those who are not members of the Christian community.<sup>138</sup> The possibility of conflict and tension between these two tiers is very real, and in this fallen world, perhaps inevitable. But it is a tension we must learn to live through in this life.

Regarding the "singularity" tier, Meilaender notes that one cannot really understand the Christian life apart from an understanding of the biblical narrative and the practice of the Christian community. Only as the biblical narrative, the historical Christian disciplines, and the traditions of the Christian community shape one's character does Christian ethics make sense. Therefore, these are the primary sources of moral knowledge for members of the Christian community. Abstracted from a Christian way of life and the community that supports it, the particular rules for Christian living may lack intelligibility and will almost surely lack the power to persuade or the beauty to attract others. Pure ethical reflection alone cannot supply this rich background for moral deliberation and decision. If the lived preaching, teaching, and worship of the church do not help Christians see their world within the framework of the biblical story, no abstract ethical reasoning can supply what is lacking. The emphasis in Christian moral development is on narrative and demonstrates our continual need for a return to the first form of moral life.

By emphasizing narrative, Meilaender does not mean to imply that Christian ethics is devoid of commands and rules. One only needs to look at the Decalogue to see there are commandments which the Christian is to follow if he is to be faithful to God.

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<sup>138</sup> "For all these reasons it seems best to describe Christian ethics as a two-tiered ethic - in part general and able to be defended on grounds not peculiarly Christian; in part singular, making sense only within a shared life of the faithful community." Meilaender, *Faith*, 20.

However, rules do not tell the whole story. The Christian moral life needs more than rules, it needs virtues like faith, hope and love to guide us in using our freedom to serve others in the different spheres of life: family, work and politics.

We might ask, what are the sources of moral knowledge for the other tier, the common ground we share with those outside the community? Here, Meilaender appeals to natural law. Meilaender delineates two different approaches to natural law: the phenomenological and the ontological. The phenomenological approach to natural law, exemplified by H.L.A. Hart's concept of the "minimum content of natural law,"<sup>139</sup> is basically descriptive. We perceive the way things normally happen in the world and we draw conclusions based on those perceptions. For example, we perceive that parents tend to care for their children and that societies in which this happens survive over societies where parents don't care for children. So we draw the conclusion that there is a natural obligation for parents to care for their children as a necessary aspect of survival. Such a view of natural law tends to be minimalistic, giving us enough only to basically survive. While this might not be much, it might be enough to establish the political bonds necessary for a society to work cooperatively together. Meilaender believes that from such facts, and presupposing our desire to survive, we might derive a set of minimal rules needed for life in society - rules that would look basically like the second table of the Decalogue.<sup>140</sup> However, Meilaender holds that this approach to natural law is so minimalistic that it is inadequate and unsatisfying in any ultimate sense. A society that appeals only to this approach to natural law will not long endure as a society because it

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<sup>139</sup> H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), 189.

<sup>140</sup> Meilaender, *Faith*, 118.

cannot account for any concept of the "good life" apart from basic survival. For example, if survival becomes the only basis for natural law, then there is no place for virtues like self-sacrifice. These are virtues he believes are ultimately necessary for the growth and fullness of human society. Social fulfillment is about more than just survival.

The ontological approach to natural law is based on the kind of being we are and is a prescriptive rather than descriptive view of natural law. Because we are a certain kind of being, human persons, we ought to act and think a certain way. Meilaender believes that to think of natural law in this sense is to recognize our full humanness. This view does not adopt moral principles merely because they contribute to our survival, but because they are definitive to who we are as God created us and of our faithfulness to him. "For on this view what matters is how we live, not how long. To recognize our nature is not merely to survive, but to be a person of a certain sort."<sup>141</sup> Whereas in the phenomenological approach the obligation for parents is purely consequentialistic, for survival's sake, in this approach the obligation is based on the nature of parents and children and the natural bonds of love between them and is hence deontological.

Meilaender realizes that the ontological view of natural law, while ultimately more adequate and satisfying, is less likely to be a foundation for moral agreement. He reasons about these two approaches to natural law:

The kind of natural law theory that's easiest to advance is a very modest one. I use the old Hart notion: there are certain kinds of things that any people living together are going to have to pay attention to. The less modest, more wide-ranging, real teleological understanding of natural law, namely to flourish as a human, is richer but harder to know how you get normative agreement. I am not

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<sup>141</sup> Ibid., 124.

opposed to it but Hart's is easier to advance as it is a limited, modest kind of natural law.<sup>142</sup>

While he thinks the phenomenological approach will be easier and more persuasive, Meilaender says there is a place for the ontological approach to natural law: "The Christian understanding of our world as *creation* accounts for the difficulty of demonstrating such an ideal while, at the same time, giving us confidence that one may be found."<sup>143</sup> No matter which version one opts for, in appealing to natural law we must remember that we are only providing "part of the truth." It is still truth but Meilaender holds that we cannot articulate a complete understanding of full humanness apart from reference to Jesus. This is just more of the tension of the Christian moral life we must live through.

The above discussion about natural law raises an important clarification which needs to be addressed concerning Meilaender's conception of the two-tiered ethic. While Meilaender refers to the natural law as a source of moral knowledge for those outside the faith, he does not picture the two-tiered ethic as two completely separate tiers that develop apart from each other, a singular Christian ethic and a universal natural law ethics. His point is that the two-tiered ethic is developed from within the life of faith. He clarifies this:

Starting from the inside of this singular ethic authorizes you to anticipate some commonalities and it's from there that I get the two tiers. It's not that you start with the two tiers, one of which is generally shared and one of which is not, you start from within the Christian faith. But moves can be made within that faith that should lead us to expect shared moral understanding on a variety of matters. There are going to be some things that won't be shared, but many of the basic moral questions that come up anytime human beings need to cooperate and live

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<sup>142</sup> Personal Interview, 7/25/07.

<sup>143</sup> Meilaender, *Faith*, 124.

together in society, flow out of the created nature that we share. So it seems to me there is bound to be that overlap.<sup>144</sup>

This concept of the two-tiered ethic, of affirming the singularity of a Christian ethic while recognizing a general ethics inherent within and its accompanying tensions, play an important part in understanding Meilaender's thoughts concerning Christians involved in the public sphere.

### **Theological Anthropology**

I will divide my discussion of Meilaender's theological anthropology into two parts. First I will discuss his view of the nature of human beings. I will then discuss Meilaender's view of human beings in relationship, first to each other and then to God.

Meilaender affirms that humans are "two-sided" beings. This duality is best expressed in the conjoining of the terms "ensouled bodies" *and* "embodied souls." Meilaender looks to the biblical narrative of the creation account of man to form his view of human beings: "The LORD God formed man of dust from the ground, and breathed into his nostrils the breath of life and man became a living being."<sup>145</sup> We are both body, and therefore finite, and soul, and therefore able, to some extent, to transcend our finite bodily existence. Meilaender cautions that Christians must avoid any attempt to reduce human beings to either purely materialistic bodies with capacities to function under certain stimuli or purely spiritual beings of whom the body is just a garment. "Such

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<sup>144</sup> Personal Interview, 7/25/07

<sup>145</sup> Gen. 2:7, NIV.



reductionisms cannot capture the complexity that is a human person."<sup>146</sup> We are an irreducible unity.

A major concern for Meilaender is contemporary discussions of personhood, especially as they influence bioethics. Such discussions often separate the "human organism" from the "person" and suggest that it is possible to be human without being a person. They speak of "person" as a human organism with the capacity to function in a certain manner. Self-consciousness, rational capacities, communicative abilities, and capability for willful and moral deliberation are some of the capacities often listed. Meilaender's concern is for those human beings who lack such functions: infants, the mentally handicapped and the senile, among others. Individuals in this category are often relegated to subhuman status by those who affirm a functional concept of personhood.

Meilaender rejects these functionalistic concepts of personhood and the separation of "human organism" from "person." Functionalism is guilty of neglecting the body as part of what it means to be a human person and instead opts to think of persons only as spirits able to make free choices. It adopts a Cartesian "ghost in the machine" view and if the ghost is not present then the body has no value. It is ironic how, in such a materialistic age, we end up spiritualizing personhood. However, he argues, "There is a difference between (a) distinguishing characteristics of the human species and (b) qualifications for membership in that species."<sup>147</sup> One can belong to the human species without ever possessing or exercising such capacities. The only qualification for membership is that one is physically begotten of human parents. As Christians we must continue to affirm

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<sup>146</sup> Meilaender, *Faith*, 41.

<sup>147</sup> *Ibid.*, 44.

the duality of our personhood: as persons we are *both* body and soul. We are not a person inside a body.

If "person" is not defined as a being functioning a certain way, then how does Meilaender define "person"? Shunning appeals to ontological properties, Meilaender defines a person as an "irreplaceable self - someone who has a history."<sup>148</sup> For Christians, this concept of personhood is ultimately theological. What constitutes us as persons is not any particular capacity or ability on our part but that we embody a story in which "God addresses us and calls us to himself."<sup>149</sup> Unlike other aspects of creation, only persons can embody such a story. It is God's commitment to us that confers personhood on us. Meilaender appeals to the dual nature of Jesus to draw this out. The early church affirmed the one person of Christ with two natures. He was one person because he was an individual with a history. In that history he acquires and displays various personality characteristics, but he is not one with them.<sup>150</sup>

An individual person is more than just the aggregate of his capacities and characteristics. He is a "someone who" - an ensouled body *and* an embodied soul with a history. Meilaender says we know such persons only by entering their history through "personal engagement and commitment - or what Christians have called love."<sup>151</sup> This segues into Meilaender's view of humans in relation.

As we have said a primary theme in Meilaender's writings is that of faith giving rise to faithfulness. When it comes to faithfulness in our relationship with our fellow human beings it takes on the form of love. Meilaender draws his conception of love out

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<sup>148</sup> Ibid., 45

<sup>149</sup> Meilaender, *Faith*, 45.

<sup>150</sup> Ibid., 46.

<sup>151</sup> Ibid.

of the relationship within the Trinity. In that relationship he sees three aspects of love: Benevolence or good will (the affirmation and delight in the existence of another as the Father gives to the Son), Mutuality or reciprocity (a union of affections as seen in the Son's response to the Father) and Self-Giving (which leads to giving and receiving to one another as the Spirit is the mutual bond which springs from the giving and receiving between Father and Son).<sup>152</sup> "Our task is nothing less than this: to achieve within human life the love that is a dim reflection of the life of God."<sup>153</sup>

The task is made difficult for us in that, while we are free creatures able to love, there are limits in expressing that love. This tension between our freedom and our limits expresses itself in at least two ways.

First is the tension of how far we can go in the name of Christian love. Can we transgress our faithfulness to God if in doing so we are expressing love to another? Meilaender writes, "In some moments love may demonstrate itself in a respect for the limits of human life; in other moments love may freely transgress a boundary once thought sacred."<sup>154</sup> Some claim that motive is all that matters: as long as we love another and love God, nothing else should count in the moral evaluation of our actions.<sup>155</sup> However, Meilaender argues that to think this way is to ignore the limitations placed upon us as finite creatures. It is an attempt to use our freedom in God too broadly. Even love is limited by God's created order and our faithfulness to Him and there are limits to

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<sup>152</sup> There is an analogous similarity in Meilaender's scheme to Outka's three forms of love as mutuality, equal regard and self-sacrifice.

<sup>153</sup> Ibid., 48

<sup>154</sup> Meilaender, *Limits*, 32.

<sup>155</sup> Joseph Fletcher, *Situation Ethics: The New Morality* (Philadelphia, PA: Westminster Press, 1966).

the moral life that love cannot transgress. This temptation to transgress God's limits in the name of love creates a state of continual tension for the believer.

A second way the tension between our freedom and our finite limits expresses itself arises from the particular and universal aspects of love. Because we are finite creatures, located in a particular time and place, we come into contact with only certain individuals. With many of these we form bonds of love that are both particular and preferential in which we share mutual affection. However, because we are free we are also able, and as Christians are expected, to reach out and extend beyond these limits to love to everyone for every person is our neighbor. This expresses the benevolence aspect of love. We are able to willingly love in a universal sense apart from affectionate bonds and preference by affirming the existence of the other.

In his short book on friendship<sup>156</sup>, Meilaender uses the Greek terms *philia* and *agape* for these two forms of love. *Philia* is a preferential love that forms the mutual bond of friendship and is marked by reciprocity of love between individuals. It can change as we enter and exit relationships. *Agape* is non-preferential like the Father's love for all men. Unlike the mutuality of *philia*, *agape* is something we are to show even to our enemies. Rather than changing, *agape* is characterized by constancy. The tension between these two forms of love is evident in that preferential love is, by nature, exclusive - we love some and exclude others. Yet, as Christians, we are commanded to show neighbor love to all men, even our enemies.

You have heard that it was said, 'Love your neighbor and hate your enemy.' But I tell you: Love your enemies and pray for those who persecute you, that you may

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<sup>156</sup> Gilbert Meilaender, *Friendship: A Study in Theological Ethics* (Notre Dame: University of Notre Dame Press, 1981).

be sons of your Father in heaven. . . If you love those who love you, what reward will you get? Are not even the tax collectors doing that? And if you greet only your brothers, what are you doing more than others? Do not even pagans do that?<sup>157</sup>

In this passage *agape* seems to overrule and dominate over *philia*. In fact this passage leaves one with the impression that they are incompatible. You must choose one over the other.

Meilaender argues that the question is not which we choose, for we need both forms of love. A love lacking particular attachments inevitably lacks warmth and intimacy which is essential to any love that has come to full fruition. It is equally true, that, by themselves, partial and preferential loves lack something just as essential to any perfected love: the spirit that simply affirms the existence of the other and not just the spirit that is drawn to characteristics of a warm and reciprocal relationship.<sup>158</sup>

How then are we to relate these two forms of love in the moral life? There are a number of ways of conceiving their relationship. One is for benevolence to act as a limit on mutuality. We may pursue our particular attachments as long as we do no harm or injustice to another. Meilaender feels that this misses the active and positive side of benevolence or *agape* - it becomes basically a limiting factor and little more. A second way to relate them is to derive benevolence from mutuality. Particular love is simply the application of our general benevolence. We love some particular people as we would love all if we could. Meilaender feels that this is inadequate in that it doesn't account for the preference aspect of particular loves. We could love anyone this way. A third way is to go the opposite direction and derive general benevolence out of particular love. In this

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<sup>157</sup> Matt. 5:43-47, NIV.

<sup>158</sup> Meilaender, *Faith*, 50-51.

sense our particular attachments become a school in which we learn universal love.

Meilaender sees some good in this conception. Speaking of loving his wife he writes, "Having committed myself to her, attempting to care for her well-being in particular, I may gradually become a person more ready to care for the good of any neighbor."<sup>159</sup>

However, Meilaender believes the best way to relate mutual and benevolent forms of love is not by trying to link them directly, but connecting them both to the third aspect of love. He believes that the most important element in Christian love is self-sacrifice. A love in which self-sacrifice is primary recognizes both the importance of preferential relationships and the necessity of universal love, but moves beyond them to "seek to enact the more fundamental rhythm of self-giving which makes the divine life possible."<sup>160</sup> Sacrificial love does not ask whether it is preferential or universal love which is expressed, but merely seeks the neighbor with no particular goal but to love and meet the neighbor's needs. It is more than mutual preferential love, for it willingly sacrifices personal preferences for the sake of the other. And it is more than general benevolence as it does more than just affirm the existence of the other. The Christian who loves sacrificially seeks "only to make the way of Christ his own and may be quite certain that this way is likely to lead to the cross."<sup>161</sup> For this reason Meilaender suggests that, while only some Christians will probably attain this higher form of love, all Christians are called to a self-giving life and it remains a permanent possibility for all. Christians learn to love self-sacrificially as they grow in trusting God. Knowing God cares for us frees us from concern for ourselves to self-sacrificially care for others. "The

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<sup>159</sup> Ibid., 53.

<sup>160</sup> Ibid., 54.

<sup>161</sup> Meilaender, *Friendship*, 33.

Christian life of love is governed not by a theory about equal treatment but by faith that trusts God and is, then, living and active in service of others."<sup>162</sup>

Finally a word needs to be said about love of self in relation to love of others. If it comes down to a choice between self-love and love of neighbor, Meilaender affirms that neighbor always comes first. In this sense the command of Jesus to love your neighbor as yourself should be seen as "in place of" yourself. This might seem to imply that there is no love of self or to love one's self is inappropriate. Some think of Jesus's command as a decree completely to disregard one's own needs and desires and live fully in the service of the other. As we have noted above, self-sacrifice will be the calling for all believers at least some time, and may be the calling of some believers all the time.

However, life is not usually a choice purely of either self or other. How are we then to think of love of self? Meilaender suggests that we need to make a distinction between a love that is by nature self-referential and a love that has the self for its object. Not all loves are purely for the sake of the other. Our loves are often related to our desires for our own satisfaction and good. We seek our own good in such things as friendship, marriage and work. These may be self-referential but the self is not the object of our love. Such a love recognizes our need as creatures who depend upon each other for our ultimate fulfillment and flourishing. However, what we should reject is a love that has the self as its object. We should never aim to exploit others purely to fulfill our own desires and satisfactions. I may seek my good in loving my wife, but in doing so I make her the object of my love. This will most probably require the sacrifice of other desires. If I take as my aim only satisfying my own desires, making self the object of my love,

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<sup>162</sup> Meilaender, *Faith*, 85.

then I will not be able to seek my good in loving my wife and ultimately defeat the very goal I wish to obtain.

Having discussed our relation to other persons, we turn now to our relation to God. As human beings we relate to God in two ways: as sinners and as saints. The tension between these two has been of foremost interest to Meilaender and will be taken up in the next section. Here I will discuss the person as sinner and just touch on the person as saint.

Meilaender locates the basis of sin in a tension between our finiteness and our transcendence. "Our sin is best characterized as failure to master the intricate simultaneities required by the duality of our being."<sup>163</sup> As finite beings we are located in a particular time and space, limited in our abilities. Yet we are also transcendent beings created for eternity. These two aspects of our nature struggle against each other, creating tension. The source of the tension is our failure to put our trust and hope in the God who has created us as transcendent beings, but who has also limited us. This failure to trust and hope in God is our sin. Meilaender says this sin expresses itself in two primary ways: pride and sloth.

Pride is the refusal to accept the natural limits of our condition as finite creatures. It is a failure of trust. "It is the attempt to exercise freedom without limit – without even, the limit that is God."<sup>164</sup> In pride we think the final truth of our human nature is found in using our own self-determination and freedom to transcend our natural limits and have mastery over all creation. Meilaender comments that pride also devalues

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<sup>163</sup> Meilaender, *Faith*, 59.

<sup>164</sup> *Ibid.*, 60.



our view of the body. Because pride concentrates on our transcendence and freedom, we think of ourselves as persons using our bodies rather than as embodied persons. This has long-range consequences for a number of issues in bioethics. Our drive to master creation, rather than exercise biblical dominion over it, impels us to attempt to extend our lives quantitatively and qualitatively. We see ourselves as masters of our own destinies, living independent of God.

While pride concentrates on our transcendence at the cost of our finitude, sloth concentrates on our finitude. It is an attempt to find meaning only in the things of this world. Whereas pride is a failure of trust in God, sloth is failure of hope. Sloth is an unwillingness to delight in creation as a gift from God but tries to delight in just creation itself: "For they exchanged the truth of God for a lie, and worshipped and served the creature instead of the creator."<sup>165</sup> However, the goods of this world will ultimately not satisfy our heart's deepest longing. We always want more. Meilaender comments how sloth eventually leads to dissatisfaction with leisure itself. By hoping only in the things of this world we just become bored, wondering "Is that all there is?"

The end result of both pride and sloth is isolation. In pride we try to make everything and everyone subject to our will where we are secure, but alone. In sloth we can delight in nothing outside ourselves. While the destination is the same no matter which path we take, Meilaender comments that pride may carry some consequences that are not present with sloth. The nature of pride is its competitiveness; it sets itself against the good of others. Therefore pride is usually more socially destructive than sloth.

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<sup>165</sup> Rom 1:25, NASB

Another consequence resulting from a life dominated by pride and sloth is idolatry. In pride we make an idol of our freedom to fulfill our desires. Rather than worship the God who gave us our freedom, personal autonomy becomes our God. In modern medicine this has become the endless quest to end all suffering and disease. Meilaender has written, "There is no end of good causes in the world, and they would sorely tempt us even if we did not live in a society for which the pursuit of health has become a god, justifying almost anything."<sup>166</sup> In sloth the idolatry is more obvious, but no less sinful. Rather than worship the God who gives us "all good gifts," we cling to the gifts themselves in hope that they will bring us a satisfaction that can only be found in God. Being a sinner does not mean that we cannot or do not love others or even that we do not love God. It means that our love is divided. We struggle with the tensions of a divided loyalty and a divided self. We desire to genuinely love God, even to rest on Him. Yet, at the same time, we have an implacable will not to be interfered with, a wish to live autonomously. We experience a sincere longing for the joy that only God can offer but, at the same time, a timorous clinging to the goods of this world.<sup>167</sup>

While Meilaender acknowledges that we have a sin nature, he says that this is a historical truth, not an ontological truth. We are not necessarily sinners due to our finiteness; it is not inherent in us. Instead the biblical narrative of the Fall teaches that our created nature has been corrupted. The concept of original sin is problematic: What is the origin of sin? If we are sinners by nature then does that not diminish our personal responsibility for sin? As far as the first question, Meilaender does not attempt to offer a

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<sup>166</sup> Gilbert Meilaender, "Begetting and Cloning," *First Things*, 74 (June/July 1997): 41-43.

<sup>167</sup> Meilaender, *Faith*, 63.

theodicy for the origin of evil. He comments that, in the biblical narrative, the origin of evil itself is left unexplained. However, the fact that sin entered into and corrupted our nature, while not a necessary aspect of our finiteness, is a necessary part of our story and of the story of the cross. The story of original sin has always been at heart Christological. Saint Paul wrote, "For just as through the disobedience of the one man the many were made sinners, so also through the obedience of the one man the many will be made righteous."<sup>168</sup> According to Meilaender, to diminish the reality of original sin trivializes the story of the cross. The Christian story is one of good creatures who fell from that goodness, and this fall was a "failure of trust and a disordering of love so deeply infecting our nature that it becomes a condition from which we cannot free ourselves," but from which we can only be freed by the "redemption and deliverance through God's re-creating act in Christ. Hence, the Christian understanding of original sin is, first and foremost, a working out of the right way to tell the story of Jesus."<sup>169</sup>

As far as the question of personal responsibility, Meilaender recognizes the tension involved in affirming both that we are sinners by nature and that we are responsible for sin. He writes that those who have difficulty affirming both often have a misunderstanding of the human person. Our individual character is both *our* character and yet shaped by and large by the community we find ourselves in. We may claim that we should not be held responsible for actions that arise from a character others may have had a hand in forming. "But that is to pretend that we are one thing and our character another - as if the self were something other than the self shaped within society."<sup>170</sup> We

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<sup>168</sup> Rom 5:19, NIV

<sup>169</sup> Meilaender, *Faith*, 67.

<sup>170</sup> *Ibid.*, 68.

are shaped both by our community and by our decisions. In the beginning our character is formed and our orientation away from God becomes inculcated in us by a community of disordered and divided loves. In this sense Meilaender affirms that our sin nature is propagated to us not just biologically, but socially. However, our character is also formed by the choices we make. The fact that we have a sin nature does not negate that we are also responsible for our sin. This tension between our nature and our choices causes us to cry out with the Saint Paul:

For what I do is not the good I want to do; no, the evil I do not want to do—this I keep on doing. Now if I do what I do not want to do, it is no longer I who do it, but it is sin living in me that does it. . . . What a wretched man I am! Who will rescue me from this body of death?<sup>171</sup>

One of the worst results of pride is to make us believe that we can ultimately rescue ourselves. Hence, we devise general ethical theories in attempts to diminish the impact that sin has on us as individuals and on our society. However, as Robert Adams says of such theories, "They have nothing to say to us in a situation of helplessness . . . . [They] abandon us in what literally is the hour of our greatest need."<sup>172</sup> Meilaender affirms that what we need ultimately is not philosophical discourse, but deliverance. Such deliverance can come from God alone and has been offered in the person and work of Jesus Christ. Through him we break the bondage and slavery of sin and become saints. However, this creates another tension. For Meilaender, the problem of justified sinners is perhaps the most perplexing tension to grapple with in the moral life of the Christian.

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<sup>171</sup> Rom 7:19-24 NIV

<sup>172</sup> Robert Merrihew Adams, *Finite and Infinite Goods: A Framework for Ethics* (Oxford: Oxford University Press, 1999), 224 quoted in Gilbert Meilaender, "Divine Grace and Ethics", in *The Oxford Handbook of Theological Ethics*, ed. Gilbert Meilaender (Oxford: Oxford university Press, 2006), 76.

### The Problem of Moral Development

Meilaender summarizes the problem of moral development for the Christian: "If the gospel announces that sinners are pardoned and that God is pleased with them, what more could possibly need doing? Why should we talk about these pardoned believers needing to learn to follow Christ, to obey the command of God, or to grow in grace and virtue?"<sup>173</sup> If we are declared righteous through the justification we receive through grace, what need have we for moral development? Meilaender expresses this problem in a number of different ways.

The concept of the justified sinner is at the heart of the Christian story. In justification man is declared to be righteous in Christ by no work of his own; it is solely by the grace of God. Paul writes that we "are justified freely by his grace"<sup>174</sup> and that "it is by grace you have been saved, through faith—and this not from yourselves, it is the gift of God."<sup>175</sup> Yet, even under grace, we still experience life as sinners. We are both sinners and saints: *simul justus et peccator*. To fully appreciate this tension we must begin with an understanding of grace. As we said above, sin leaves man with a divided will and disordered loves. In his natural state he is a slave to sin desiring both to follow God and yet constantly giving in to self. It is only by the grace of God through faith in Christ that one overcomes this conflict in the self. Grace provides both a pardon for our sins and the power to overcome the struggle.

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<sup>173</sup> Meilaender, *Freedom*, 10.

<sup>174</sup> Rom 3:24, NIV

<sup>175</sup> Eph 2:8, NIV

Such a strong view of grace is not without its problems. One difficult question is "Whether God causes to be what comes to be through our choices?"<sup>176</sup> The issue of God's grace acting in our lives challenges the concept of human freedom. Who eventually is responsible for our choices - us or God? Meilaender does not offer a detailed analysis of the question of freedom vs. determinism and acknowledges the ultimate mystery in answering such a question, but suggests the analogy of a narrative as one way of thinking through it. When an author writes a story she must work with both characters and plot. While the author is in control of the characters she creates, she cannot just allow them to act any way she wishes. The characters have their own natures and they will not be believable as characters if they are allowed to act in ways contrary to their character. The difficulty in good writing is achieving the goals of the plot without violating the nature of the characters. Meilaender writes, "The right way out of such difficulty - requiring authorial skill of the highest order - permits characters to act in accord with their natures, while yet bringing the plot to the ending the author had envisioned."<sup>177</sup> While God is the ultimate author of our story, he uses our free choices to achieve the goals of his plot without interfering with that freedom.

However the greater problem that occupies much of Meilaender's thought concerns the relation of the two aspects of grace as power and pardon: "There is within Christian thought a permanent tension between two ways of understanding the grace of God."<sup>178</sup> The narrative of the prodigal son captures much of this tension. Reading that story, many of us find ourselves standing with the elder brother protesting the father's

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<sup>176</sup> Meilaender, "Divine Grace," 77.

<sup>177</sup> *Ibid.*, 77-78.

<sup>178</sup> Meilaender, *Faith*, 76.

acceptance and forgiveness of his prodigal son while we have been faithfully serving him all this time. The moralist in us seeks a transformation in the life of the prodigal, a change in his life and behavior before the Father bestows his love and blessing on him. Yet in the story the father declares the son forgiven and restored with no transformation. We see the two aspects of divine grace in these two actions: Grace as declaration of the pardoning by God of our sinfulness and his acceptance of us without a required transformation; grace also as the transforming power of God as he sustains us in our growth as Christians.

Another way Meilaender pictures this tension in moral development is his analogy of the Christian life as journey or dialogue. To think of the Christian life as dialogue is to emphasize the pardon aspect of grace. It pictures the Christian as caught between commands of the law and the offer of the gospel. The Christian moral life is an experience between these two divine verdicts of law and gospel. Within human history Christians cannot escape that dialogue or ever progress beyond it. The Christian life goes, in a sense, nowhere; rather, it goes back and forth.<sup>179</sup> As we encounter our failure to keep the demands of the law, we are driven back to experience the pardon and forgiveness of God. Under this understanding of the Christian life, there is no place for Christian ethics except to show us our state as sinners and our need for God's forgiveness and his declaration of us as saints. In this model of the Christian life as dialogue there is no place for the notion of sinner who is gradually coming to be (by God's grace) more

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<sup>179</sup> Meilaender, *Limits*, 35.

and more a saint.<sup>180</sup> Meilaender believes that it is the failure of many Lutheran theologians and ethicists to view the Christian life from this perspective only.

However, Meilaender suggests that there is another way to view the Christian life and that is as a journey. This is a process in which the God transforms the Christian over time conforming him more and more to His will. It is a life-long pilgrimage towards becoming Christlike. Christian ethics provides both direction and the paradigmatic narrative to which we should conform our lives as we grow and progress. In contrast to the dialogue view, "The Christian life is pictured as going somewhere. Not back and forth between two contrary divine verdicts, but toward fellowship with a God who is unequivocally gracious."<sup>181</sup>

Meilaender also expresses this tension by the use of the metaphors of "gift," an indicative term for what we have been given to us, and "task," an imperative term for what we must do. Grace is both gift and task. In thinking of grace as transforming power, we emphasize the imperative. Grace provides the power to perform the tasks God requires of us as we progress and grow in our relationship with him. The emphasis in this understanding of grace is on our Christian moral development. However, if we think of grace as a gift, pardon and righteousness given to us, we reduce and perhaps even eliminate the need for moral exhortations. "Both gift and task are affirmed, and the tension seems firmly in place."<sup>182</sup>

Pardon/power, declaration/transformation, faith/faithfulness, dialogue/journey, or gift/task - all of these metaphors are ways of expressing the tension between two ways of

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<sup>180</sup> Meilaender, "Place," 200.

<sup>181</sup> Ibid.

<sup>182</sup> Meilaender, *Faith*, 81.



viewing God's grace and two manners of living the Christian life. The question is how do we resolve the tension? Meilaender affirms several times that we cannot. "Grace is fundamental for the life of believers, but that grace must be understood both as pardoning word and transforming power. Within human history no theory can unite these two in a tension-free harmony."<sup>183</sup> Nor should we attempt to resolve the tension, for any attempt to overcome this tension diminishes a full understanding of the grace of God.

In our attempt to resolve the tension we might try to emphasize one of these aspects of grace over the other. However, to do so invites serious dangers into our moral thinking. The danger of too strong an emphasis on the pardoning word can lead to a life where there is little place for ethical reflection and growth. On the other hand, the danger of too strong an emphasis on the transforming power of Grace can lead to one of two other dangers. First, it can lead to presumption: we think we can make ourselves holy. We think of the Christian life as our possession rather than as God's gift. Second, it can lead to despair: failing in holiness we lose hope of ever becoming what God wants us to be.

So what are we to do? Meilaender's answer is that, rather than attempting to resolve the tension, we are called to *live through the tension*. Living through the tension does not mean merely to acknowledge and acquiesce to it, but to embrace it as a significant part of our Christian vocation. However, this only brings us to a deeper question: exactly what is involved in living through the tension?

While Meilaender does not specifically explain how one "lives through the tension," he does provide some helpful insight. First and foremost, it is a life lived in

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<sup>183</sup> Ibid., 80.

trust in God. Because we don't experience our declared state, it is easy to fall into the error of thinking that, in fact, nothing has really happened to us. We doubt the truth of *reality*, that we have been declared as righteous, and trust rather in our *experience*. The truth at times must be more believed than seen; we must walk by faith, not by sight. Meilaender affirms, "We are no longer enslaved to sin. In Jesus Christ we are 'alive to God' – desiring to know his will and learning to delight in his commands. And although as followers on the way we sin daily, we are no longer in bondage to that sin. *Something* has happened."<sup>184</sup> At times our Christian progress may seem static, or worse, that we are even falling back. In the midst of those times we need to return to the pardoning word of God as a reminder that we are forgiven and are righteous in Christ. However, Meilaender says that the dialogue model "should not become the chief structuring principle of Christian ethics."<sup>185</sup> We are not only to trust God, but we are to pray that this new life would become a part of our experience. We are to grow and progress in our new life. Meilaender affirms that it is not contrary to the life of discipleship that we should again and again experience ourselves as caught in the tension between the reality of our sin and the reality of God's forgiveness. What *is* contrary to the path of discipleship is that we should rest content in that static condition.<sup>186</sup>

Scripture affirms this full expression to both aspects of grace: "If we live by the Spirit, let us also walk by the Spirit."<sup>187</sup> This has led to the theology of "justification followed by sanctification," which some promote as a means of overcoming the tension. Meilaender believes that, at face value, this language offers little help in resolving the

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<sup>184</sup> Meilaender, *Freedom*, 40, emphasis mine.

<sup>185</sup> Ibid.

<sup>186</sup> Ibid., 41, emphasis his.

<sup>187</sup> Gal. 5:25, NIV

tension. Any strong view of justification seems to challenge the need for sanctification. He proposes instead that perhaps a different understanding of the language of justification and sanctification might provide some insight into living through the tension. Following Karl Barth, Meilaender suggests that the concept of *reconciliation* should be the superseding theological category with both justification and sanctification as two different aspects of God's reconciling act. They are not two different tasks of God, but two aspects of his one task of reconciling the world to himself.

Meilaender says we live through the tension by claiming these two aspects of God's reconciliation at the appropriate times we need them. Their distinction lies not so much in their order, "justification followed by sanctification," but in their need. To those in despair they need to hear the word of pardon and be reminded of their justification. To those confident in their justification, they need to hear of the power of God's grace in transforming their lives and be encouraged through his grace to continue progressing in growth.

Does this resolve the tension? No. Meilaender insists that the tension between these two aspects of grace will never be fully resolved this side of eternity. We will always struggle with them. The desire only to appropriate God's pardon will always hinder our need to employ God's transforming power in our moral development.

However, Meilaender writes:

This is, I suspect, the best that Christian ethics can manage or should try to manage. The one gracious work of God in Christ, reconciling the world to himself, will – this side of the eschaton – always have to be described in the language of both pardon and power. These are different but necessary ways of describing how God's Spirit draws human lives into the story of Jesus. The language of pardon speaks to Christians' continuing experience of sin in their lives; the language of power reflects the truth that the Spirit of Christ does,

indeed, dwell in believers. Both languages will, therefore, be necessary to say everything that needs to be said about the place of grace in Christian life.<sup>188</sup>

### Consequences, Rules and Virtues

This discussion on moral development leads naturally to Meilaender's view of moral theories and which approach is best to employ in Christian ethics. Meilaender affirms the need to adopt an approach to moral thinking that recognizes our finiteness and limits. He writes, "The fundamental temptation . . . is always the same: failing in trust, our temptation is to love without limit, wanting to be like God."<sup>189</sup> The temptation in adopting any ethical theory is that we think we can improve ourselves and the world around us by our own will and power. Karl Barth is famous for his claim "What the serpent has in mind is the establishment of ethics."<sup>190</sup> Whatever theory we adopt for Christian ethics must be attentive to this temptation.

Meilaender initially recognizes three aspects of the moral life: *results* of our actions, which we usually judge as "good" or "bad"; the *actions* themselves, which we judge as "right" or "wrong"; and *character*, where we judge the person as "virtuous" or "vicious" (acting out of vice). While we recognize that all three of these will often play a part in making moral decisions, one of them will usually dominate in guiding and evaluating our moral being. Out of these three aspects arise the three predominant theories of ethics: consequentialism, deontology, and aretaic or virtue ethics.

<sup>188</sup> Meilaender, "Divine Grace," 83.

<sup>189</sup> Gilbert Meilaender, "Eritis Sicut Deus: Moral Theory and the Sin of Pride," *Faith and Philosophy*, Vol. 3 No. 4 (Oct. 1986): 397

<sup>190</sup> Karl Barth, *The Doctrine of Reconciliation: Church Dogmatics*, Vol IV/1 (Edinburgh: T&T Clark, 1956), 448.

While Meilaender considers all three of these theories in his discussion, he reduces them to two groups: impersonal and personal. The consequentialistic theories are impersonal in the sense that they require the moral agent to evaluate a moral situation from an impersonal perspective. She is to stand outside of the situation and judge it as an impersonal spectator. The identity of the person or what her own particular historical condition might be is not relevant to the decision as to what the right course of action. Who the agent is does not count most morally. What counts is that she achieves the best state of affairs. The standpoint is a universal one for the consequentialist.

The deontological and virtue theories do not require the person to take a universal stand in such an impersonal way.<sup>191</sup> They do not place the responsibility of achieving the good for everyone on a single individual. "These theories accept the moral importance of the agent's perspective - the importance of what he is and does, not just what he brings about."<sup>192</sup> This is not to say that one cannot, at times, transcend one's personal perspective. That one can and should is often essential if one is to be just in the treatment of others. Meilaender affirms that we sometimes must see moral situations from God's perspective, but we are not to attempt to be God. In our transcendence, we must never lose sight of the limits of our finiteness. This tension leads us to Meilaender's criticism of consequentialism as a moral theory.

There is little argument that consequentialism is probably the most popular moral theory of our age. Meilaender understands why this is so: morality is about the good and maximizing good is at the center of consequentialistic thinking. This can readily be seen

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<sup>191</sup> It is true that some deontological theories are presented as universalistic, i.e. Kant. However, it is not required as a necessity of deontology to be a universal ethics. For Meilaender's comments on Kant, see below.

<sup>192</sup> Meilaender, "*Eritis*," 398.

in the most well-known version of modern consequentialism, utilitarianism. The fundamental principle of utilitarianism is to maximize the greatest good (whatever that might be) for the greatest number of people. Meilaender comments that even Christians can be lured to such a theory. "This formula has the kind of other-regarding ring which Christians are accustomed to praise, and we may be tempted to believe that there must be little difference between an act which maximizes good consequences and an act that is most loving."<sup>193</sup> Consequentialism comes close to sounding like a secular version of Christ's command to love one's neighbor.

However, Meilaender has a number of problems with consequentialism. By attempting to take a universal position and responsibility for good results, consequentialists are in fact placing themselves in a position reserved for God alone. In the process they are denying an important aspect of their nature, their finiteness. Not only is taking such a position presumptuous, it is doubtful that it is even possible in reality. How can one possibly even know what the "good" is that is to be achieved for all involved? Such knowledge is surely God's alone and no one is really able to step into the "outside" position and acquire it. We are not called to achieve the good, we are called to be faithful. "It suggests a kind of presumption about our control of the future that sits uneasily in a life shaped by hope, whose assurance rests not on our mastery but in God's promises."<sup>194</sup>

Meilaender also has a problem with the tyranny of consequentialism as expressed by the 18th-century philosopher William Godwin, "If justice has any meaning,

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<sup>193</sup> Ibid., 400.

<sup>194</sup> Meilaender, "Divine Grace," 87

it is just that I should contribute *everything in my power* to the benefit of the whole."<sup>195</sup>

The idea expressed here raises two important questions for Meilaender:

(1) Are there any limits on our freedom to seek what is best for others? *May* we always aim at the 'greatest good' attainable? Or, are there limits on what should be done even in the best of cases? (2) Are we ever free from the obligation to measure our action by the standard of general well-being? *Must* we always aim at the 'greatest good'? Or are we to some degree free to pursue our own projects and desires even if they do not serve our own projects and desires, even if they do not serve the greatest good possible?<sup>196</sup>

An affirmative answer to either the *may* or *must* questions places restrictions on our freedom that may be undue and unwarranted. Addressing the second question, Meilaender says that, if we must *always* aim at the greatest good, we destroy the freedom of the Christian life. Consequentialism simply demands too much of us. There is no place for personal choice. It moralizes the whole life and makes every decision an obligation, requiring us *always* to seek what is best for everyone overall. Our freedom to respond to God's call in our life will constantly need to be justified in light of providing what is in the best of all. Meilaender uses the example of selecting a vocation in life to illustrate the restrictions of such an ethic. Suppose one has the talents, abilities and opportunities to become a great medical researcher but would desire rather to be a butcher and believes, in fact, that God has called him to such a vocation. It can be argued that the aggregate good is maximized more from medical research than from cutting beef. Therefore, under the consequentialist demand to maximize good, one loses the freedom to choose one's own vocation.

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<sup>195</sup> William Godwin, *Enquiry Concerning Political Justice and Its Influence on General Virtue and Happiness* (1793) (New York: Alfred A Knopf, 1926), 40, quoted in Meilaender, "Eritis," 400, emphasis mine.

<sup>196</sup> Meilaender, *Faith*, 98.

More importantly, says Meilaender, consequentialism separates the obligation to love others from trusting in God. We "imagine that the destiny of the world lies not in God's hands but in ours."<sup>197</sup> While we are free to some extent to transcend our situation and reach out to the neighbor in love, ultimately our love is limited by our finiteness - we are created by God in a particular time and location in history. We are not just to acquiesce and grudgingly accept the limits of our finiteness, but we should rejoice in it. "What is needed, by contrast, is a glad affirmation of our finite nature and trust that we are free to be the sort of creatures God has made us to be."<sup>198</sup> The joy comes from our realization that we need not always contribute everything in our power to the benefit of the whole. Recognizing our finiteness sets us free from the tyranny of consequentialism.

Meilaender also sees a problem in consequentialism's answer to the first question above. *May* we always aim at the greatest good or are there any limits to our freedom to seek the good? A consequentialist would say there are no limits, for we are always to do what we must to benefit the whole. We may always aim at the greatest good even if it involves doing what many would consider evil. Some have even argued that Christian love often demands the violating of moral norms in order to achieve the greatest good. Hence Joseph Fletcher famously argues,

Once we realize and truly accept that only love is good in and of itself, and that no act apart from its foreseeable consequences has any *ethical* meaning whatsoever - only then will we see that the right question is to ask is, Does an evil means always nullify a good end? And the answer, on a basis of what is sometimes called 'due proportion' must be, 'No.' It always depends on the situation.<sup>199</sup>

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<sup>197</sup> Ibid.

<sup>198</sup> Meilaender, *Faith*, 101.

<sup>199</sup> Fletcher, *Situation Ethics*, 126.



Meilaender states that, as Christians, we need to avoid such thinking and so he advocates a deontological approach to Christian ethics. We are to trust and be faithful to the commands and precepts of God even if that means, at times, not achieving what we perceive to be the good. "To aim at evil, even in a good cause, is to take into our person a choice against what is good - not to just let this happen but to give it the personal involvement of our purpose. It is to begin to make of ourselves people who would not want to be with God."<sup>200</sup>

In adopting a deontological approach, Meilaender does not deny that there can be rare exceptions to moral obligations. One must not forget the part that 'grace as pardon' plays in the moral life. A strict deontology fails to capture what is central in Christian ethics - focusing on the needs of our neighbor.<sup>201</sup> A time might arise when the necessities of neighbor love make it morally necessary to break a moral rule for the sake of neighbor love. By "morally necessary," Meilaender means not just the loss of certain goods, but the triumph of evil. These times are rare and should not be the defining moments of the Christian moral life. While some might argue that deontology is compromising its non-consequentialistic character at such a moment, Meilaender would argue that no compromise is in play here. The ground for breaking the moral rule is not consequential. It is recognizing certain intrinsic goods and resisting the triumph of evil. Meilaender says at such times we must cry out with Augustine, "Deliver me from my necessities," and throw ourselves on the mercy of God. We offer no justification. We are not to seek good

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<sup>200</sup> Meilaender, "*Eritis*," 408.

<sup>201</sup> Meilaender, *Faith*, 106.

by doing evil. At such times we just recognize our limits and turn to God for pardon and deliverance.

Meilaender recognizes the inherent tension between attempting to move beyond our limits in obtaining the good and being faithful to the limits placed on us as finite justified sinners and, in a passage worth quoting in full, he warns of the danger of trying to make that move:

This tension - between the worthwhile results we seek to produce in and for the lives of others, and the moral limits on how we are to act - is a permanent one in human history. If we try to eliminate it, we seek, in a sense, to save ourselves from it by means of moral theory. But for the heart that, trusting in God, seeks to *live through the tension*, it is always occasion for temptation - a moment of danger in which, seeing that the fruit of the tree is good for food, we will be tempted to eat of it. It is temptation when the tension becomes simply a call to daring and responsible exercise of freedom. But, in fact, this is no true human responsibility, only an illusion.<sup>202</sup>

While Meilaender affirms that the correct approach to Christian ethics is at heart deontological, it is a modified deontology from what is regularly espoused. The most well-known form of deontology is that of Immanuel Kant's. Yet Meilaender is critical of Kant's attempt to universalize his deontological approach. While Kant is certainly no consequentialist, they both require individuals to make moral judgments about the world from a position nowhere in that world.<sup>203</sup> His concepts of the "good will" and the "categorical imperative" are attempts to will as moral maxims only those actions that can be adopted as universal law. His form of deontology encourages us to think that "our glory lies in being free and autonomous, obeying no law except that which we legislate

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<sup>202</sup> Meilaender, *Faith*, 111, emphasis mine.

<sup>203</sup> Meilaender, "*Eritis*," 399.

for ourselves in accordance with the universal requirements of reason - has encouraged us, in short, to develop a moral theory for beings who are all freedom and no finitude."<sup>204</sup>

It would be incorrect to gain from Meilaender's criticisms of Kantian deontology that he does not believe there are universal norms. "An adequate ethical position must recognize that we have some moral responsibilities which oblige all persons similarly situated. But it must not characterize the whole of morality in these terms."<sup>205</sup>

Meilaender employs the term "duties of perfect obligations" to refer to those obligations that are universal. Examples would be the obligations God requires in the Decalogue. The first table of the law lists our obligations to God and the second table our obligations towards our neighbor. However, Meilaender does not believe we should extend the concept of universalizability beyond these kinds of duties. There are other duties of imperfect obligation which are not universalizable.

Meilaender wants to preserve a certain amount of freedom in morality. He believes that if we characterize the whole of morality purely in terms of universal obligations, we destroy any possibility of choosing the sort of person we will be and of determining our character through the choices we freely make.<sup>206</sup> This is not a freedom to live beyond our limits, but it is recognition that there are some goods we may choose that are incommensurable for others and yet are obligatory for us. He uses the example of Captain Lawrence Oates, the well-known British explorer of the South Pole who willingly sacrificed himself for the sake of his comrades. Recognizing that his disabilities, frostbite and gangrene, were slowing down the progress and endangering the

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<sup>204</sup> Meilaender, *Faith*, 93.

<sup>205</sup> Gilbert Meilaender, "Is What is Right for Me Right for All Persons Similarly Situated?," *Journal of Religious Ethics*, Vol. 8 (1980), 126.

<sup>206</sup> Meilaender, *Freedom*, 91.

lives of the rest of the team, Oates walked out of his tent in -40° temperatures, reportedly saying "I am just going outside and may be some time."<sup>207</sup> Meilaender says that while Oates may have been doing what for him was his duty, it is certainly not universalizable for all. Some moralists want to shift such decisions from the category of the obligatory to the category of the supererogatory. Without dispensing with the category of supererogation, Meilaender resists such a move claiming that decisions like these often shape our character and vocation and determine the manner in which our life will relate to others. To deprive us of the ability to use 'ought'-language concerning such choices not only flies in the face of ordinary language but also removes from morality's realm many of the most important decisions people ever make.<sup>208</sup>

Meilaender notes that most of those obligations that fall under the category of duties of imperfect obligation are those in which we are beneficent. Non-maleficent duties are usually universalizable. However, this does not always hold true. For example, suppose I am standing next to the shallow end of a pool at a family gathering and my niece, only a toddler, crawls over and falls into the pool, quickly sinking to the bottom. It will take almost no effort to bend over, reach down into the water and pull her out. This would be an act of beneficence on my part which almost everyone would agree is an obligation for any person similarly situated. Meilaender acknowledges acts of beneficence like this are universal, but there is a limit to what we can universally require agents to do. He also affirms that there is no limit to refraining from doing evil. So, if my

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<sup>207</sup> This story is well known and has probably grown to legendary status over the years. Recent evidence challenges some of the alleged facts of the life and death of Captain Oates. For an interesting account of his life I suggest Michael Smith's *I Am Just Going Outside: Captain Oates - Antarctic Tragedy* (West Link Park, Ireland: The Collins Press, 2006).

<sup>208</sup> Meilaender, "Is What is Right," 127.

niece had fallen overboard in the ocean and I cannot swim, there exists no universal obligation to save her, though I may and, Meilaender would add, I should feel obligated to at least try and save her. According to Meilaender, what distinguishes these examples is not just the cost to the agent, but what such a decision does to one's character.

"Relevant also - and, I think, more important - is the effect on the character of the agent, the degree to which a particular decision will necessarily help to create a person indifferent to human need."<sup>209</sup>

Advocating a deontological approach to Christian ethics, Meilaender affirms that rules play an important part in the moral life. However, they are not simply restrictions on our freedom, they express what it means to trust God in the whole life. Rules not only set limits, they also distinguish a sphere of what we are free to do in serving our neighbor. More importantly, there are numerous ways to exhibit love of neighbor that do not come under the category of the obligatory. Faithfulness that grows out of faith in God involves keeping rules, but it involves more than that. "Rules do not tell the whole story, nor can commitment to them as a structured form of love be sustained apart from the virtues of faith and love."<sup>210</sup> It is to Meilaender's discussion of virtue that we now must turn.

One of Meilaender's earliest books was on virtue ethics: *The Theory and Practice of Virtue*.<sup>211</sup> Again it is not possible to cover every issue that Meilaender deals with and so I will select those that are most significant in his thinking. Meilaender describes his book as an "exploration" into the thoughts and writings of a number of thinkers on the

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<sup>209</sup> Ibid., 130.

<sup>210</sup> Ibid.

<sup>211</sup> Gilbert Meilaender, *The Theory and Practice of Virtue* (Notre Dame: University of Notre Dame Press, 1985).

topic of virtue ethics. His goal is not so much to arrive at a comprehensive theory of ethics as it is to arrive at a coherent understanding of the place of virtue in the thought and training of the Christian. Josef Pieper and Martin Luther primarily inform his thoughts on virtue ethics.

Meilaender applauds the return to a discussion of virtue ethics that marked much moral thinking in the last decades of the 20th century. This suggests a widespread dissatisfaction with an understanding of the moral life that focuses only on consequences, obligations, moral dilemmas and borderline cases. Such deliberations may be helpful in thinking through ethics on the conceptual level, but most of us go through our lives without confronting these kinds of circumstances. And while Christian ethics involves obligations and duties, it is inadequate to think of the moral life only in terms of duties. What we ought to do often depends on what sort of person we are. Duties often flow from virtues that are both formed by and shape our vision of the world. Thinking in terms of virtue also has the added benefit of helping to consider those moral issues which may sometimes fall between the cracks of our duties. For example, while we might not be able to condemn one who eats or drinks to excess in the obligatory language of *doing* something "wrong," virtue ethics provides us with the language of *being* appropriate that might apply in such situations.

Meilaender adopts Pieper's definition of virtue as "excellences which equip human beings 'to achieve the furthest potentials of their nature.'"<sup>212</sup> Rejecting a view of virtues as primarily dispositions or skills, Meilaender believes that virtues are best

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<sup>212</sup> Josef Pieper, *The Four Cardinal Virtues* (Notre Dame: University of Notre Dame Press, 1966), xii, quoted in Meilaender, *Theory*, 6.

thought of as traits of character. They do not just equip us for certain activities, or even for life in general; they influence how we think about the activities in which we engage and what we think is important about what we are doing. Our character affects our reaction to the events of life, but our character also partially determines the significance of those events for us.<sup>213</sup> Vision, then, is the central theme in any ethic of virtue, for they are not only skills to fit us for life, they are the traits of character that ultimately shape life for us.

Meilaender identifies two general needs for the virtues: (1) virtues have a corrective function, helping to control and direct emotions; (2) virtues fit us to live a life characteristic of flourishing human beings. While he recognizes that both of these needs are met by living a life dependent on the virtues, Meilaender does not believe it is sufficient to think of virtues only in a corrective sense. It is true that virtues help order and govern our emotions, keeping them in check. But as they are perfected in the moral life we begin to approach the highest potentialities of our nature - that we are living a life characteristic of flourishing human beings.<sup>214</sup> We need virtues for both reasons, but the latter reason should be seen as primary. Virtues are traits of character needed for living the sort of moral life that is a journey towards perfection.

While Meilaender applauds the return to virtue ethics, he warns of a danger posed by an ethic of virtue. He refers to this as the danger of "reflexive concern." Those who adopt an ethic of virtue are in danger of the tendency to become self-absorbed with their own moral development and turn from concern for others to concern for self. Even

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<sup>213</sup> Meilaender, "Exploring," 15

<sup>214</sup> Meilaender, *Theory*, 12.

worse, virtue ethics has traditionally been conceptualized as examining one's own life and self-mastery: *I* achieve the virtues through my own effort; they are *my* possession which I have acquired through self practice. This concept of the virtues appears to run counter to Christian teaching that such attempts at self-mastery are doomed. All our virtues are gifts of God provided through His grace. Any righteous deeds of our own are but filthy rags. The question then is how can we reconcile these two apparently contrary conceptions? Meilaender comments, "At the very least we should say that in order to be saved from such a fate an ethic of virtues will have to find its place within some larger pattern of faith which affirms that we are what we have received, and the virtues are not simply human achievements."<sup>215</sup> Meilaender turns to Luther in attempting "to find its place in some larger pattern of faith." In a play on Plato's famous dictum, Meilaender claims that Luther would say that the *examined* life is not worth living - at least not by itself, outside the framework of divine grace.

In order to appreciate Luther's view of the virtues, we need to return to the problem we examined above in the section on moral development. As we observed above, Luther saw man as simultaneously saint and sinner. However, Meilaender says that Luther had two meanings to this concept which develop into two models of the moral life. In one sense, by saying that man is simultaneously saint and sinner he was speaking of the whole person and of his character taken as a whole. When one looks at the whole man apart from Christ we are completely unrighteous - none of our deeds or character is righteous in the eyes of God, though they may seem so to other men. However, when we are seen "in Christ" our actions, as well as our whole character, are those of a saint. This

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<sup>215</sup> Meilaender, "Exploring," 18.



sense of "simultaneously saint and sinner" leaves out any room for an ethic of virtue.

What one is (sinner or saint) is declared by God, not acquired. Also, there is no room for gradations which an ethic of virtue would seem to require as one grows in acquiring the virtues.

However, Meilaender believes at times Luther meant something different by "simultaneous sinner and saint." This second sense is more the idea of half sinner/half saint. Luther argued that sin remains in the Christian after conversion, but does not rule the Christian. This sense seems to allow for a place for moral development (however still aided by grace). While God sees us whole and under the law as subjects of his wrath while under the gospel subjects of his grace, we see ourselves on a journey of moral development aided by the grace of God. For Luther, both models are an accurate portrayal of the moral life. The question is how to hold the two models together.

Meilaender says the first step is to recognize that we do not become virtuous through inner examination and self-mastery, but only by focusing on God's mercy. He is worth quoting at length here:

That is, the virtues of love, praise, and gratitude are fostered precisely to the degree that we do not try to foster them but, instead, look outside ourselves to the promised mercy. The examined life is not worth living - not only because it can give the conscience no peace before God but because it does not really issue in virtue. When we stop trying to tend to our own soul, when we hand that soul over to God and realize that we cannot bring our virtue to God but that he must (in Christ) bring virtue to us, then we experience a kind of liberation which makes possible true virtue, a virtue which comes not from the slow, disciplined transformation of character through the development of virtuous habits but from the liberating acceptance of the sinner by a loving God.<sup>216</sup>

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<sup>216</sup> Gilbert Meilaender, "The Virtues: A Theological Analysis," in *Virtues and Medicine: Explorations in the Character of Medicine* (Boston: D. Reidel Publishing Company, 1985), 160.

Secondly, Meilaender suggests two ways to understand Luther's view of virtue. Meilaender calls the first of these a *substantive* understanding of virtue: seeing virtues as traits of character developed over time through habitual behavior. We are partly saint/partly sinner. From this understanding moral education is possible. Meilaender refers to this as "philosophical doing": our actions shape our character. The second understanding is a *relational* understanding of virtue: viewing oneself as virtuous purely by acceptance by God. 'Virtuous' is a description of our standing before God in Christ before whom the self stands wholly and passively. Meilaender refers to this understanding of the virtues as "theological doing": our character is transformed through God's acceptance and it shapes our actions. Christians must think of virtue from both understandings.

Like other areas of the Christian moral life, Meilaender recognizes that these two understandings of virtue stand in some tension, but it is another tension that Christians will have to live through.

The tension between these several views of virtue cannot, I think, be removed from the Christian perspective. Its theoretical resolution lies in the narrative Christians tell and retell - a story, not yet finished, in which God is graciously at work transforming sinners into saints. But that story, because it is not yet finished, must be lived. The theoretical resolution explains but does not remove the tensions of the practical life.<sup>217</sup>

Meilaender suggests that, due to the irresolvability of this tension, perhaps the paramount virtue for the Christian is hope in living through the tension.

Finally, while Meilaender sees the value of virtue ethics, he sees a virtue approach to Christian ethics as supplemental to a deontological approach. But for him it is best to

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<sup>217</sup> Meilaender, *Theory*, 125.

conceive of the Christian moral life primarily in terms of obligations of faithfulness rather than of obtaining the virtues.<sup>218</sup>

### **Bioethics**

While Meilaender has written on a number of significant issues in Christian ethics, he has focused most of his energy on bioethics. He has authored a number of articles and two books dealing with such issues as abortion, end of life care, organ transplantation, reproductive technologies, cloning and genetics, and embryonic stem cell research. Of his two books on bioethics, his first book - *Body, Soul, and Bioethics* - is more theoretical while *Bioethics: A Primer for Christians* deals mostly with issues and problems. It is beyond the scope of this chapter to consider everything Meilaender has said about these different issues. However, we can examine some general concerns he has raised about the direction and practice of bioethics and in the process look at a few representative issues as examples of his broader claims. My purpose is to show how Meilaender's thoughts on bioethics flow directly from his Christian ethics.

Meilaender is critical of how bioethics has developed over its short history and how it is currently being practiced. A major theme in his first book is that bioethics has "lost the soul" - ignoring fundamental questions of who we are and what we should be. As the field of bioethics has increasingly focused on public policy the importance of background beliefs about human nature and destiny has been obscured.<sup>219</sup> However, no method of doing bioethics can really divorce itself from background beliefs even though

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<sup>218</sup> Personal interview, 7/25/07

<sup>219</sup> Gilbert Meilaender, *Body, Soul, and Bioethics* (Notre Dame: University of Notre Dame Press, 1995), ix-x.

it is possible to ignore those beliefs and *suppose* that one is doing bioethics without uncovering or unpacking them.<sup>220</sup> This is, in fact, what Meilaender believes bioethics has attempted to do over the last three decades. To argue this point, Meilaender notes the way bioethics developed in the last decades of the 20th century and the two primary methods of doing bioethics that have dominated during that time.

Historically, medical ethics was guided by its own internal moral norms and codes and not by appeals to universal moral norms. These norms were handed down from practitioner to practitioner. Over history a body of ethical guidelines evolved out of and among the community of health care workers. However, the history of the past quarter century of bioethics is in large measure a story of movement away from this tradition. Meilaender believes that much of this movement from an "internalist" ethic to an "externalist" one is a reaction against the perceived paternalism of the medical community as well as a view that an internalist ethic eventually dissolves into relativism. Meilaender suggests that an internal ethic is not necessarily relativistic, but that the problem is that such claims to special professional virtues and obligations often seem to stand in tension with larger social goods.<sup>221</sup> As a result two primary "methods" have evolved as an attempt to resolve this tension by establishing an externalist approach to bioethics.

The first of these is *principlism*. Principlism was born out of the 1978 Belmont Report but has been developed by a number of authors, most notably Tom Beauchamp

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<sup>220</sup> Ibid, 2-3, emphasis mine.

<sup>221</sup> Ibid., 6.

and James Childress in *Principles of Biomedical Ethics*.<sup>222</sup> Principlism begins with an established set of moral principles (respect for autonomy, non-maleficence, beneficence and justice) from outside of medical practice (common morality) which can be used as guidelines when confronted with difficult medical-ethical issues. Meilaender is not opposed to the use of principles in general and, in fact, finds such a heuristic method valuable for teaching and analysis. However, ultimately he finds such a method inadequate in addressing the complexity of many bioethical issues we face today. As an example, he wonders if balancing between the principles, a task that commonly must be done in bioethics, can be successful without appeals to theories or background beliefs to adjudicate between the principles in consideration. He writes,

For example, when one applies their principles one often encounters tensions between several of the principles - especially, perhaps, between respect for autonomy and beneficence. Since for Beauchamp and Childress, the principles are only *prima facie* binding, such tensions seem like perfect moments to move to the higher level of theory in search of resolution. . . . Yet these theoretical differences seem to make little difference in their work.<sup>223</sup>

Meilaender notes that how we judge situations and conflicts between principles depends largely on a whole range of background beliefs that we bring to the situation. Beauchamp and Childress do comment that factual beliefs about the world are needed in the process of balancing and specifying of principles.<sup>224</sup> However Meilaender's criticism

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<sup>222</sup> It should be noted here that Meilaender's evaluation of Beauchamp and Childress is based on the third edition of their book. In more recent editions, especially the fifth edition, they have substantially revamped and clarified their version of principlism. In doing so, they have addressed a number of problems raised by critics, including many of Meilaender's criticisms. Their view of moral reasoning is now more nuanced than earlier versions. However, Meilaender would still hold to his primary criticism that methods like principlism are too thin and thus inadequate to handle most of the fundamental tensions in bioethics unless they appeal to background beliefs beyond those of mere common morality.

<sup>223</sup> Meilaender, *Body*, 14.

<sup>224</sup> Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics*, 5th edition (Oxford: Oxford University Press, 2001), 387.

remains that "they recognize the relevance of such beliefs, but are seldom willing to explore them in detail."<sup>225</sup>

The other major approach to bioethics garnering much attention is *casuistry*. Casuistry believes that one does not start with universal principles which then one applies to specific cases, but rather with paradigmatic cases and a process of analogy in moral reflection on relevantly similar cases. Through a process of analogy with more and more cases one eventually begins to arrive at general guidelines to which we can appeal when approaching the next relevant case. While principlism is often characterized as top-down<sup>226</sup>, casuistry is seen as a bottom-up approach. According to Meilaender, casuistry's goal is to arrive at conclusions that are only probabilistic at best but would still receive public support. Meilaender claims that casuistry sees itself as demanding a more "mature" approach to bioethical reasoning: one that recognized the complexities and ambiguities of the moral life. Appeals to universal principles and theories were not necessary. Casuists would say that we do not need to refer to underlying principles or theories; we simply need to offer good reasons. Meilaender comments that for casuistry, the goal of ethical reasoning becomes social harmony. He quotes casuist Stephen Toulmin as advocating "Aristotelian procedures of the casuists and rabbinical scholars, who understood all along that in ethics, as in law, the best we can achieve in practice is for good hearted, clear headed people to triangulate their way across the complex terrain of moral life and problems."<sup>227</sup> For Meilaender, casuistry is much less desirable than

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<sup>225</sup> Meilaender, *Body*, 15

<sup>226</sup> Beauchamp and Childress repudiate this characterization of principlism. They would offer more of a dialogue model between principles and specific cases in the process of specification and balancing.

<sup>227</sup> Stephen Toulmin, "The Tyranny of Principles," *Hastings Center Report*, Vol 11 (December, 1981), 37, quoted in Meilaender, *Body*, 25.

principlism for at least principlism acknowledges the need to recognize theory and background beliefs and is at least open to a deontological ethics. While casuistry does not acknowledge appeals to moral theories, Meilaender does detect a theoretical commitment behind casuistry in the direction of consequentialism.

Meilaender's criticism of both of these methods is that they are ultimately too thin to adequately deal with the complex problems that arise in bioethics. Such problems often go to the heart of who we are, what is our destiny and place in the world, and what constitutes the good life. Because these methodologies are usually aiming towards public policy as their goal, such questions are rendered inappropriate and prohibitive. Instead, modern bioethics aims for an ethic with the least common denominator. It aims for consensus. It is this concept of consensus that is the most troubling for Meilaender. This is key in understanding not only his disappointment with much modern bioethics, but his approach to the issue of religion and public policy which we cover in the next chapter.

He writes:

I confess that the preference for consensus has little charm for me. To accept the results of a vote is one way of sharing common life - a way which, incidentally, leaves us free to get on with the rest of life. To lose a vote is simply that and nothing more. It does not require that we pretend to think of the majority decision wise. By contrast, decision by consensus often carries a subtly coercive quality. When we acquiesce in a consensus that does not fully persuade us, our acquiescence is often interpreted, not simply as acceptance of democratic voting procedures, but as approval of a decision we may in fact have opposed.<sup>228</sup>

If we abandon the quest for consensus we free ourselves to introduce our background beliefs, including religious beliefs, into our discussion and reasoning about bioethical problems and issues. Meilaender can return to a principlist approach but in a

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<sup>228</sup> Meilaender, *Body*, 9.

much richer way. The appeal to principles may still shape our discussion about many ethical issues, but they will be deeper.

Meilaender suggests that by employing Henry Richardson's process of "specification" in applying principles, we can rethink the meaning of our moral obligations in a deeper way by allowing our background beliefs to influence our thinking. For example, Meilaender advocates what could be called a traditional pro-life position towards abortion. Human beings begin at conception and to intentionally end such a life is morally prohibited. Many abortion advocates appeal to a mother's right to privacy as justification for abortion. However, Meilaender in general is not impressed with such appeals for they ignore the importance of the special bond between mother and child. He goes on to ask, "Is it unfair to the mother if we claim that she ought to sustain this bond, a bond she may, after all, not have desired or sought?"<sup>229</sup> He considers two situations in which it would be inappropriate to insist on the prohibition of abortion: the mother's life is in danger and forced pregnancies resulting from rape or incest. Meilaender's tactic is to specify the nature of the obligations that arise out of this bond. He recognizes that the call of Christ may be different for different individuals. As we saw with the example of Captain Oates above, some mothers may be called to self-sacrifice. However, Meilaender says, "We may admire such a decision, we may seek to imitate her as she imitates Christ, but we cannot claim that hers is the only way to follow Christ."<sup>230</sup> Hence through specification, through exploring the nature of obligations involved in the bond

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<sup>229</sup> Gilbert Meilaender, *Bioethics: A Primer for Christians* (Grand Rapids, MI: Wm. B. Eerdmans Publishing Co., 2005), 33.

<sup>230</sup> *Ibid.*, 34.



between mother and child in light of the call of Christ, Meilaender enriches our understanding of the principles in conflict.

Meilaender claims that, not only has modern bioethics "lost the soul," it has also "lost the body." It has done so by defining personhood in such a way that embodiment has come to mean very little in the evaluation of the status of the human being. We saw earlier that Meilaender notes two possible concepts of "person" and he believes the wrong one is dominating modern bioethics, namely functionalism. The life and health of the body only has value if it is functioning properly. If it is not, then the person is not present and the body loses its value as a "human" body. Hence modern bioethics has lost the body.

Functionalism has grave consequences for our treatment of some of the most vulnerable in our society. Certainly the unborn come to mind, but Meilaender also considers the elderly, the senile and severely demented, the comatose and those in a persistent vegetative state. One example would be cases where treatments are judged as "futile" such as the case of Helga Wanglie. Wanglie, an 87 year old woman, had entered a state in which she was diagnosed as PVS. Her caregivers wanted to remove the medical devices maintaining her life, arguing that any treatment was futile even though her insurance agreed to pay for the treatment and her husband, acting as proxy for her, expressed her desire to be kept alive. Thus in the Wangle case, at least in the minds of her physicians, personhood defined in terms of the right autonomously to determine one's future gave way to personhood defined in terms of the present possession of certain

capacities.<sup>231</sup> Meilaender notes the irony of this case in that the assertion of personal autonomy, the heart of much the modern bioethics, is suddenly trumped by paternalistic notions of "futility." He doesn't believe that the physicians in this case are completely wrong. They are not forever bound by the whims of patients. However, they are wrong when they reduce "person" to an immediate ability to function a certain way.

Meilaender argues for a richer and deeper understanding of personhood, one which recognizes the idea of ensouled bodies *and* embodied souls. "Personhood" is not something the body possesses. As we saw earlier, Meilaender sees a person as a "someone who has a history" and, for human beings, that history is lived through a living human body. Every human life is a story. The story does not begin nor end with a particular kind of functioning. "That story begins before we are conscious of it, and for many of us, continues after we have lost consciousness of it."<sup>232</sup> It is a story whose author is God. We cannot write our own story for we are finite and cannot see our story as a whole. Only God can see it from that perspective. To try taking control and becoming the authors of our own or others' stories, ending them in our own way, is to fall into the sin of pride, arrogating to ourselves prerogatives that belong God alone.

Along with affirming the duality of humans as ensouled bodies *and* embodied souls, Meilaender argues that a deeper and richer bioethics will acknowledge our finiteness and transcendence and will recognize the tensions and limits that accompany these two qualities of our being. Because of our transcendence, we are free to explore the world beyond the limits of our nature and history. The desire to explore and understand

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<sup>231</sup> Meilaender, *Body*, 53.

<sup>232</sup> *Ibid.*, 59.

is what drives medical research. Our transcendence allows us to join with God in the process of healing; in treating disease and comforting those who suffer. However, we need to remember that while we are co-creators with God, we are not God. There is a limit to what we can and should do. For we are not just transcendent; we are also finite. The tension between these two is always present and we are often tempted to resolve it by completely giving into one side or the other. "If we simply oppose the forward thrust of scientific medicine, we fail to honor human freedom. . . . Yet, of course, if we can never find reason to stop in this restless attempt at mastery, we may fail to honor the finite limits of our wisdom and virtue."<sup>233</sup>

One place where this tension is felt is in genetics, a sphere in which, over the past several decades, medical research has made tremendous advances. This development has, for the most part, been good and appropriate. Our knowledge now allows us to screen for a number of genetic disorders, identifying those currently in need of treatment or those who may be at risk for themselves or for their offspring. While genetic intervention is still in its infancy, there is great hope and encouragement that researchers will be able to manipulate genes for therapy and treatment.

However, with such abilities come the dangers of ignoring our limits and to do more than we should. Screening can be abused to marginalize segments of society deemed unacceptable. Especially significant is prenatal screening which often carries the "abortion assumption": the mother, upon learning of a deformed child, will undoubtedly wish to terminate the pregnancy. "What we call Man's power over nature turns out to be

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<sup>233</sup> Gilbert Meilaender, "Bioethics and the Character of Human Life," *The New Atlantis: A Journal of Technology & Society*, No. 1 (Spring 2003), 72.

a power exercised by some men over other men with Nature as its instrument."<sup>234</sup> The temptation to use the knowledge obtained to dominate over others flows from the tension between the duality of our finite and transcendent nature.

Most persons view genetic intervention done for therapeutic reasons as positive, especially somatic cell therapy. But when it comes to germ line therapy Meilaender believes we need to proceed with caution, for here we may be trying to extend our limits into future generations with little real knowledge of the outcomes of such therapy. Our finiteness should humble us.

Perhaps the most thorny area in genetic intervention is maintaining a distinction between genetic therapy and genetic enhancement. With enhancement, the tension felt between our finite abilities and our desire to transcend those abilities is so great that it is often difficult to draw a hard and fast line between therapy and enhancement. "This line may be difficult to draw in practice, but that means only that it is difficult to draw, not that it does not exist or is unimportant."<sup>235</sup> Meilaender believes attempts at enhancement are at root the result of expansive definitions of health as "complete wholeness." He argues that we should be wary of such definitions as they lead to marginalizing and discriminating against others who do not match up to what some believe human beings should be. The temptation to give into enhancement is almost overwhelming. In the motion picture *Gattaca*, the geneticist comforts the Freeman's concerns about genetically pre-programming their next child with, "He's still you, he's just the best of you."<sup>236</sup> Who could resist such a temptation? And yet, Meilaender argues, as Christians we must resist

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<sup>234</sup> C.S. Lewis, *The Abolition of Man* (New York: Macmillan Publishing Co., 1947), 69.

<sup>235</sup> Meilaender, *Bioethics*, 43.

<sup>236</sup> *Gattaca*, written and directed by Andrew Niccol, Columbia Pictures, 1997, opening sequence.

it. If we do not, "We may never reach a point at which we are prepared to accept others, and especially our children, as they are - to oppose *diseases* but accept *persons* whatever their capacities."<sup>237</sup>

Finally, Meilaender would say we need a rich understanding of the place that suffering plays in human existence. Relief of suffering has become the hallmark of modern medicine. We all agree that medicine is a good and medical research and treatment that aims to relieve suffering is important and worthy to be pursued. However, there is a very real tension in our approach to suffering today. We have made relieving suffering into a God and will sacrifice almost anything on its altar. Meilaender reminds Christians that we must therefore always be of two minds about suffering. We should care for those who suffer, but we should not imagine that suffering can be completely eradicated from human life or that it can have no point or purpose in our lives. Nor should we suppose that suffering must be eliminated by *any* means that is available. A good end does not justify any and all means.<sup>238</sup>

Today we hear the call to end suffering from many places, but perhaps no louder than from those suffering from genetic disorders for which they see hope in embryonic stem cell research. The idea that we can and should destroy embryos, especially "spare embryos" in order to relieve such suffering is advocated by a large section of the population, including many who would not normally advocate destruction of embryos. And many of these advocates think that it is barbaric that some would obstruct this

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<sup>237</sup> Meilaender, *Bioethics*, 44.

<sup>238</sup> *Ibid.*, 7.

research. Meilaender asks, is there an imperative to end all suffering? Is there a limit to such an imperative?

In answer to the second question, Meilaender says yes, there is a limit. We cannot do that which is wrong in order to end suffering. This especially is true when it comes to exploiting those in our society who are most vulnerable. "We will have to ask ourselves whether it is right to build our medical progress upon the sacrificed lives of those - such as spare embryos - who seem expendable because doomed to die anyway."<sup>239</sup>

In answer to the first question, Meilaender acknowledges that Christians have always promoted the importance of medical care and the obligation to help others. But it is not the overriding imperative that our culture often advances today, nor has it always been. Health is one of many goods that we seek, but it is not the only good. Other imperatives may displace it. Sometimes it is imperative and other times it is merely desirable.

In the end Meilaender reminds us that we serve a suffering God, one who understands our suffering. In living in faithfulness to him we must honor the dictum that says that when it comes to relieving suffering we should do what we can while affirming that there is a limit to what we can do.

### **Conclusion**

The purpose of this chapter has been to analyze Meilaender's conception of Christian ethics in order to gain a better perspective on his approach to the question of

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<sup>239</sup> Meilaender, "Bioethics," 76.

appealing to religious reasons in supporting or opposing public policy. I began by identifying two significant themes in his conception: tension and limit. I then surveyed several specific areas where those themes emerge: the two-tiered ethic, his theological anthropology, the problem of moral development, and finally his view on the relationship of rules, virtues and consequences. Lastly I showed how Meilaender's approach to bioethics is an outgrowth of his Christian ethics and especially how the two themes of tension and limit play an integral part in his bioethical reasoning.

My claim here is somewhat modest. Meilaender pictures the Christian life as one of living through the tension. One cannot avoid it for its presence is felt in almost every area of life. It is due primarily to two limits about reality from which we cannot escape while in this world: our dual nature as finite yet transcendent beings and our status as believers caught in two kingdoms, as both sinners and saints. I believe these two themes are also the key to understanding Meilaender's approach to the question of religion and public policy, to which I now turn.

### Chapter Three

#### Meilaender on Religion and Public Policy

It is the glory of politics that it may invite us to make great sacrifice, even what we are often pleased (though mistaken) to call "the ultimate sacrifice" -- and it is the terror of politics that political loyalty may so easily be unchastened by the danger of idolatry.

Gilbert Meilaender, *The Way That Leads There: Augustinian Reflections on the Christian Life*

Politics must remain limited: one sphere of human life, always in some tension with other equally important spheres, able to make life better, but forbidden to seek or offer "the good life," a politics of salvation. Here again there are no fixed lines that can be drawn forever. There is only the continuing conversation about what is public.

Gilbert Meilaender, "The Limits of Politics and a Politics of Limited Expectations"

#### Introduction

Having covered the background discussion about religion and public policy in Chapter One and Meilaender's approach to Christian ethics in Chapter Two, we now come to the key chapter of the dissertation. This chapter examines Meilaender's position on the place religion might play in supporting public policy. We begin with a discussion of Meilaender's political vision and his view on how Christian believers should approach politics. We will see that, drawing upon Augustine, Meilaender believes in a demythologized politics - one which is both limited in influence and from which believers should have limited expectations. However, while it is a chastened politics, it is not denuded of values. There is a place for religion in the public square and religion may have an important part to play in one's political reasoning. On the basis of that discussion we will then answer our primary question of Meilaender's position on the use of religious reasons in supporting and opposing public policy, especially coercive laws. In



explicating Meilaender's position we will return to our narrative from Chapter One and delineate where he would stand on each of the questions raised in that account. Finally in the last section of this chapter we will look at Meilaender the practitioner, concentrating mostly on his work with the current President's Council on Bioethics (PCB). Our purpose is to observe how Meilaender applies his views on religion and public policy in working on policy issues in bioethics.

### **An Augustinian Political Vision**

Meilaender calls his approach to the political life an "Augustinian undertaking."<sup>240</sup> Augustine demythologized and limited the political realm and Meilaender intends to do the same. In approaching Augustine, Meilaender shuns any attempt to develop a complete political theory out of Augustine's thought. *City of God*, Augustine's major political work, was written over many years and is not always internally consistent. Hence, rather than constructing a full-bodied political theory out of Augustine, Meilaender is interested in the more modest task of using Augustine to draw "some sense of what it means for Christians to acknowledge and cherish the brilliance of this earthly life without ever forgetting that it is 'the fragile brilliance of glass'(4.3), that 'smoke has no weight' (5.17)."<sup>241</sup> Augustine reminds us that we are on the way toward a city far greater and more worthy of praise than any of the communities to which we give our loyalty here and now. Meilaender explores these important concepts from

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<sup>240</sup> Gilbert Meilaender, "Individuals in Community: An Augustinian Vision," *The Cresset* 47 (November, 1983), 6.

<sup>241</sup> Gilbert Meilaender, *The Way That Leads There: Augustinian Reflections on the Christian Life* (Grand Rapids: Wm B. Eerdmans Publishing Co., 2006), 80.

Augustine's approach to the political life and applies them to Christian activity in the modern political arena.

Meilaender focuses primarily on Augustine's tendency to devalue the ultimate importance of politics: "As for this mortal life, which ends after a few days' course, what does it matter under whose rule a man lives, being so soon to die, provided that the rulers do not force him to impious and wicked acts?"<sup>242</sup> According to Meilaender, Augustine devalues the political in two ways. First, he appeals to Augustine's view of the Apocalypse and specifically his rejection of millenarianism, to establish that Augustine was "hoping for very little from history."<sup>243</sup> Millenarians hold that history is progressing towards a culmination in which Christ would return to reign on earth for 1000 years. According to Augustine, the millennium of Revelation 20 is not some period at the end of history, but is symbolic of the entire period after Christ and extending to the last judgment. It is not progressing to any single point and there is no decisively new action of God to expect between the ascension of Christ and the last judgment. Hence, in Meilaender's view, Augustine "flattens out the history of the world"<sup>244</sup> and demolishes our ability to discern where it is going or what God is doing at any moment. In faith we *trust* in God for its culmination, but it is impossible for us to *know* its story in detail or our part in it. Only God knows that. Because we cannot know where history is going at any one moment while we are in it, we cannot find our ultimate meaning and salvation in it nor in its historical institutions like politics. Augustine has desacralized history and demythologized politics. Therefore, says Meilaender, our task is merely to be faithful to

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<sup>242</sup> Augustine, *City of God*, V:17, quoted in Meilaender, *The Way that Leads There*, 83

<sup>243</sup> Meilaender, *The Way that Leads There*, 84.

<sup>244</sup> *Ibid.* 85.

God and live through the tension of being members of two cities that exist and are intermingled until the last judgment:

For until God once again acts in a new and decisive way to bring history to its culmination, there really is only one thing to say about the shape of earthly life: Two loves struggle within the self, two cities struggle on the world stage. Until the end of history we are caught in the midst of that struggle, and the communities to which we belong are caught in the field of force between two ultimate possibilities: the *civitas terrene* and the *civitas dei*.<sup>245</sup>

Meilaender's interpretation Augustine's concept of the two cities is significant.

Meilaender notes that, while at times Augustine equates the church with the city of God and Rome as the paradigmatic earthly city, he often spoke of them as “interwoven and intermixed in this era, and await separation at the last judgment.”<sup>246</sup> Because of this Meilaender insists that we not closely identify the two cities with any empirical institutions like “state” and “church.” Rather they should be conceptualized as eschatological realities separable only by God at the last judgment. One might ask how this helps us understand politics. Meilaender’s reply, not surprisingly, is that we should expect tension as we attempt to live within these two conflicting entities. He writes:

Perhaps the most important lesson this analysis can teach us is that our actual communities - which are simply a swaying to and fro between these two ultimate possibilities - will always be characterized by division and friction. The conflict between the two cities . . . means that the life of any community must be disordered - and hence, that life will be marked not only by the eschatological conflict between the city of God and the earthly city but also a division and conflict in society.<sup>247</sup>

This anticipation of unavoidable tension in society is key in understanding Meilaender’s view towards the participation of religion in the public square.

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<sup>245</sup> Ibid. 87.

<sup>246</sup> Augustine, *City of God*, I:35.

<sup>247</sup> Meilaender, *The Way that Leads There*, 93.

Meilaender makes frequent appeals to a second manner in which Augustine demythologizes politics: his discussion of Cicero's description of a commonwealth. In *City of God* Augustine quotes Cicero as stating that a commonwealth is made up of the "multitude bound together by a mutual recognition of justice and a mutual cooperation for the common good."<sup>248</sup> Augustine then claims that, if Cicero was right, Rome was never a commonwealth. For, if a commonwealth is a group of people bound together by a concern for justice, then wherever justice is lacking, one does not have a commonwealth. True justice is giving to all what is their due. However Rome did not honor God. What justice can there be where God is not given his due and loved above all else? Meilaender believes this point is significant: Augustine is not just saying that Rome got most things right and simply neglected this one thing. To get *this* one thing wrong is to disorder everything. "Hence, where God is not given his due, any order we create will be some form of disorder, any justice we attain will be some species of injustice."<sup>249</sup> It is not until much later in *City of God* that Augustine goes on to offer a definition of a commonwealth which Meilaender refers to as chastened: "A multitude of reasonable beings voluntarily associated in the pursuit of common interests."<sup>250</sup> This definition places political relationships in their proper place. It permits us to recognize common interests and to work together towards those interests without committing our whole being to the preservation to some artificial 'common good.' It also allows us to distinguish between better and worse kinds of states based on the quality of the shared

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<sup>248</sup> Augustine, *City of God*, II:21. Meilaender discusses Augustine's correction of Cicero in a number of works. See "Individuals," 5; *Limits of Love* (University Park, PA: Penn State Press, 1987), 131; *Faith and Faithfulness* (Notre Dame: University of Notre Dame Press, 1991), 138 and *The Way That Leads There*, 89.

<sup>249</sup> Meilaender, *The Way That Leads There*, 90.

<sup>250</sup> *City of God*, XIX:24.

interests involved. At the same time "it diminishes our expectations and lowers the stakes in the game of politics."<sup>251</sup> Hence Augustine demythologizes politics by suggesting a limited state with limited goals and of which Christians should have limited expectations.

Meilaender further develops this chastened political view by contrasting three different conceptions of how individuals relate to the modern state.<sup>252</sup> One conception, a form of liberalism often promoted today, is the "night-watchman state." In this concept the state itself has no particular goal or collective purpose. There is no specific form of the good life which the state as a whole is aiming to achieve. Politics and ethics are completely separated. Freedom is the most cherished value in this society and the purpose of the state is simply to provide a secure system of procedures and laws to maintain and support the freedom of the individual. Hence, it is the "night watchman" standing guard protecting the freedom of individuals to choose whatever manner of the good life they desire. The state exists merely to arbitrate between possible conflicting claims of individuals as they pursue their own particular conceptions of the good life. Meilaender suggests that such a society will have difficulty inculcating any virtues deeper than those we might call "civic" virtues: orderliness and politeness. He writes, "Content to establish boundaries that control conflicts of interests among citizens government must necessarily aim at a kind of lowest common denominator virtues."<sup>253</sup>

Meilaender believes this view of liberal democracy is the most prevalent one being promoted today. While he doesn't think this view is completely defective, he does

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<sup>251</sup> Meilaender, *Faith*, 138.

<sup>252</sup> Meilaender points out that these three conceptions are somewhat idealized in their pure form and that no one actual state perfectly models these conceptions.

<sup>253</sup> Meilaender, *Limits*, 134.

recognize some serious problems with it. First, he wonders if such a barren view of politics will be able to produce citizens with the virtues necessary in order to sustain it. Meilaender is also concerned over how such a thin view of virtue might affect the moral education of citizens even in private (non-civic) spheres of life such as family and church. He writes, "It will be difficult to prevent a belief in the primacy of private interests from seeping down into and dominating our understanding of virtue. Serious moral education, serious training in virtue may then become difficult to sustain."<sup>254</sup> He points as an example to the modern ease with which one can procure a legal divorce. He believes that the fact that the law allows one to discard a spouse so easily might be one reason why many Christians are willing to consider divorce more readily than they might have.<sup>255</sup>

Meilaender's second problem with the night-watchman state, partly the result of this 'seepage' problem, is a devaluation of participation in public service. It might easily create "apathetic citizens." Public service necessarily distracts one from pursuing those personal and private activities that make up the good life. The result is that participation in public life might be viewed as a chore; a necessary evil which a citizen might *have* to perform, but hardly a task to which one would *want* to devote one's life. He is fond of quoting Michael Oakeshott, "Politics is a second rate form of activity . . . at once corrupting to the soul and fatiguing to the mind, the activity either of those who cannot live without the illusion of affairs or those so fearful of being ruled by others that they

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<sup>254</sup> Meilaender, "Individuals," 7.

<sup>255</sup> Personal correspondence, 8/28/07

will pay away their lives to prevent it."<sup>256</sup> While critics respond that such citizens are selfish or only concerned about their own interests, Meilaender argues that a citizen who is civically "apathetic" is not necessarily so for selfish reasons nor acting primarily out of his own self-interests. Many citizens may be extremely other-regarding in their relationships with those within the close communal bonds in which they are active: family, church, and other such communal organizations. They may give much of their time and energy to the welfare of others within these bonds. To become "civically" involved will likely mean the sacrifice of these important goods for something that might seem to offer much less. He writes, "The fellow-citizen bond relation does not seem to me to be the one in which the bond is love and affection. It is rather a shared subjection to an impersonal reason and will."<sup>257</sup> Few citizens will sacrifice the bonds of love and affection for one formed on merely a thin conception of justice. It may be necessary, but it's not good.

A second way of understanding an individual's relation to the state is the Fraternal Community. In opposition to the night-watchman state, the fraternal community has a definite goal or purpose that unifies the community: the common good. The state sees itself as a "fraternal community in which citizens take care to shape each other's character, in which the individual feels an emotional solidarity with the community, and in which it is possible to find one's 'true self' by participating in the life of the larger community. In such a community statecraft will surely involve soulcraft."<sup>258</sup> This conception of the state closely blends politics and ethics.. The goal is the moral

<sup>256</sup> Michael Oakeshott, "Introduction" to Hobbes's *Leviathan* (Oxford: Basil Blackwell, 1955), p. lxiv; quoted by Meilaender in "Individuals in Community," 7.

<sup>257</sup> Gilbert Meilaender, "Understanding the Apathetic Citizen," *dialog* Vol 17 (Autumn, 1978), 304.

<sup>258</sup> Meilaender, *Limits*, 136-137.

transformation of the citizen from a self caught up in a world of private desires to a communal self actively involved with the concerns of the community and sustained by fraternal forms of civic virtue. Meilaender notes that it is not uncommon for advocates of this conception to resort to the personal and intimate language of family (referring to the state as our "parent") or of "civic friendship." He admits that there is a fundamental truth that motivates the fraternal community that should not be denied: the isolated individual is not fully human. There is a specific good life which we should all seek to obtain and such a life involves deep relations with others in order to sustain itself. We all long for such a life and the night-watchman state fails to achieve this need.

One of the strengths of the fraternal community is that it highly prizes participation in public life by which we best express our fraternal virtue and lose our selves in living for the common good of the community. Another strength of the fraternal community is its strong emphasis on the moral education of citizens. "Virtue here is the first step. Government - and citizens in their self-governing capacities must take a concern to shape the virtue of the community's members."<sup>259</sup> Like the night-watchman state, the virtue here is primarily a civic virtue, but a much fuller version - one in which feelings of friendship and affection will dominate.

However, Meilaender sees even more danger in this conception of the state than the more liberal night-watchman state. A "fraternal" community can easily become "paternal," with government taking an oppressive role crafting the life of its citizens. It is the state that forges a conception of the good life; a conception of which the individual citizen may be forced to acquiesce. Personal freedom may be severely limited in the

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<sup>259</sup> Meilaender, "Individuals in Community," 8.



name of virtue. This can easily lead to the danger of equating the good citizen with the virtuous person.

For Meilaender the greatest danger in advocating a fraternal community is that it divides and disorders our ultimate loyalties. Fraternal communities often "do not recognize that deep and incurable metaphysical tension which, for all its defects, the liberal tradition has seen: the tension between the individual made finally for God and the claims of any historical community."<sup>260</sup> In the end the state as fraternal community recognizes an important need but unfortunately does not recognize that it is not the state's place to meet that need. It promises more than it can and should deliver. In considering the vision of the fraternal community, Meilaender recalls Augustine's comment about the Roman historian Sallust who praised Rome too highly because he had no other city to praise.<sup>261</sup>

Meilaender wants to suggest that the proper way for Christians to view the relationship between individuals and the state is one which takes Augustine's restrictions seriously. Analogizing from the theological controversy of the nature of Christ, Meilaender refers to this third view as the Chalcedonian state.<sup>262</sup> This form of the state adopts a middle way between the night-watchman state and the fraternal community by focusing on the strengths of each and yet avoiding their weaknesses. Meilaender recognizes that the liberal night-watchman state is correct in promoting individual freedom, but also recognizes the weakness that having such a thin view of virtue may not

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<sup>260</sup> Ibid.

<sup>261</sup> Augustine, *City of God*, III: 17.

<sup>262</sup> See *Limits*, 140. The night-watchman state is analogous to the Nestorians who sharply separated the two natures and the fraternal community is analogous to the Eutychians held that Christ had only one nature. The Council of Constantinople settled the issue by rejecting both extremes (451).

be enough to sustain society and could seep down and corrupt moral virtue. In the same way, he notes the strength of the fraternal community in recognizing the need for a community strong enough to provide the necessary solidarity to educate and inculcate virtue in its members, but also notes the weakness of the fraternal community in attempting to resolve the tension between the individual made for God and the claims that any particular political community might make upon the individual, a tension Meilaender characterizes as between politics and ethics. The Chalcedonian state is one which recognizes this tension, but does not attempt to overcome it. Instead it promotes a form of living through the tension. Meilaender writes:

This form of the tradition claims that the public realm - the political - exists *not* just to support and make possible individual pursuit of private goals and projects, *nor* to foster fraternal solidarity. Rather, the political realm exists to foster *private, social* bonds – to make space in life for families, friendships, clubs, faiths, neighborhoods.<sup>263</sup>

The Chalcedonian state conceptualizes the individual as autonomous and free but also emphasizes the importance of social bonds that are instrumental in forming the individual and which can be corrupted by excessive attention to autonomy. This view also recognizes the need to formulate a shared conception of the good life within a community but does not seek it on the political or state level. The fraternal community can only offer at best an artificial “community” built around a devotion to some common good often forced on the community. “By contrast, a genuine personal bond like friendship is unlikely to be focused on some single common goal and is almost certain to be destroyed by force.”<sup>264</sup> Friends and family are bonded together by love and care for

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<sup>263</sup> Ibid.

<sup>264</sup> Meilaender, “Individuals in Community,” 9.

one another, not simply by justice or the common good. Friendships are formed within a community that shares its conception of the good life.

A community with a shared conception of the good also has a place for the inculcation of virtues beyond the barrenness of the civic virtue of the night-watchman state. A richer conception of virtues as excellences that fit us for the moral life is adopted and promoted within these communities. Because such virtues rely on a community that practices and supports them, Meilaender argues that we need a political state that fosters and sustains communities and not just private individual endeavors and interests.

One of the benefits for the political state in fostering communities is that the ultimate outcome is a citizen who understands the importance of sacrificing self at times for the sake of others (though not necessarily for the sake of the “state”). “These will be citizens who know the meaning of sacrifice because they *have*, for example, sacrificed for their children. They will not be interested in [just] making their own way in the world.”<sup>265</sup> True, such citizens may never see political participation as good in and of itself, but they will often be motivated to move beyond the “apathetic” citizen. Why might a citizen be willing to “pay away” one’s life in public service? Meilaender suggests one reason:

Public participation then, even if it does not in itself constitute a personal bond, may be a very important way (though not the only way) of seeking to do some small measure of service for others. Such service can, in fact, be interpreted as an attempt to foster justice and thereby insure for one’s fellows the opportunity to have a life in which the personal ties of attachment and affection can be experienced.<sup>266</sup>

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<sup>265</sup> Ibid., 10, emphasis his.

<sup>266</sup> Meilaender, “Understanding the Apathetic Citizen,” 307.

Under this political vision Meilaender recognizes that conflict will be almost inevitable. There will be a tension between differing communities and differing conceptions of the good. Unlike the fraternal state, there is no one 'common good' forced on all citizens to adopt. There is no satisfactory way to resolve this tension, though there are ways to live through it. These ways demand the virtues which make private communities necessary to produce citizens who can work through the tension together. Meilaender believes that the church is a community especially equipped for this task. He writes, "We should not underestimate the difficulty of the task described here . . . . A commitment to public participation is not likely to be sustained unless it is nourished by faith and hope."<sup>267</sup>

Meilaender is concerned not only about limiting politics, he is also concerned about those who place too much trust in politics or in a political solution to all the ills of the world. It is a limited politics and a politics of limited expectations. Along with Augustine, Meilaender turns to scripture to support his idea of a limited politics. In examining three events from the early pages of Genesis - the banishment from Eden, the Flood and The Tower of Babel - he writes, "The limits, therefore are clear: no return to paradise; no human society free of distrust, free of the need to use force; no harmonious community achieved by free and willing consent alone. Against the backdrop of these truths, political judgments must be made and human societies ordered."<sup>268</sup> The primeval period is not the only place in scripture that deflates our political expectations. Meilaender finds this theme in the salvation story of Christ as well. The cross and

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<sup>267</sup> Ibid.

<sup>268</sup> Gilbert Meilaender, "The Limits of Politics and a Politics of Limited Expectations," *dialog* Vol. 28 No. 2 (Winter 1987), 99.

resurrection are the acts by which believers are made new and through which human striving and achievement are put to death. While this applies to personal striving, Meilaender broadens the meaning of the cross to apply to the end of striving to achieve God's ultimate purposes politically as well. No salvation can be found in politics. Meilaender puts it in its proper place. "It is one important sphere in which human need is served. It is the locus of many common interests and some shared purposes. But it is not the home we seek. The human person was made for God."<sup>269</sup>

In limiting politics, Meilaender does not want to deny that politics does much and provides many goods. In draining politics of any redemptive ultimacy he affirms that there is much *penultimate* value that the political state provides. While division and conflict will always be an inevitable tension in the Chalcedonian state, it does not mean there must be instability or chaos. One good the state provides is peace. True, it will be a somewhat tenuous peace, founded on force and compromise, but it may be the best peace the state can offer.

A benefit of the peace offered by the state is that it provides an environment in which the church is free to perform its mission here on earth. Not only does this peace foster an environment that allows private and personal bonds to flourish, encouraging and inculcating the virtues to the members of those communities, but it also provides an opportunity for believers to interact with non-believers. As Augustine says, "Thus even the Heavenly City in her pilgrimage here on earth makes use of the earthly peace and defends and seeks compromise between human wills in respect of the provisions relevant

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<sup>269</sup> Ibid., 100.

to the mortal nature of man, so far as may be permitted without detriment to true religion and piety.”<sup>270</sup>

This raises the question of the manner in which members of the Heavenly City “defend and seek compromise between human wills.” What place should religion play in this activity?

### **A Chastened but not Denuded Politics**

It would be easy to think from the above argument that Augustine might be advocating a politics completely neutral in regards to any particular conception of the good life. Some have even suggested that Augustine’s limited political state has much in common with Rawlsian liberalism: a political state relying on a free-standing political conception of justice based on an overlapping consensus while not appealing to any particular “comprehensive doctrines.”<sup>271</sup> Meilaender argues that, while this may appear to be the case, Augustine is not advocating a state stripped bare of appeals to comprehensive doctrines. He writes, “The realm of politics lacks ultimacy; it is neither redemptive nor salvific. But it is by no means a realm in which religious beliefs, and visions of the moral life shaped by such beliefs, have no proper place.”<sup>272</sup> A politics of limited expectations means a politics that does not seek the fulfillment of our religious

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<sup>270</sup> Augustine, *City of God*, XIX:17.

<sup>271</sup> One person who makes an argument of this kind is Edmund Santurri, who proposes “that an Augustinian liberalism inclines toward a Rawlsian conception of liberally neutral arrangements as *politically* or *pragmatically* grounded in the sense that normative justification abstracts from ‘comprehensive’ visions of the good as well as *certain* ‘metaphysical’ commitments.” See his “Rawlsian Liberalism, Moral Truth and Augustinian Politics,” *Journal for Peace and Justice Studies*, Vol. 8, No. 2 (1997), 2.

<sup>272</sup> Meilaender, *The Way That Leads There*, 97.

desires. The purpose of the church is not to sustain the political community. However, this does not mean a politics in which religion plays no part.

Meilaender offers a number of reasons why a political vision cannot be denuded of all values save “consent and choice.” One reason is that he believes that the “purely neutral” state, one that advocates no particular vision of the good life, is an illusion. He suggests two examples to support this claim. The first comes from Rawls himself in his well-known discussion of abortion in a footnote in *Political Liberalism*. In that passage Rawls writes that one needs to balance three political values in deciding this issue: respect for human life, reproduction of a society over time, and equality of women as citizens. He then states, “I believe that any reasonable balance of these three values will give a woman a duly qualified right in the first trimester to decide whether or not to end her pregnancy,” and simply dismisses “any comprehensive doctrine that leads to a balance of political values excluding that duly qualified right in the first trimester”<sup>273</sup> as unreasonable.<sup>274</sup> Meilaender suggests that Rawls’s conclusion, that views contrary to his are “unreasonable,” might well make one skeptical as to whether he has so easily eschewed his own comprehensive doctrines.

Meilaender’s second example comes from public discussions on embryonic stem cell research. He observes that many of those who advocate this procedure are often critical of religious arguments against it, but these same advocates often make claims about the tragedy of suffering, the moral imperative of medical research to conquer disease and suffering, and of the value of embryos as merely a “clump of cells,” all of

<sup>273</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), 243, n. 32.

<sup>274</sup> Rawls attempted to clarify his position in another footnote in his later revision (see *The Law of the Peoples* (Boston: Harvard University Press, 1999), 169, n 80). However, Meilaender believes he does not successfully salvage himself from this criticism. Personal Interview, 7/25/07.

which reveal deep commitments to comprehensive doctrines about the meaning and nature of human beings and human living. To claim (often without argument) that religious opponents are appealing to comprehensive doctrines while proponents are not doing the same is blatantly disingenuous. "Purported governmental neutrality on such questions involving competing visions of the good life will often amount to unacknowledged support for one of the competing perspectives."<sup>275</sup>

Meilaender indicates that Augustine was critical of a state barren of any concept of the good life where only consent and choice reign. He appeals to a passage where Augustine is especially critical of Rome, and satirizes it as a state that advocates that:

The laws should punish offences against another's property, not offences against a man's own personal character. No one should be brought to trial except for an offense, or threat of offence, against another's property, house or person; but anyone should be free to do as he likes about his own or with his own or with others, if they consent.<sup>276</sup>

Meilaender notes that what Augustine deplores and satirizes here, modern American society sees as desirable. What needs to be made clear is that Meilaender is not advocating that the state should adopt a moralistic tone and regulate every aspect of the private lives of citizens. That would be the fraternal community and Meilaender is not in favor of that. But he is arguing for a balance between religion dominating politics and a society completely barren of any appeal to religious or moral claims about the good life. He argues that we need to reject a view of America serving God or guided by God in any special way on the one hand while recognizing that "freeing ourselves of that illusion does not mean freeing ourselves of our religious beliefs whenever we step into

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<sup>275</sup> Meilaender, *The Way that Leads There*, 109.

<sup>276</sup> Augustine, *City of God*, II:20.



the public sphere."<sup>277</sup> We should recognize the limits of politics, but we should not confuse those limits with some vague idea of "separation of church and state" that removes and marginalizes religious language in the public square.

That we should expect some amount of shared moral understanding within our political community comes as no surprise for Meilaender. Harkening back to his concept of the two-tiered ethic, he holds that while Christian ethics is singular, we should anticipate that there will moral commonalities with those outside the Christian faith.

"There are going to be things that won't be shared, but many basic moral questions that come up any time human beings need to cooperate and live together in society, flow out of the created nature that we share. So it seems to me there is bound to be overlap."<sup>278</sup>

From the Christian point of view, the two-tiered ethic accounts for what Meilaender refers to as a "minimal civic righteousness" that allows for common moral deliberation and action among all people. However, Meilaender wonders if this minimal civic righteousness is sufficient to sustain the life of a community. Might a healthy society need something more, something like religion?

Meilaender suggests that religion cannot be excluded from the public square because "it will be very difficult to describe any code of civic righteousness that can successfully be sealed off from religion."<sup>279</sup> We noted above how even those who claim to make no appeal to comprehensive doctrines subtly, perhaps unwittingly, import foundational presuppositions about the good life and the nature and value of human beings into their thinking. Many of these values have religious concepts embedded

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<sup>277</sup> Meilaender, *The Way That Leads There*, 101.

<sup>278</sup> Personal Interview, 7/25/07.

<sup>279</sup> Meilaender, "The Limits of Politics," 100.

within them. Religious beliefs influence our conceptions of justice and our commitments to human equality. "If certain dogmas or rituals can perhaps be confined to private practice, the life to which they give rise, the virtues they commend and the vices they condemn cannot be so confined - not if they want the ship of state to remain afloat. In short, religious belief will impinge on public life in countless ways."<sup>280</sup>

While Meilaender agrees with Augustine that the politics of the *civitas terrena* should not attempt to be redemptive or salvific and that it should concern itself only with "things relevant to this moral condition," he also recognizes that a chastened, non-redemptive politics is not a politics denuded of attention to and care for such values as the bond between generations, the dignity of the human body, the connection between marriage and procreation, and the worth of weak and voiceless human beings. Such concerns are "relevant to this mortal life" but are simultaneously part of our comprehensive visions of the good life.<sup>281</sup> Many of these concerns are also religiously laden. Questions about them cannot be adequately addressed purely on the basis of "consent and choice." They are questions about what it means to be human and to achieve the good life. Religion often, if not usually, plays a primary role in informing a person's thinking on those questions. While many would want to restrict public discussions on these issues to being "secular," Meilaender argues they are secular only in the sense that they belong to this age, the *saeculum*, not because religion is cut out.

Some have suggested that religion might be necessary, but that it should be a kind of "civic" religion, one stripped of most of its theological and liturgical particulars, but

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<sup>280</sup> Ibid., 101.

<sup>281</sup> Meilaender, *The Way That Leads There*, 107.

that acknowledges a minimal appeal to something ultimate. Rousseau is an example of one who promoted this broad kind of religion. Rousseau saw the need for religion because people seek a common purpose or cause in which to lose themselves. He believed that only shared religious beliefs and public rituals could provide the bonds necessary to hold together a society. However Rousseau rejected the idea that Christianity could fulfill this role. Christianity divides loyalties between two kingdoms and he was looking for a religion which united society. Therefore he suggested a civil religion minimal enough to satisfy the need for unity, but one that would not teach any dogmas that might be divisive or be the cause for social disturbance.

Meilaender rejects any concept of a civil religion. Not because he aims to promote a Christian religion in its place. He actually agrees that Christianity produces citizens with divided loyalties and would not be an appropriate civil religion. He rejects the idea of a civil religion because it comes too close to the fraternal community. In fact Rousseau states that the purpose of politics is to "change human nature, to transform each individual . . . into a part of a much greater whole, from which that same individual will then receive, in a sense, his life and his being."<sup>282</sup> This certainly is not a politics of limited expectations.

This appears to leave us with a conundrum. On the one hand, Meilaender insists that a chastened politics is not necessarily void of religion and that, in fact, religion, or something very much like it, may be necessary in order to have a healthy society. On the other hand he rejects any sort of minimalist, universal civil religion or even a particular religion such as Christianity as appropriate for filling the void. The solution to the puzzle

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<sup>282</sup> Jean-Jacques Rousseau, *The Social Contract* (NY: Penguin Books, 1968), II:7.

is found in Meilaender's conception of a political community: "an association of those with common interests, in need of shared standards of civility, but eschewing any common public search for the good life."<sup>283</sup> How are these "common interests" and "shared standards of civility" maintained and promoted within the political society? His answer is through public conversation within communities and between different communities.

Meilaender is not using conversation here as a metaphor, he means literally talking with each other. Public conversation involves the respectful sharing of views with others in a genuine attempt to understand them better and to help them understand our views, not only on specific moral issues but including our views on drawing the line between the private and the public. For Meilaender this is one of the main purposes of politics:

A willingness to continue that conversation indefinitely is precisely what a minimal understanding of civic righteousness requires. It is the mark of a liberal policy. . . . the purpose of politics should be neither the transformation of human nature nor the complete overcoming of the pluralism of our divided loyalties and competing moral languages. . . . Its purpose is to make possible a continuing conversation – a time in which, first of all, the word of God's mercy may be spoken; a time also in which we may expand the interests we hold in common.<sup>284</sup>

Therefore, rather than attempt to reach a consensus on one "civil religion," Meilaender holds that all religious (and non-religious) perspectives should be part of the on-going public conversation in all of their particularities. Discussions between particular religious communities, done in a respectful manner, are healthy for a society. Meilaender says that only those not willing to continue the conversation, those perhaps

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<sup>283</sup> Meilaender, "The Limits of Politics," 102.

<sup>284</sup> Ibid., 101-102.

fearful of disagreement and conflict, will advocate the banishment of religious discussion from the public square.

Some are concerned about the possibility of conflict in allowing all comprehensive doctrines a place in public conversation. The concern about conflict is well justified. Christians belong to two kingdoms and they have divided loyalties. Such divisions are bound to cause tension and conflict. But he holds that it must be suffered within human history: we must learn to live politically with divided loyalties. The fragile peace that Augustine promoted was never meant to imply that there would be no conflict. Meilaender says that conflict about "things relevant to the mortal life" is often inevitable and not always undesirable. Robert Merrihew Adams writes, "In politics . . . conflict could hardly be eradicated without excluding from the political process the selfhood of most of the individuals and the identity of many of the groups in society."<sup>285</sup> For Meilaender, it is not a question of avoiding conflict, but of the proper way to deal with it in a respectful manner. Rather than attempting to resolve the tension by marginalizing that which is most dear to many religious believers, we live through the tension by seeking understanding through talking about it. There may be times when the conversation might break down. "Sustaining that conversation is a fragile and precarious undertaking. There may be moments when it cannot and should not be sustained, when the claims of moral vision outweigh those of political vision."<sup>286</sup> However, that risk does not discount the benefits of continuing the conversation.

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<sup>285</sup> Robert Merrihew Adams, "Religious Ethics in a Pluralistic Society," in *Prospects for a Common Morality*, ed. by Gene Outka and John P. Reeder, Jr. (Princeton University Press, 1993), p. 106, quoted in Meilaender, "Divorcing Augustine from Rawls," 67.

<sup>286</sup> Meilaender, "Limits of Politics," 101.

The presence of conflict and tension should come as no surprise to the Christian. As we saw in the last chapter, tension due to our limits is a common theme in the Christian life. Here it is simply reflected in the limits of our political life as well. However, there are some who seem to be deeply concerned about the possibility of social conflict. One such person whom Meilaender discusses in this context is John Rawls. We have already seen that Meilaender is skeptical of Rawls's claim that appeals to public reasons are neutral of any comprehensive doctrines. As another example, he raises Rawls's convoluted reasoning in justifying abolitionism and the civil rights movement of the 1960's, both of which made strong public appeals to religious reasons in defense of their cause. Rawls's explanation for why these movements should not be thought of as violating his restriction on the use of religious reasons is an interesting maze of reasoning. First, he says we must consider the case "conceptually, not historically" and then, on that basis, we are to speculate that "they could have seen their actions as the best way to bring about a well ordered and just society in which the ideal of public reason could eventually be honored." He concludes:

On this account the abolitionists and the leaders of the civil rights movement did not go against the ideal of public reason; or rather they did not provided they thought, or on reflection would have thought (as they certainly could have thought), that the comprehensive reasons they appealed to were required to give sufficient strength to the political conception subsequently realized.<sup>287</sup>

Meilaender comments that, even if this reasoning were to follow, it would actually defeat Rawls's main argument as it would mean that antecedently placing limits on the kinds of

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<sup>287</sup> John Rawls, *Political Liberalism*, 250-251.

arguments admitted into the public arena might "deprive us of truths we need to see, truths that are relevant to the life we share in political community."<sup>288</sup>

While Meilaender is aware that Rawls revised his view and allowed religious reasons to have a place in one's reasoning about public policy, he is not convinced that this concession should satisfy religious believers. For even here Rawls still demonstrates a fervent desire to exclude the religious from playing any substantive role in the public square. Gilbert Meilaender agrees with his son, Peter Meilaender that Rawls "seems somehow unnerved by the prospect of wide-open unrestricted debate" and that his argument is "distinguished by a kind of nervousness, a desire to exclude."<sup>289</sup> Meilaender speculates why Rawls should have this anxiety, suggesting of him what Augustine said of Sallust: "Perhaps because the liberal society is the greatest good Rawls can imagine. Perhaps because he has no other city to love."<sup>290</sup>

Meilaender suggests that the proper way to deal with disputes between conflicting religious and non-religious views is not to rule them out of the public square or conceal them from one's opponent out of some artificial conception of "respect." The mechanism for dealing with conflict is to take their argument seriously. This means that we listen to each other with a keen desire to understand the opposing view and with an openness to being persuaded by well-reasoned arguments. One then should respectfully

<sup>288</sup> Meilaender, *The Way that Leads There*, 105.

<sup>289</sup> Peter C. Meilaender, "The Problem of Having Only One City," *Faith and Philosophy* Vol. 20 (April 2003), 182. Quoted by Gilbert Meilaender, "Divorcing Augustine from Rawls," 67. As far as Rawls's argument from the possibility of religious conflicts, Eberle makes a strong case that the realistic prospect of such conflicts in the modern liberal democracy does not warrant Rawls's concerns. See Christopher J. Eberle, *Religious Conviction in Liberal Politics* (Cambridge: Cambridge University Press, 2002), 157-160. Meilaender would concur with Eberle.

<sup>290</sup> Ibid. Meilaender does not comment on the other writers we covered in chapter one in any of his published material. He did comment that concerning Audi's position that "I have never quite understood the stipulation [that you have to have a secular reason along with a religious reason]." Personal Interview, 7/25/07.

share one's own view based on one's convictions, among them religious convictions, and to be honest with them if one finds that their argument is not persuasive. Perhaps there will be a change of mind or perhaps some form of a compromise will be reached.<sup>291</sup> Eventually, we resolve differences by appealing to the primary mechanism in a democratic society: voting. He comments, "Both compromise and majority vote are mechanisms that allow us to make decisions and reach agreements without requiring any of the contending parties to admit they were in error."<sup>292</sup> This approach is much more in the spirit of a democratic society as opposed to excluding arguments grounded in a particular conception of the good or attempting a consensus. While consensus may be necessary sometimes, Meilaender believes there is an almost totalitarian quality to the idea. "If we are going to reach a consensus, you're going to have to sacrifice some things you believe in. Consensus has the effect of drawing me into an agreement that I don't really agree on."<sup>293</sup> Voting on the other hand costs nothing of one's self. Even if one loses, one can still hold the position one believes and continue the conversation, attempting to persuade others of that position. "I just like to cast my negative vote. I've lost hundreds of votes in my life. That's OK."<sup>294</sup>

What place does the church play in Meilaender's political vision? The church should certainly not attempt to dominate the political sphere. He writes, "The church does not exercise political rule, and it should not think of its task primarily as giving

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<sup>291</sup> Meilaender does not offer a clear conception of the meaning of compromise he intends here. An analysis of his writings leads one to believe that he is not referring to a compromise of one's religious beliefs, but a creative compromise concerning how one can apply one's beliefs and still cooperate within political society.

<sup>292</sup> Meilaender, "Divorcing Augustine from Rawls," 67.

<sup>293</sup> Personal Interview, 7/25/07.

<sup>294</sup> Ibid.



advice to rulers. Instead, the church shapes Christian conscience and bears witness to Christian truth - - bears witness precisely by entering with its own distinctive language into public argument and debate."<sup>295</sup> In fact, Meilaender sees the Christian church as the best guarantee and protection of basic liberties within a liberal democracy. Rightly conceived, the church will oppose any attempt towards the fraternal community. It will promote a liberal state, not of the night-watchman variety - denuded of all values save consent and choice - but like the Chalcedonian state, one that establishes an environment that allows private communities to flourish which will produce citizens with the virtues needed to maintain such a society.

The primary mission of the church is to its own, transforming the lives of believers into distinctively Christian disciples who are known for their love of neighbor and faithfulness to God. But if it is successful, it will also have a residual effect on surrounding society – possibly shaping and forming it in ways that are at least open to Christian principles. Meilaender says it best:

In a society where there is such a church, politics can never claim citizens to the whole extent of their being. The best protection of human liberty, of a private realm beyond the proper power of government, is not any concept of "public reason" denuded of religious language and commitment. It is, rather, the church with its distinctive way of life, determined to bear public witness to its life and to be Christ's Body in the world - - whose very presence announces that political rule can never be redemptive and must therefore be limited. Hence, it is no paradox but simple truth to say that only a church set over against the world can be a church for the world. In setting limits to politics the church points to the God alone who can claim our final allegiance, and it thereby reminds us that no lesser god can claim us wholly and entirely.<sup>296</sup>

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<sup>295</sup> Meilaender, *The Way that Leads There*, 115.

<sup>296</sup> *Ibid.*, 116.

### **Religion and Public Policy**

We have now arrived at the point where we can answer the question about Meilaender's position on the use of religion in supporting or opposing public policies. To briefly review, in Chapter One we distinguished three positions on the place of appeals to religious reason in supporting or opposing public policies, especially policies that were coercive to citizens. The three schools were exclusionism, inclusionism, and exclusivism. Exclusionism holds that religious reasons should be completely excluded, or almost completely excluded, from supporting or opposing coercive public policies. Inclusionism says that religious reasons may be allowed a part in one's reasoning about public policies, but that at least one public reason must also be present and, for some inclusionists, actually operative. Exclusivism holds that one is justified in supporting or opposing coercive public policies on the basis of religious reasons alone exclusive of any public reasons.

I believe the discussion above leads us to place Meilaender firmly in the third school. Meilaender believes in a limited politics, but not one that is void of appeals to comprehensive doctrines. Among those comprehensive doctrines will be religious beliefs that might inform one's reasoning on public policies. He believes that rather than concealing them, religious believers should be free to express those beliefs in public conversation and to appeal to them in voting. Hence he can affirm, "It may be that the best way to articulate our views on such things relevant to the mortal life is to draw on religious beliefs and language. . . . Christians should not suppose that because they censor

themselves others will do likewise. Better by far for us to speak and listen to our fellow citizens seeking to articulate our beliefs as persuasively as we can."<sup>297</sup>

Meilaender places himself in this category. "If we were to choose from among those three [positions] then it seems to me I would have to be in the third."<sup>298</sup> Meilaender affirms that he is quite obviously not an exclusionist. He also states that he does not believe that inclusionism, as represented by Audi, is successful in making its case. "So that leaves the third category."<sup>299</sup> One reason he places himself here has to do with a kind of vagueness in the way the issue is usually framed. It's not always clear to Meilaender what counts as a specifically *religious* reason. He proposes that people often use these categories as if it is possible to draw up a list of reasons one might appeal to on a specific policy, and say, "Well, these six reasons are religious reasons and these four are not." Perhaps one can do something like that sometimes, but Meilaender doesn't believe that is how most persons reason about public policy. Most of our reasons for holding our views are based on a mixture of all sorts of beliefs. Religious beliefs may often simply be in the mix. They are often not easy to isolate and in fact may not always be close to the surface of our noetic structure. But that doesn't mean they are absent. Their presence may be felt even if not explicitly appealed to.

Meilaender suggests something like the following example may be a common case. Suppose Sally thinks that an embryo is a human being with the dignity equal to any adult persons and that his life ought to be respected. She may have a whole range of different reasons for holding that belief. Some she learned from embryology and others

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<sup>297</sup> Gilbert Meilaender, "Against Consensus: Christians and Public Bioethics," *Studies in Christian Ethics* Vol 18, No. 1 (2005), 80.

<sup>298</sup> Personal Interview, 7/26/07

<sup>299</sup> Ibid.

from other places. Suppose one of those is just a general belief like, “I believe that God loves even the weakest and the powerless who can’t speak on their own behalf.”

Meilaender wonders, does this count as a specifically *religious* reason to hold the view that the embryo also is entitled to equal respect? It’s clearly religious in a way, but it’s more of an extrapolation of a general outlook.<sup>300</sup> Meilaender believes that most people reason this way. They have a general outlook on the world that is religious and that leaves them to be more persuaded in some directions than others without making any specific appeals to “religious” reasons per se. One might refer to these as *indirect* religious appeals, but they are religious nonetheless. He believes most discussions on the use of religious reason in making public policy do not take this form of reasoning into account.

Another reason Meilaender believes appeals to exclusively religious reasons are justifiable is that, in the end, this is more respectful of others than the view that one should conceal one’s reasons from others. He seriously questions whether it is realistic to assume most persons will exercise self-restraint in appealing to their comprehensive doctrines in supporting or opposing public policy. What most persons will do is appeal to them but then conceal their real reasons from others. One may not intend this or even be aware of it. However, respect certainly does not mean I conceal whatever reasons are most important from others. Meilaender says respect means “to be willing to engage in discussion and even argument with them and in doing so doing your best to take their

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<sup>300</sup> Ibid.

arguments seriously while being honest with them about why their argument does not persuade you. What else could it mean?"<sup>301</sup>

Might religious conversation make society unstable? Meilaender recognizes that in one sense society may always be unstable. There will always be some tension between citizens who hold differing views of the good life. That seems inevitable when you have citizens with divided loyalties. But the presence of tension does not mean it needs to be uncivil. Respect is still realizable as long as we agree to continue the conversation. He writes, "We will best approach this task not with the aid of some third language - that of civil religion - but by a conversation in which we speak in ways that reveal who we truly are and what we truly believe. What we need is not a civil religion but citizens who are civil and a *civitas* that is humble enough to hear them and determined enough to defend the common life they seek to share."<sup>302</sup>

In affirming the legitimacy of direct appeals to religious reasons on matters of public policy, Meilaender is not saying that such appeals are always or even often necessary. Nor are such appeals always wise. Sometimes they are strategically inappropriate in that they may not be persuasive to those who do not share one's particular religious beliefs. Meilaender comments:

Now in a lot of circumstances, I don't always try to drop some religious insight. I mean there is no reason to try to deliberately lose arguments. If I know that making a specific religious argument here is just counter-productive, why would I do that? If I think I can persuade you with an argument that seems less religious and not likely to persuade you with one that is, well I am interested in persuading you and I'll do that. So, it's not as if I am constantly looking for ways to make religious arguments.<sup>303</sup>

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<sup>301</sup> Ibid.

<sup>302</sup> Gilbert Meilaender, "Civil Religion: Thinking with Robert Benne," *Journal of Lutheran Ethics* 5:4 (April, 2005), pp. 5-6.

<sup>303</sup> Personal Interview, 7/25/07.

He also recognizes that particularly religious arguments are not always necessary. Because of the two-tiered ethic, Meilaender thinks we should expect to discover a shared moral basis for many concerns in public policy. While Christians may have started within the life of faith to arrive at beliefs concerning the nature and value of human beings and human goods, we can and should expect that others, beginning from other starting points will often, though not always, arrive at the same or similar beliefs. Therefore, it is not necessary for one to raise the specific religious reason behind a belief if there is commonality.

Meilaender himself often appeals to secular reasons in support of public policies without directly appealing to religious reasons. This raises the interesting question of the relationship between his secular reasons and his religious ones. One can identify three different kinds of appeals in Meilaender's writings: those that seem to appeal to secular reasons without any reference to religious reasons, those which are direct appeals to religious reasons and a middle category of those appeals that are secular in their appearance, but have embedded within them implicit religious reasons.<sup>304</sup> The existence of this middle category raises the following question: Are these background religious reasons playing the role of *justifying* his secular reasons or do they just *explain* why he holds the secular reasons?

This is not an easy question to answer. I doubt if even Meilaender always knows what role they are playing. However I think a case can be made that, for Meilaender, the background religious reasons implicit behind many of his secular arguments are often

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playing a justificatory role and are not merely "explaining" why he appeals to those secular reasons. This is especially true of discussions on the deeper questions of the meaning and value of human life and basic human goods. I would support this from the following lines of evidence.

First, recalling Meilaender's comments on Rawls and abortion, we have seen that Meilaender is often suspicious of those who claim to have "purely" secular reasons. He recognizes that often such reasons are not so "pure." They often reflect deeper reasons based on comprehensive doctrines, religion being one of them. Secondly, recall Meilaender's point in his quandary over what constitutes a "religious reason." Religious reasons are often embedded in the believer's noetic structure and may not come to the surface unless they are reflected upon. But that does not mean they are not present. They may not be explicit, but they are often implicit. Thirdly, Meilaender's view of the two-tiered ethic would lead one to believe that many of his secular reasons, especially on deeper issues, would find their ultimate justification in his religious reasons.

Finally, given what we know of Meilaender's Christian ethics and how much thought and reflection he puts into his beliefs about these deeper issues, it is difficult to believe that his secular arguments are "purely" secular. He may not be appealing to religious reasons to persuade his audience, instead choosing to use secular reasons. But if pursued as to his ultimate reasons, he would certainly appeal to them as the ultimate justification for his beliefs. If you were to push him as to why he thinks, for example, that persons have intrinsic value, ultimately he would say because they are image of God-bearers.

Given these reasons, I believe it is reasonable to hold that at least when it comes to some deeper issues, Meilaender would ultimately justify the secular reasons he offers by appealing to religious reasons implicit within them. I don't think this is necessarily always true. It is possible that sometimes his religious reasons might just explain why he appeals to certain secular reasons. But it seems to me that Meilaender is too reflective a thinker for that to be the case very often.

Let us take up the didactic narrative we introduced in Chapter One. In that narrative we saw a number of individuals supporting or opposing<sup>305</sup> a public policy in the state of Virginia, P54, that would restrict abortions only to those cases which are necessary to save the life of the mother in an emergency situation. How might Meilaender assess the actions of the individuals in the narrative?

In the case of the legislators, delegates Hastings and Drake, Meilaender would argue that there is no reason to insist they must apply the principle of self-restraint concerning appeals to religious beliefs in debating and even voting on P54. On the contrary they should feel free to appeal to religious convictions in their own reasoning about the proposition. However, of more importance to him is that they approach their responsibility with the right understanding of the place of politics for Christians: that is, it serves a penultimate good, but is non-redemptive. "Christians in public service should decline to use political power to (attempt to) create faith precisely because they take seriously their religious commitments - among them the belief that God wills to work faith not through the power of the sword but through the word of the gospel and the

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<sup>305</sup> As a reminder, by "supporting or opposing" I refer to a broad range of activities that include formulating one's position on public policies, publicly promoting one's position on public policies, deciding and voting on public policies, and implementing public policies.



testimony of the Holy Spirit.”<sup>306</sup> This important caveat noted, Meilaender doesn't see how public servants can completely divorce their comprehensive doctrines, including religious views, from their public decisions. A certain amount of introspection and self-reflection can be accomplished, but given his comments about how religion is often embedded in one's general outlook in ways that one may not even be aware of, a complete separation in a Rawlsian sense hardly seems likely nor necessary. While he agrees that the situation is more complicated for public officials than for citizens, "I'd still hold that they may - and perhaps sometimes must - appeal to religious beliefs in accounting for their votes/decisions/etc.”<sup>307</sup> By "must" here he means that there could be circumstances in which one may simply have to give an account of why one's conscience was so bound and that might include one's religious commitments.

As far as rising to the floor and stating one's religious reasons in the legislative assembly, as delegate Hastings did, again Meilaender would hold that it is not inappropriate as long as it was done within the norms of respect for other views discussed above. However, he also recognizes a strategic element involved in publicly speaking out. He argues that it may not always be strategically advantageous to raise one's religious reasons in public debate. If one can find shared common moral elements and use those to attempt to persuade others then that might be tactically more appropriate. Finally, Meilaender recognizes that there could be circumstances where one might even have to resign for the sake of conscience and thus cease to be a public official. While he doesn't state a particular example, he says one can imagine a state of affairs where too

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<sup>306</sup> Meilaender, *The Way that Leads There*, 102.

<sup>307</sup> Personal Correspondence, 8/6/07.

much compromise is required and a public official might just choose to step aside rather than compromise a cherished religious conviction. Realizing Meilaender's penultimate conception of a limited and chastened political state, it is not surprising that he can imagine such a situation.

What would Meilaender say to Pastor Farmer and Rabbi Fox in regards to addressing P54 from the pulpit? While he would not say that it is inappropriate for them to do so, he would caution against it in all but the most extreme cases. He offers not only strategic reasons for doing so (it could be divisive, could alienate many, and carries the appearance of impropriety to those outside the church), but also he thinks this introduces a political element into the church that might prove unhealthy.

This does not mean that there may not be those rare times when clergy should speak out on a particular policy. Meilaender raises the example of the pastors of the Confessing Church in Germany who spoke out from the pulpit against the "Aryan Paragraph," a policy supported by the *Deutsche Christen* and passed by the Hitler regime banning non-Aryans from becoming members of the German Evangelical Church. Even this example deals specifically with the internal life of the church. But Meilaender does not want to rule out those rare instances when pastors may need to speak out on a particular policy. Other than such rare examples, Meilaender advises against pastors speaking on specific policies from the pulpit and instead recommends addressing issues in general terms as they relate to the Christian life. The primary mission of the church is not to change the culture or to save America (much less to "call back America" to its biblical heritage). Its primary mission and the primary task of its servants is forming the lives of believers. This will certainly have a residual effect on their political decision

making. But most often this will happen indirectly, not by directly instructing the congregation from the pulpit how to vote on a particular issue. "Therefore the church does not exercise political rule, and it should not think of its task primarily as giving advice to rulers. Instead the church shapes Christian conscience and bears witness to Christian truth."<sup>308</sup>

If the church fulfills its mission it will produce citizens who will often reflect on public policies from within the life of faith. This brings us to Sue Turner, our Christian citizen and member of Pastor Farmer's congregation. Sue has formed her beliefs to vote in favor of P54 on the basis of her Christian convictions. She believes that God is, at least in most cases, against abortions and therefore they should be restricted. Is it appropriate for her to share these beliefs in the public square and vote in accordance with them? Meilaender would say yes of course this is perfectly legitimate, though he would want to make sure some points are clear. First, in accordance with his belief in the two-tiered ethic, he would say that Sue should seek some common moral grounds with her fellow citizens in developing her own reasons and in discussing these grounds with others who may not share her religious convictions. The idea behind the two-tiered ethic is that working from within the faith we should expect common moral beliefs with others. Sue might frame her reasoning in a manner something like this: "The life of every human being is of equal value and no life should be taken without just cause. There is good reason to believe that the unborn is a member of the human community with the basic inherent capacities that all humans have by nature of being human even though he/she cannot currently actualize those capacities due to lack of development. In fact, he/she is

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<sup>308</sup> Meilaender, *The Way That Leads There*, 115.

among the weakest and most vulnerable members of the human community and needs even more to be nurtured and protected from harm." While not everyone will agree with these reasons, they are reasons that all can understand and discuss. Most important they can originate and be supported from both within and without the life of faith.

This leads to Meilaender's second caveat. Religious convictions are often embedded in the background of our general beliefs and worldviews. As we noted earlier, it is not necessary to quote a Bible verse or to make a direct reference to God for my reasons to be ultimately religious. For example, in the statement Sue gave above, it could be argued that her reasons for holding that all human life has value ultimately is due to her underlying religious conviction that all humans are created in God's image and life has value because we are divine image-bearers. While she might not appeal to a biblical verse to support this conviction (such as Genesis 9:6), or even be cognizant of the belief, it still may inform her thinking about the value of each human life. The same could be said for her belief that the weakest and most vulnerable humans among us need our care. This was Meilaender's point earlier that it is not clear exactly what makes a reason a religious one.

A third caveat that Meilaender would want to stress is that while a direct appeal to a religious reason is allowable, it might not always be strategically wise. If the goal is to persuade others of the reasonableness of one's actions or beliefs and perhaps to even change their beliefs, then it is wisest to use reasons they will find compelling. Direct references to religious convictions are not usually compelling to others outside of one's faith. Given our first two caveats - that one should expect some common morality with those outside the faith and that this morality can still be ultimately religious - it may be

strategically wisest to avoid a direct reference to a particular religious reason. This said, Meilaender also recognizes that there may be times when an appeal to a specific religious reason is necessary and appropriate. For example, one might not be able to form a reason to be opposed to redefining the term "marriage" to include same-sex relationships apart from one's religious convictions that God intended the institution of marriage to be between man and woman. In cases like this, as long as the appeal is done in a respectful manner as outlined above, then it might be the best one can do. We cannot nor should not always avoid conflict.

This raises a fourth point: religious believers should expect conflict and disagreement with those outside the faith (and often within it). There will be a tension as not all will be persuaded by our reasoning and may reject our religious reasons whether explicitly stated or as the background to our stated reasons. As should be evident by now, the presence of tension should be neither surprising nor disturbing to Christian believers. Our task is not to resolve all tension, but to be faithful and to continue the conversation in as respectful a manner as we can. The apostle Paul says, "If it is possible, as far as it depends on you, live at peace with everyone."<sup>309</sup> The presence of disagreement does not mean we cannot be civil or respectful. It simply means we disagree. In the end we all vote and agree to abide by the will of the majority. This does not mean the conversation ends there. The conversation is always ongoing.

Finally, Meilaender would want to remind Sue that our ultimate citizenship is not of this world. We are pilgrims here and our ultimate loyalty lies elsewhere. While we should not shirk political involvement and we should speak up in the public square,

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<sup>309</sup> Rom 12:18, NIV

we must remember that a politics of limited expectations means that our hopes would be misplaced if we seek a political solution to all of the ills of the world. Meilaender writes that when Christians become actively involved in politics they face two temptations: "To attempt a Christian restructuring of society (the Eusebian temptation, leading inevitably to a cultural Christianity), or to deny that any common ground can be found in the political sphere (the sectarian temptation)."<sup>310</sup> Both of these are attempts to resolve a tension that cannot be resolved in this world. We need to live through the tension, placing our hope in God. Sometimes we will win the vote and sometimes we will lose. Our mission is not to achieve the *good* - that's God's job. Our task is to do the *right* - to be faithful to Him in whom we place our hope that all things will be put aright in the end.

The final character in our narrative is Justice Samuel Towns, a member of the Virginia State Supreme Court who is considering an appeal concerning the constitutionality of P54. As a traditional Roman Catholic he holds strong religious beliefs about the immorality of abortion. Would Meilaender allow Justice Towns to appeal to religious reasons in his rendered decision? Meilaender admits that judges probably have more restrictions on them than other public servants. He notes that "ordinarily a judge ought to work within a system of precedents,"<sup>311</sup> though he also acknowledges the possibility of extreme borderline cases where a different conclusion might be possible. There is also the possible scenario where a judge might find a "creative" way to deal with precedents where his religious background might play a part. Meilaender does not explain what either of these two exceptions are nor does he provide

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<sup>310</sup> *Faith and Faithfulness*, 146.

<sup>311</sup> Personal correspondence, 9/24/07.

examples of them. While it would probably be difficult for a judge to justify direct appeals to religious reasons, Meilaender says that one could certainly argue that, in addition to appeals to precedents and case law, a judge could also appeal to natural law as part of his reasoning process. "If there is such a thing as natural law, then I suppose it is a comprehensive doctrine of some sort - and I wouldn't necessarily argue that a judge would be wrong to use it and consider it."<sup>312</sup> However, by the very nature of what justices do, the opportunities to appeal to private beliefs and convictions do not often arise. In the end Meilaender says that if a judge does believe he can't work within the systems in good conscience, he should resign.

In the end Meilaender believes that in most cases it is appropriate for religious believers to feel free to appeal to religious convictions as the basis for supporting or opposing public policies, even those that might be coercive to some and even if they only have religious reasons. His foundation for this is a limited politics and a politics of limited expectations. Such a politics is chastened but not denuded of value. Religion plays an important part in sustaining the virtues necessary for a people to govern themselves properly, including the ability to respectfully discuss and, on occasion, disagree on substantive social and moral issues. In fact it is the church's recognition of the limited political state that encourages such respectful dialogue. A limited politics leads to the "humble state" which Meilaender describes as:

A state which knows that its days are numbered. A state which knows that its work is neither redemptive nor salvific, but that it exists to serve the church's mission by preserving the world toward the day when Christ's rule will be completed and political rule will be obsolete. But also . . . a state which knows that it is "secular" not in the sense that it is irreligious, but in the sense that its

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<sup>312</sup> Ibid.

work is confined to the *saeculum*, to this present but passing age. And if not irreligious, then open to religious language and belief in the public square.<sup>313</sup>

### **Meilaender in Practice**

In the previous sections we saw that Meilaender believes in a limited politics, but not one denuded of any appeals to values based on comprehensive doctrines in public discussion, debate and decision making. As a result he believes that, as long as one is civil and respectful of the views of others, it is legitimate and, at times, possibly obligatory, that one appeal to one's religious convictions for reasons one might support or oppose a particular public policy. This does not mean that it is always strategically wise to do so. Direct appeals to religious convictions may not always be persuasive and many times other commonly shared moral beliefs may have more persuasive force, so one should not feel obligated to always appeal directly to a religious conviction. In addition Meilaender suggests that, in accordance with the two-tiered ethic, one often appeals indirectly to religious convictions when one raises moral values that have their ultimate basis in a general religious outlook even though a specific reference to a particular religious conviction may not be present. Hence a religious believer does not need to feel she is abandoning her religious convictions in appeals to shared morality.

In the final section of this chapter we will examine Meilaender as he puts this into practice in discussions on public policy questions, especially with those outside of the Christian faith. Since the majority of these questions have concerned the area of

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<sup>313</sup> Meilaender, "Civil Religion," 5.



bioethics, we will concentrate on his work in this field.<sup>314</sup> It is important to note that my purpose here is twofold. First, I want to show that Meilaender often appeals to religious convictions, sometimes directly, but often indirectly, in his discussions on public policy. Second, I want to show that when Meilaender does make such appeals he does so with humility, respect for other views, and in a civil way, while not compromising his own position. I will examine two manners in which Meilaender has participated in public discussions on these questions: through publications and through his work with and on governmental committees. I start with a look at his publications.

Meilaender has written a number of books and articles on bioethics both in general and in discussing particular topics. The vast majority of these are addressed primarily to a Christian audience. Of his two books on bioethics, he refers to one specifically as a “primer for Christians.”<sup>315</sup> Many of his articles on bioethics have appeared in journals with a mostly religious audience in mind including *First Things*, *Journal of Religious Ethics*, *dialog*, *The Cresset*, and *Christianity Today*. However, Meilaender has also written articles on the same topics in bioethics published for secular or substantially non-religious publications intended for a wider public audience. Included among these journals are: *The Hastings Center Report*, *The New Atlantis*, *The Weekly Standard*, *National Review*, *Issues in Law and Medicine*, and *The Washington and Lee Law Review*. This affords us with an opportunity to compare and contrast how he

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<sup>314</sup> Meilaender has also written on a number of other public policy issues apart from bioethics such as the death penalty, war, homosexuality, and marriage and the family. However, he is most well known for his work in bioethics so we will concentrate there. This also fits best with his public policy involvement.

<sup>315</sup> Gilbert Meilaender, *Bioethics: A Primer for Christians* (Grand Rapids: Wm B. Eerdmans Co., 2005). One is not sure if the intended audience of Meilaender's other book on bioethics, *Body, Soul, and Bioethics* (Notre Dame: University of Notre Dame Press, 1995) is primarily Christians or if it is meant to have a wider appeal.

addresses the two different kinds of audiences. While we cannot look at each and every article and bioethics issue on which Meilaender has written, I will select a representative issue in bioethics that Meilaender has addressed in both religious and non-religious publications and compare the manner and basis for his reasoning about that issue. The issue is reproductive technologies (which will include some material on abortion).<sup>316</sup>

In 1995 Meilaender participated in a symposium sponsored by the *Washington and Lee Law Review* on John A. Robertson's book *Children of Choice: Freedom and the New Reproductive Technologies*.<sup>317</sup> His article was entitled "Symposium on John A. Robertson's *Children of Choice*: Products of the Will: Robertson's Children of Choice" and was published in the law review journal.<sup>318</sup> In the article Meilaender is critical both of Robertson's expansion of reproductive liberty to include third-party collaborators and of his minimalistic restriction on reproduction rights: the only restriction concerning an individual's right to reproduce or right not to reproduce is "clear evidence that harm would result" from the use of that right.<sup>319</sup> According to Meilaender, all other suggested reasons for restrictions are relegated by Robertson to being "symbolic" and should carry no weight in restricting a couple's desire to have a child or to terminate a pregnancy. However, Meilaender would argue that, by failing to address these "symbolic" issues, Robertson inadequately explains and defends his position. His criticism of Robertson falls into three general categories: Robertson's lack of conceptual clarity concerning the

<sup>316</sup> My point here is to examine how Meilaender applies his model of appeals to religious reasons when writing to a primarily non-religious audience. I am not evaluating the strength of his arguments themselves.

<sup>317</sup> John A. Robertson, *Children of Choice: Freedom and the New Reproductive Technologies* (Princeton: Princeton University Press, 1994).

<sup>318</sup> Gilbert Meilaender, "Symposium on John A. Robertson's *Children of Choice*: Products of the Will: Robertson's Children of Choice," 52 *Wash & Lee L. Rev.* 1995, 173-195. Large parts of this article were republished in Chapter 3 of *Body, Soul, and Bioethics*.

<sup>319</sup> *Ibid.*, 174.

meaning, scope and importance of reproductive liberty; his underdeveloped and poorly defended moderately pro-choice abortion argument; and his inadequate consideration of deeper issues involved in the meaning of human procreation. For our purpose we will briefly look at the last two of these categories.

Robertson wishes to defend a position that he describes as moderately pro-choice: “abortion at early stages of pregnancy is generally viewed in most circumstances to be an ethically and legally acceptable act, but an act that should be discouraged or avoided whenever possible.”<sup>320</sup> Meilaender questions the seriousness of Robertson’s “discouragement” when he later argues in favor of public funding of abortion services for the disadvantaged or argues against the requirement of a 24 hour waiting period as obstructionist. These are hardly the comments of a man who wishes to “discourage abortion.” Because Robertson wants to argue for the right of couples or individuals to *not* have children, he is forced to adopt some form of a personhood argument in his defense of the moderate pro-choice view. Unfortunately, says Meilaender, Robertson never fully develops an adequate argument for the personhood of the fetus. He does state at one point that a blanket condemnation of abortion “overlooks the very different biologic stages of embryonic and fetal development.”<sup>321</sup> Well enough, says Meilaender, but where does that leave us? At one point Robertson notes the importance of sentience, but then goes on to assert that personhood requires “the ability to reason or make choices.”<sup>322</sup> Meilaender claims this is never argued, just asserted. The individual human life experiences a variety of developmental stages both before and after birth. Why select

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<sup>320</sup> Robertson, *Children*, 46. Quoted in Meilaender, “Symposium,” 182.

<sup>321</sup> Robertson, *Children*, 48 n.1, quoted in *Ibid*.

<sup>322</sup> Robertson, *Children*, 51, quoted in *Ibid*.

any one particular stage as conferring to us our personhood? Also, Robertson later states that an individual's right not to have children does not justify infanticide. But one wonders why not? Certainly infants cannot reason or make choices. Meilaender also points out that at the end of life individuals often decline and lose their reasoning abilities. Are these no longer persons? In the end Meilaender criticizes Robertson for a failure to follow through and develop his argument for personhood. Robertson merely reduces persons to cognitive and volitional capacities and reduces the abortion discussion to a question of respecting choice. However, Meilaender argues that one needs to consider deeper issues such as "a moral ideal that gives compelling testimony to human interdependence and the strength of character required to deal with the unexpected and unwanted in life. To explore such questions. . . is the true task of moral reasoning."<sup>323</sup>

While Robertson occasionally speaks of the "ambivalence" we share about new reproductive technologies, Meilaender believes the rest of his book betrays some disingenuousness concerning these claims. He writes, "Robertson offers a relatively straightforward but very thin understanding of human life. Individuals are largely isolated wills, brought together in association when they choose to cooperate in pursuit of their interests."<sup>324</sup> Such a narrow focus obscures other important values that should come into play when we consider human procreation.

One value obscured by Robertson's expansion of reproductive liberty to include collaborators (gamete donors and surrogate wombs) is the importance of procreation as a part of a marriage relationship. While we are free to separate procreation from a

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<sup>323</sup> Ibid., 185.

<sup>324</sup> Ibid.,

committed loving relationship between husband and wife and make it a sterile process that is merely an act of the will, Meilaender argues that we lose something of the value and meaning to procreating a member of a human family. He argues that placing procreation within the confines of the bond between husband and wife will produce goods for the relationship and for procreation itself. We view the child as the fruition of our love rather than a project to satisfy our desire or right to have a child. "In our freedom, we can thus soar far above our finite condition, forgetting that there may be more ways to violate our humanity than by limiting that freedom."<sup>325</sup>

Meilaender is also critical of Robertson's dismissal of principle-based moral arguments in evaluating the use of reproductive technologies that involve collaborators. Robertson instead takes a purely consequentialist approach in approving this expanded meaning of reproductive liberty, treating such liberties as a given: "Without a clear showing of substantial harm to the tangible interests of others, speculation on *mere moral objections* alone should not override the moral right of infertile couples to use those techniques to form families."<sup>326</sup> Meilaender points out what he believes is an inconsistency in Robertson's argument. Robertson offers a moral argument (which, Meilaender claims, he is not really doing - he is merely asserting a consequentialist conclusion), while at the same time ruling out appeals to moral arguments.<sup>327</sup>

Meilaender argues there is more to human actions than just what we "make"; what we

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<sup>325</sup> Ibid., 188.

<sup>326</sup> Robertson, *Children*, 35. Quoted in Meilaender, "Symposium," 189. Emphasis mine.

<sup>327</sup> Meilaender is not denying that consequentialism can be a viable moral position from which one can form moral arguments. As we saw in the last chapter, he affirms consequentialism as a legitimate moral theory (though he has serious problems with it; see pp 107-112). His criticism of Robertson at the juncture is twofold: (1) At times Robertson *asserts* consequentialist conclusions without providing moral *arguments* to support them. Robertson *can* offer a consequentialistic moral argument he just *isn't* doing so at this point. (2) Robertson does not do justice to other moral arguments, such as principle-based arguments, but instead, as the quote above shows, he simply dismisses them as "mere moral objections."

"do" also defines who we are. Using H.R. Niebuhr's three modes of reasoning from *The Responsible Self*,<sup>328</sup> Meilaender argues that while human action is goal-oriented, it is also intersubjective and responsive to others. I am a member of a community that lays claims on me and to whom I must fittingly respond. So thinking in terms of just goals or consequences is inadequate in approaching moral problems. Meilaender writes:

However important "making" may be, it does not exhaust the categories by which we should think about and evaluate human action. Moreover, there may be occasions when it is an inappropriate category, when it cannot capture the human significance of what we do. Procreation is such an occasion, for only the child who is "begotten, not made" can be one equal to us, one who is not finally a product at our disposal.<sup>329</sup>

Apart from "tangible harms," Robertson dismisses all other objections to expansive reproductive liberties (the rights of individuals to have and not have children) as speculative and "symbolic." He reasons that since we live in a pluralistic society and there is a large amount of disagreement over such "symbolic" reasons, they should not have any say on the issue. Meilaender argues that Robertson asserts these claims and never really argues them. While there are disagreements, sometimes serious ones, these "symbols" often go to the heart of what it means to be a human being and to dismiss them is to cut us off from much that is important in life.

In this article, written primarily to a non-religious audience, Meilaender makes no direct appeal to religion or his own religious convictions. It is possible that his arguments are purely secular and therefore do not require agreement with or reference to his specific Christian beliefs. Yet, his arguments are hardly denuded of values based on a comprehensive view of life and an argument can be made that his religious reasons are

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<sup>328</sup> H. Richard Niebuhr, *The Responsible Self: An Essay in Christian Moral Philosophy* (San Francisco: Harper & Row, 1963).

<sup>329</sup> Meilaender, "Symposium," 191.

embedded in his secular arguments. His appeals to deeper convictions concerning the meaning of personhood, procreation, and the meaning of marriage that, while shared with others of differing comprehensive doctrines, can be seen as derived from and ultimately justified by his faith. Those familiar with the tenets of his conception of Christian ethics recognize his use of language that intimates towards Christian beliefs: freedom and finitude, "begotten, not made." His reason for avoiding direct religious appeals was a wise strategic decision for they would have been out of place and unpersuasive in an article written for a law journal. But they were always lurking nearby, underneath the surface. This is an excellent example of religious reasons as part of one's general background.

More importantly, we can compare and contrast this article with the chapters on abortion and reproductive technology in *Bioethics: A Primer for Christians*. Many of the same arguments appear in these chapters. Oftentimes he exposes and clearly states the Christian convictions that were embedded in the arguments in the above article. The juxtaposition of the terms "procreation" and "reproduction" is clearly explained in relation to the religious phrase "begotten, not made" and God's work of creation. In discussing the importance of the marriage bond in procreation, he more fully relates it to the bond between the Father and the Son: "The child is God's 'yes' to such mutual self-giving. That such self-spending should be fruitful is the deepest mystery not just of human procreation but of God's being. From eternity the Father 'begets' the Son - that is gives all he is and has to the son. Christians use just this language to affirm that God's

own being is a community of love."<sup>330</sup> In his chapter on abortion, he raises similar concerns about personhood arguments that attempt to exclude particular members of the human community based on the lack of certain capacities. He argues for a more inclusive view of the person as a member of the community based simply on being the fruit of human parents and how in an unwanted pregnancy children should still be received as a gift from God.

In his book written specifically to a Christian audience, Meilaender more fully develops the Christian foundations behind the same points he made in the article written to the more general audience. Therefore, one can argue that, while not presented in detail, his religious beliefs are present in the former article. Whether or not Meilaender would claim they ultimately justify his secular arguments or if they merely explain them is not completely clear, but it seems one can reasonably affirm that they are implicitly present in the secular arguments.

It should also be noted that, while Meilaender is critical of Robertson's overall position and arguments, he voices his criticism in a manner that is civil and respectful. He treats Robertson as an equal and appeals to his rational abilities to consider his arguments. He does not attempt to "force religion" on Robertson, though clearly his view is religiously based. Meilaender exhibits humility in his presentation and often recognizes places where he might be interpreting Robertson wrong and is open to correction. Finally, Meilaender makes it clear that one is free to disagree with him. He is not looking for nor expecting agreement. He just wants to be heard and see his arguments taken into

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<sup>330</sup> Meilaender, *Bioethics*, 14.



consideration. In many ways this article models the position he advocates in his view of the use of religion in public policy discussions.

While Meilaender has published a number of secular publications, it is his work with and on government committees that I believe gives us a unique perspective as to how he employs his religious convictions in his deliberations on public policies concerning bioethics. Over the past several decades beginning in 1974 the United States Congress or different presidential administrations established a number of commissions, boards and committees for the purpose of deliberating and advising on issues related to biomedical research and other problems related to ethics in medicine.<sup>331</sup>

Meilaender was invited to appear twice before the National Bioethics Advisory Commission established under the Clinton administration. The first time was in 1997 during their deliberations on human cloning and the second was in 1999 during their deliberations on ethical issues in human stem cell research. Both times Meilaender was invited to speak specifically from his perspective as a Protestant theologian. Therefore his appeals to religious convictions were not only expected but were actually encouraged. It is interesting (and admirable) to note that the NBAC took the time to listen to and consider a number of religious perspectives as part of their deliberations on these issues. In their report on human cloning they offer the following justification for doing so:

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<sup>331</sup> National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, 1974-1978; President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, 1978-1983; Department of Health, Education and Welfare Ethics Advisory Board, 1978-1979; Biomedical Ethical Advisory Committee, 1988-1990; National Institutes of Health-Department of Energy Joint Working Group on Ethical, Legal and Social Implications (ELSI) of Human Genome Research, 1989-Present; National Institutes of Health Human Embryo Research Panel, 1994; Advisory Committee on Human Radiation Experiments, 1994-1995; National Bioethics Advisory Commission, 1996-2001; President's Council on Bioethics, 2001-Present.

The Commission was interested in religious arguments and conclusions about human cloning because religious traditions influence and guide many citizens' responses to various issues in biomedicine, including such novel developments as human cloning. For purposes of recommending public policy in a democratic society, the Commission was also interested in the extent to which moral arguments in various religious traditions rest on premises accessible to others outside those traditions.<sup>332</sup>

Even given such a justification, it is still somewhat awkward to address a governmental commission from a distinctively religious perspective. Meilaender's comments at the beginning of his address on human cloning show his awareness that the language he speaks in "may seem unfamiliar or even unwelcome" to some on the committee. However, he says, "Attempting to take my charge seriously, I will speak theologically - not just in the standard language of bioethics or public policy."<sup>333</sup> Meilaender also makes it clear from the beginning that he sincerely believes he is not just giving a "Protestant view" of human life and values, but that he is using theological language to say something that is true about reality: "This theological language has sought to uncover what is universal and human. It begins epistemologically from a particular place, but it opens up ontologically a vision of the human."<sup>334</sup> One can see his two-tiered ethic expressing itself here.

It is not my purpose to list and explain, much less evaluate Meilaender's reasoning behind his rejection of human cloning. My purpose is to note two things. First, he appeals directly to religious convictions in his rejection of cloning. He makes two major arguments reasoning, from scripture as well as the Christian theological tradition. These

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<sup>332</sup> National Bioethics Advisory Commission, *Cloning Human Beings: Report and Recommendations* (Rockville, MD, June 1997), 51.

<sup>333</sup> Gilbert Meilaender, "Human Cloning Would Violate the Dignity of Children," *The Human Cloning Debate*, ed. by Glenn McGee (Berkeley, CA: Berkeley Hills Books, 1998), 190. This is a reprint of Meilaender's address to The NBAC on March 13, 1997.

<sup>334</sup> Ibid.

arguments are similar to those we encountered in his criticism of Robertson above: (1) cloning severs the connection between procreation and the marital union between a man and a woman and (2) that in affirming that Jesus was "begotten, not made" Christian theology is drawing an important distinction between "begetting" a child, creating something like ourselves, and "making" a child as a product of the will. The main distinction between Meilaender's presentation before the commission and the Robertson article is that before the committee he was free to draw out the Christian convictions that were embedded in the reasoning to Robertson. It is also important to note that underlying Meilaender's arguments is his theme of the limits of what we can do: He recognizes that while Protestants are known to defend human freedom, "they have not had in mind a freedom without limit, without even the limit that is God."<sup>335</sup>

My second point in raising Meilaender's first address to the NBAC is to note that he always speaks in a manner that is respectful and civil. Knowing he is appealing to theological language and reasoning and that such reasons may not be compelling, persuasive, or even welcome by some, Meilaender nevertheless insists that he is not being disrespectful or uncivil in speaking this way. He says, "I will do you the honor of assuming you are interested in hearing what those who speak in such a language have to say."<sup>336</sup> He recognizes that not all will agree with him. Commenting about his appearance before the committee he said, "As far as I am concerned then, other folks just have to see whether this makes any sense for them or not even if they might not have

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<sup>335</sup> Ibid.

<sup>336</sup> Ibid.

started from where I start to come to this insight. In my experience sometimes it does and sometimes it doesn't."<sup>337</sup>

Much of what we have said above about Meilaender's first appearance before the NBAC is characteristic of his second appearance as well. Therefore our comments will be brief. This time the topic of deliberation was embryonic stem cell research. Meilaender began his presentation with many of the same comments he had made in his earlier appearance. He again affirmed that he was invited to speak as a Protestant theologian, adding that he was not claiming to speak for Protestants in general as there was quite a bit of division on this topic within Protestantism. As in his previous appearance, he conveyed his belief that he spoke as he saw the truth about reality and was not just offering one of many perspectives. Meilaender's appeals were different in this presentation in that rather than appeals to scripture and early theological creedal statements, he appealed mostly to statements from contemporary Christian theologians. Karl Barth, John Howard Yoder, Oliver O'Donovan, and Stanley Hauerwas were the primary Christian sources for his thoughts. He expressed strong reservations against embryonic stem cell research based on: the obligation to care for the weakest members of humanity, a rejection of personhood arguments based on the absence of certain capacities rather than based on "someone with a history," and using the imperative to end suffering as justification for using any means to do so.

Like his previous appearance, Meilaender was respectful and civil. He was often humble, admitting his lack of knowledge about some aspects of embryonic development and the nature of stem cells, deferring to the commission in those areas where he was

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<sup>337</sup> Personal Interview, 7/25/07.

unsure of himself. Importantly, he is firm but respectful in the final section of his presentation where he cautions about using language truthfully and avoiding the rhetoric often used in attempts to make distinctions where in fact none really exist (i.e. embryos and "pre-embryos"). He states, "Whatever this commission decides to recommend - you can do us all an enormous service if you speak truly and straightforwardly and if you will avoid euphemism and equivocation, so that we may together think clearly about who we are and wish to be."<sup>338</sup>

In 2001 Meilaender was invited to become a charter member of the newly formed President's Council on Bioethics under the George W. Bush administration. As a member of that council he has written papers, participated in council discussions and contributed to council reports. While he has not always made direct references to his religious convictions in his comments and papers, he has not placed them aside either. As we will see this is a deliberate move on his part.<sup>339</sup> Before looking at his work with the council it's important that we understand Meilaender's perspective of the approach taken by this council especially in relation to other governmental commissions and councils that have gone before.

As we discussed in the previous chapter, Meilaender has not been pleased with the direction bioethics has taken in the last several years, especially in the public arena.

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<sup>338</sup> National Bioethics Advisory Commission, "Testimony of Gilbert C. Meilaender, Jr. Ph.D." *Ethical Issues in Human Stem Cell Research Vol. III: Religious Perspectives* (Rockville, MD, June 2000), E-5.

<sup>339</sup> Meilaender himself does not believe he was asked to join the council specifically as a theologian. He writes, "But it is, I think, genuinely inconceivable (in the U.S.) that theologians should - precisely in their capacity as theologians - be appointed to serve as members of a body such as the President's Council on Bioethics." ("Against Consensus: Christians and Public Bioethics," *Studies in Christian Ethics* Vol. 18 No. 1 (2005), 76, n. 2.) When asked in what capacity he was asked to join he said, "I think I was appointed probably as one whose writings over the years indicate a lot of reflection about various sorts of moral questions--bioethics certainly included--and reflection that tried to get at 'deeper' and 'richer' questions (about human nature, the meaning of suffering, etc.) that are buried in these moral problems." Personal Correspondence, 10/9/07.

His primary criticism is that bioethics as normally practiced in public discussion and debate is simply too thin to adequately deal in any deep or rich way with the complex problems one encounters. Thinking only in terms of “respect for autonomy” and “relief of suffering” is insufficient, for such problems go to the heart of our humanity and destiny as a people and require discussions of deeper value. The common response is that in a pluralistic society references to “deeper values” is inappropriate as it is seen as disrespectful, leading to social instability, and unable to resolve any issues. Hence, says Meilaender, public bioethics as is commonly practiced aims at the lowest common moral denominator. This has been especially true of some previous governmental commissions.

Meilaender points to the 1994 report of Human Embryo Research Panel as a case study of the “poverty of bioethics.”<sup>340</sup> This is the third government commission to take up the question of research on human embryos, though each commission had its own particular purpose and nuance. Meilaender is critical of the makeup of the panel. Rather than reaching out to and inviting a diverse group of scholars, conservative and liberal, pro-life and pro-choice, the panel was made of members who were already settled on the issue of embryo research. He claims, “The question was not, ‘May embryos be experimented upon?’; the question was ‘What should be the regulatory structure that determines *how* they may or may not be?’ and they were so intent on that that clearly there was no point in having anyone on that committee who opposed embryo research.”<sup>341</sup> Meilaender is not the only one who questions the leanings of that panel.

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<sup>340</sup> Gilbert Meilaender, *Body, Soul, and Bioethics* (Notre Dame: University of Notre Dame Press, 1995), 89.

<sup>341</sup> Personal Interview, 7/25/07.

George Khushf, Director of the University of South Carolina Center for Bioethics and Medical Humanities, writes:

The members of HERP did not represent the full range of views on embryo research. Of the nineteen members, many were scientists with a direct interest in the funding of such research. The philosophers and legal theorists on the panel had all written on the topic and all rejected the conservative view that personal life begins at the earliest stages of embryonic development. The selection of panel members thus determined many of the important results. The key question then was not whether this panel would recommend funding; this was a foregone conclusion. Instead the question was how they would determine what research merits funding, and, most importantly, how they would justify funding.<sup>342</sup>

Meilaender is also critical of the panel's presumption of neutrality. The panel claimed that it steered clear of any particular religious or philosophical perspectives. "Rather, its task was to propose guidelines for preimplantation human embryo research that would be acceptable public policy based on reasoning that takes account of generally held public views regarding the beginning and development of human life."<sup>343</sup> Meilaender wonders how the panel can so easily believe it has achieved such a transcendent status; that it's untainted by the individual views of its members, and that it can speak for the "generally held public views" of others. It's not hard for a homogeneous, one-sided group of persons to delude themselves into thinking they are neutral when they deprive themselves of the possibility for real conflict and disagreement by limiting membership to only those who agree on the question.

Meilaender offers a number of lines of evidence of the non-neutrality of the committee. On the issue of the personhood of the embryo, the panel considered a number of arguments, rightly concluded that there are widely divergent views on the question,

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<sup>342</sup> George Khushf, "Owning up to Our Agendas: On the Role and Limits of Science in Debates about Embryos and Brain Death," *Journal of Law, Medicine & Ethics* Vol. 34 no. 2, Spring 2006, 63.

<sup>343</sup> National Institutes of Health Human Embryonic Research Panel, "Report of the Human Embryo Research Panel" (Bethesda, MD, September, 1994), ix. Quote in Meilaender, *Body*, 96.

and then decided that "it is not the role of those who help form public policy to decide which of these views is correct."<sup>344</sup> Yet the panel went on and decided on one of those views anyway: the appearance of the primitive streak. Meilaender also pointed to the panel's use of the term "preimplantation embryo" as an example of a metaphysical commitment to view these embryos as ontologically in a different category purely because we *choose* not to implant them. Finally he points to the panel's consideration of deliberately creating embryos for research purposes (a decision Clinton ultimately rejected). Noting that there are a number of moral arguments against this, the panel commented in their report: "These arguments are metaphysically complex and controverted, and the Panel did not come to any conclusion about their validity."<sup>345</sup> One wonders if they did not come to any conclusion about their validity, why they would go on to recommend deliberately creating embryos for research unless, of course, these arguments were just simply ignored. Meilaender suggests this shows not only their non-neutral stance, but the thin reasoning the panel used. Any rich discussions were eventually set aside for the lowest common denominators of autonomy and relief of suffering. Meilaender concludes his criticism of the manner in which bioethics is commonly practiced by stating: "I do not think we ought to place much confidence in a bioethics that, thinking itself free of religious or philosophical contamination, goes in search of public policy."<sup>346</sup>

If that is what a government commission should *not* be, then what does Meilaender believe it *should* be? Is it possible to have a public bioethics that is both rich

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<sup>344</sup> Ibid., 101.

<sup>345</sup> Ibid., 103.

<sup>346</sup> Meilaender, *Body*, 105.



and public? Meilaender believes it is possible only if one is to eschew any attempt at consensus. As was mentioned in the previous chapter, Meilaender is suspicious of attempts to reach consensus, something he sees most public commissions as pursuing:

Indeed, 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 bring to expression the metaphysical divides that actually exist within our societies.<sup>347</sup>

By relieving one's self of the tyranny of trying to achieve agreement and consensus, one is free to continue the conversation by exploring the deeper issues and values on questions of bioethics, many of which may be based on religious convictions.<sup>348</sup> A commission that abstains from attempts at consensus can open its membership to those who hold differing views on these issues where substantive discussion can take place and different views aired. Khushf echoes this: "Instead of the false impartiality associated with our religion of facts and our so called 'public reason,' we should recover another kind of impartiality: that of an impartial state. . . . The best argument for a genuinely liberal state is an honest public exchange."<sup>349</sup>

Meilaender believes that the current President's Council on Bioethics represents a model of the kind of government commission whose deliberations can be both public and rich. The executive order that established the committee specifically states:

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<sup>347</sup> Meilaender, "Against Consensus," 81-82.

<sup>348</sup> George Khushf, who describes himself as an agnostic on most bioethics questions, recognizes this point: "The controversies at the beginning and ending of life are deeply intertwined with our understanding of the nature and meaning of life. We thus cannot adequately address issues like abortion, embryo research, or brain death unless we consider the nature of reality, good, or evil, and the appropriate ends of human life." Khushf, "Owning Up," 59.

<sup>349</sup> Ibid., 73.

The Council shall strive to develop a deep and comprehensive understanding of the issues that it considers. In pursuit of this goal, the Council shall be guided by the need to articulate fully the complex and often competing moral positions on any given issue, rather than by an overriding concern to find consensus. The Council may therefore choose to proceed by offering a variety of views on a particular issue, rather than attempt to reach a single consensus position.<sup>350</sup>

By making the primary goal of the council "to articulate fully the complex and often competing moral positions" on issues in bioethics, the door is open wide to allow a wide variety of differing positions to be voiced and considered on a rich and deep level. This does not mean that the council would not like to see public policies arise out of their discussions. Meilaender comments, "We'd be happy if some recommendation we made in the report got translated into law or public policy. But that's not our primary goal. By being self-conscious about the fact that this is not our primary task, we are freed from the necessity to whittle-down our beliefs in search of consensus and to just argue things through for as long as it takes."<sup>351</sup>

While the council has often been maligned in the press for its conservative leanings, a fact Meilaender finds difficult to understand, many have pointed out that it is one of the most diverse bioethics commissions to have been established.<sup>352</sup> Meilaender offers the council's report, *Human Cloning and Human Dignity*, as a case study of a bioethics as both public and rich.<sup>353</sup> The report is primarily concerned with two issues:

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<sup>350</sup> Executive Order no. 13237, *Federal Register* 66 FR 59851, Nov. 30, 2001.

<sup>351</sup> Personal Interview, 7/25/07.

<sup>352</sup> Khushf comments: "The membership of the council was genuinely diverse. Leon Kass is correct when he states that his 'council is easily the most intellectually and ethically diverse of the bioethics commissions to date.' . . . On this point the contrast with the National Bioethics Advisory Commission or the Human Embryo Research Panel (both appointed under Clinton) could not be more striking. There was not a single conservative member on those commissions, and the full range of viewpoints and arguments were not represented in their reports."

<sup>353</sup> One should not miss the obvious juxtaposing Meilaender is doing with his own writings. He referred to his examination of HERP as a "case study" of what is wrong with public bioethics in his 1995 *Body, Soul, and Bioethics* and returns to the same genre ten years later in his 2005 article "Against Consensus."

the morality of cloning-to-produce-children and the morality of cloning-for-biomedical-research. In examining the report one can see a full range of moral positions represented in rich detail. In Chapter 5 for example, the discussion "moves quite deliberately beyond the questions of harm in order to reflect upon the implications of cloning for human quality and identity - for ways in which we may wrong others without necessarily harming them."<sup>354</sup> This chapter and the one following have detailed and rich arguments both in favor of and against both cloning-to-produce-children and cloning-for-biomedical-research.

Meilaender points particularly to Chapter 6 on cloning-for-biomedical-research to demonstrate both the diversity and the richness of the discussions. The two arguments, pro and con, are set almost side-by-side, showing the deep divisions between members of the council. Meilaender points out how the disagreements in this chapter forced council members to consider questions that inevitably involve metaphysical and religious convictions. From this perspective the council is "less concerned with lowest common-denominator policy recommendations than with reflection upon the deepest matters of our humanity."<sup>355</sup>

Perhaps the most obvious place where diversity is seen is in the personal statements of fourteen of the seventeen council members located at the end of the report. Here each person is free to express his own view on the council's work and the ultimate report. Not all agree with the recommendations made in the report. However, each person was allowed to express himself based on whatever comprehensive view he held.

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<sup>354</sup> Meilaender, "Against Consensus," 83. Meilaender comments that, while the argument here is indeed richer, it is not theological, at least not directly. These arguments are "open to the kinds of considerations and arguments which are intrinsic to much religious belief" but are not directly theological themselves.

<sup>355</sup> Ibid., 84.

No one was stifled and each comment was published in full in the appendix at the end of the report. When all was said and done, all members voted unanimously to ban cloning-to-produce-children and a majority (ten of the seventeen members) voted in favor of a four-year moratorium on cloning-for-biomedical-research.<sup>356</sup> The recommendations were sent to the President who took them under advisement.

As we said, not everyone agreed on the council. In fact conflict has pervaded council meetings from its inception and continues to do so. Sometimes these conflicts are serious, representing vastly different points of view not only on substantive issues, but on procedure and the openness of the council itself. However, the presence of conflict and tension is not a problem for Meilaender. Naturally, it would be nice if there was no tension and everyone agreed. But Meilaender knows that, as a believer whose ultimate citizenship is not of this world, tension is part of what it means to be involved in public policy. One must live through the tension as best one can in faithfulness to God and in peace with our fellow citizens of this world.

Meilaender also acknowledges that besides disagreeing and then voting, another option instead of consensus is compromise. While one does not want to compromise certain basic religious convictions, Meilaender realizes that compromise is sometimes necessary. "To stop part of an evil when one cannot - for now - stop the whole of it does not amount to endorsing what one cannot stop."<sup>357</sup> Meilaender admits of times when he

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<sup>356</sup> There is some controversy concerning the vote on the moratorium on cloning-for-research. Originally Ten members of the council were against banning cloning-for-research. The question was then changed to a moratorium on cloning-for-research. This controversy, while interesting, is not central to my thesis. Meilaender is not trying to picture the PCB as a perfect body free of all political maneuverings.

<sup>357</sup> *Ibid.*, 87.

has had to compromise on the council as, for example, in the report on *Reproduction and Responsibility*.

What of Meilaender's own work on the council? Along with participation in council deliberations and contributions to the council reports, Meilaender has written papers for the council that offer us a glimpse of his reasoning and his civility. Some of these have made direct references to particular religious convictions and others have alluded to values which clearly flow out of his religious beliefs but do not directly reference them. I will just mention a couple of these.

For the first meeting of the council in January 2002, Chairman Kass asked Meilaender to prepare a paper for discussion on the topic of what human goods are at stake in bioethics. The paper was entitled "In Search of Wisdom: Bioethics and the Character of Human Life," in which Meilaender explores four background concepts that shape much of our thinking about specific issues in bioethics. These concepts move us beyond mere questions of autonomy and rights and into richer and deeper territory about the meaning and value of human beings, human life and human dignity. The four background concepts are: the unity and integrity of human life (what does it mean to be a human being?); freedom and finitude (is there a limit to our freedom to remake ourselves?); the relation between the generations (how much control and responsibility should we have over future generations?); and suffering and vulnerability (does the presence of suffering create an unlimited imperative to end it?). While Meilaender does not usually appeal to religious convictions or use religious language in the article (he does at times), anyone with knowledge of the themes mentioned in Chapter 2 of this dissertation can clearly see the influence of his religious convictions in almost every

paragraph: his reference to human beings as embodied spirits, the tension between our finitude and freedom, the recognition of a child as a gift and not an act of rational will, man's tendency to control nature, his direct appeals to Augustine in picturing the acceptance of suffering as a form of martyrdom in resisting the temptation to end it by any means. All of Meilaender's reasoning flows from his Christian convictions.

The paper was the focus of discussion at the first meeting of the President's council. From the transcript of the meeting it is evident that the paper was well received. Chairman Kass referred to it several times as a "wonderful paper" and William F. May praised the paper for "forcing us to think back into the whole question of human nature" rather than just appealing to the typical fear-mongering.<sup>358</sup> While not everyone necessarily agreed with Meilaender's conclusions, no one questioned his right to speak out on these issues from his particular perspective. Instead members were encouraged to bring their background beliefs, religious and philosophical, to the table. Kass commented in his opening remarks to the council:

All serious relevant opinions carefully considered are welcome. . . . Moral positions rooted in religious faith or in philosophy or in ordinary personal experience of life are equally relevant provided that the arguments and insights offered and enter in our public discourse in ways that do not appeal to special privilege or special authority. Respect for American pluralism does not mean neutering the deeply held religious or other views of our fellow citizens. On the contrary, with the deepest human questions on the table, we should be eager to avail ourselves of the wisdom contained in the great religious, literary and philosophical traditions.<sup>359</sup>

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<sup>358</sup> President's Council on Bioethics, "Transcript of First Meeting, Session Three: How to do Bioethics: Discussion of Gilbert Meilaender Paper, 'In Search of Wisdom: Bioethics and the Character of Human Life,'" Washington, DC, January 17, 2002.

<<<http://www.bioethics.gov/transcripts/jan02/jan17session3.html>>>

<sup>359</sup> President's Council on Bioethics, "Transcript of First Meeting, Session One: Welcome and Opening Remarks," Washington, DC January 17, 2002.

<<<http://www.bioethics.gov/transcripts/jan02/jan17session1.html>>>

Thus the paper resulted in a lively and rich substantive discussion on the four basic concepts. For example, one major line of discussion surrounded the question of the limits of human freedom when it comes to genetic research, eugenics, and enhancement. How far is too far? Dr Michael Sandel wondered if eugenics is always a bad idea and asked about remedial eugenics: genetic engineering to correct a congenital defect. He raised the question of what modes of respect and equal treatment are appropriate to what forms of life. Note how his comments move beyond respect for autonomy to deeper issues and applications: "The objection is not that it violates somebody's rights or that it causes harm to anyone even, but that it is a mark of - a deep mark of bad character having to do with a kind of hubris that assumes that nature is merely open to use for our purposes."<sup>360</sup> Many other examples abound within the transcript. My main point is that the current President's council represents a religiously, morally and politically diverse group of professionals who are encouraged to freely discuss issues in bioethics in a rich and deep manner. It models the richly textured and public bioethics for which Meilaender argues.

While Meilaender makes few direct references to religious convictions in this paper, he has no problem raising them in his personal statement in the appendix of the report on human cloning and human dignity. While admitting that one can defend the idea that a human embryo is fully deserving of moral respect on the basis of embryology, philosophical reasoning and historical considerations, Meilaender goes on to say:

This does not mean, for me at least, that religious belief should play no role here. On the contrary, Jews worship a Lord who favors the widow and the orphan, who teaches us to speak on behalf of those no one else defends. And Christians worship a crucified God who has himself accepted vulnerability. Instructed by

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<sup>360</sup> PRCB, "Transcript of First Meeting, Session 3."

our religious traditions, we may see in the weakest and most vulnerable of human beings - those unable to speak in their own behalf - special objects of our care.<sup>361</sup>

That a member of a council established by the President of the United States can make such a statement in a governmental report on a public policy is quite remarkable.

Meilaender himself comments about his statement at the end of the report, "If we make consensus our primary aim, no one participating in an exercise of secular deliberation about a bioethical matter of public concern will ever speak this way. If we eschew the goal of consensus, we may, to some degree at least, be able in public deliberations to speak for and out of the church."<sup>362</sup>

Of course, not everyone has been as positive in their assessment of the President's Council on Bioethics as is Meilaender. Commentators in the media have often been brutal in their dissent of what appears to be the conservative leaning of the council, some having even compared it to the Taliban. Along with media criticism some members have spoken out against the council's conclusion and its deliberations. Perhaps most well known have been the comments of former council member Dr. Elizabeth Blackburn, who was a charter member of the council but was released in early 2004. In an opinion piece in the *Washington Post* written a few weeks after her dismissal she was critical not only of the fact that she was dismissed and replaced by what she perceived to be more conservative members, but that the deliberations she was involved in while a member were less than accepting of divergent views. She writes that, though her initial mood at joining was hopeful of good deliberation, that mood quickly dissipated. "When I read the council's first discussion documents, my heart sank. The language was not what I was

<sup>361</sup> President's Council on Bioethics, *Human Cloning and Human Dignity: The Report of the President's Council on Bioethics* (New York: Public Affairs, 2002), 339.

<sup>362</sup> Meilaender, "Against Consensus," 85.



used to seeing in scientific discourse - it seemed to me to present pre-judged views and to use rhetoric to make points."<sup>363</sup> She commented several times how she "sensed" resistance and intolerance from the chairman and other council members towards dissenting views and that her views were not well represented in the report of human cloning. Blackburn has gone on to criticize later reports delivered by the council after her departure. Kass as well as several others have defended the council's openness to diversity against her charges. It is not my purpose to fully explore these exchanges. I can affirm that many have acknowledged that, while it is not surprising that the council would reflect the leanings of the President who appointed it (as all Presidential councils do to a point), it is still a diverse group of thinkers sharing widely divergent religious, philosophical and moral views.<sup>364</sup>

Meilaender remains perplexed at charges like Blackburn's and is convinced that the council remains diverse and those deliberations are open to all points of view. He comments:

I continue to find it amazing that people think of our council as sort of a right wing cabal when it's deeply divided on a question like embryo research and the Human Embryo Research Panel didn't even think there was any point in putting anybody on who might have been opposed to it. Which is the broad, inclusive, expansive body and which is the narrow one? Which is the one that is open to a whole range of arguments from citizens and which is the one who's not? It's not only religious arguments we're open to. We have people on the council who

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<sup>363</sup> Elizabeth H. Blackburn, "A 'Full Range' of Bioethical Views Just Got Narrower," *Washington Post*, March, 7, 2004, B 02. One wonders in reading Blackburn's reaction to the initial deliberations and language of the council if she was really open to hearing divergent religious and philosophical views on these basic questions of humanity or if these are what she considers "rhetoric." It is not clear what she is referring to here. Her criticisms that the council has so few biomedical scientists leaves one with the impression that she sees these questions as primarily scientific issues rather than moral or philosophical.

<sup>364</sup> See Leon Kass, "We Don't Play Politics With Science," *Washington Post*, March 3, 2004, A27; Brandom Keim, "Beyond Politics: The Strange Saga of the President's Council on Bioethics," *GeneWatch* Vol. 17 No. 1, May-June 2004; George Khushf, "Opening up to Our Agendas: On the Role and Limits of Science in Debates about Embryos and Brain Death," *Journal of Law, Medicine, and Ethics*, Vol. 34 No. 2, Spring 2004.

aren't religious, who aren't interested in religion and don't think it makes any sense and are clearly naturalistic in their outlook on the world. Well, they get to make their arguments too. Everybody does.<sup>365</sup>

While Meilaender is amazed that people have such a distorted view of the President's council, he is not surprised at the amount of disagreement on these issues and the tension that disagreement might produce. In discussing basic human goods within a pluralistic society, tension and conflict is almost inevitable. While we try to relieve some of the tension by appealing to common moral values we share (which for Meilaender come from within the life of faith), we realize that some of these problems will remain intractable. We are not going to make the tension disappear. There are limits to the political solutions that our public commissions may be able to achieve. Perhaps all they can do is draw out all the different views to consider, make recommendations, and pass them on. Commenting on the report on human cloning, James Childress says, "Indeed, where moral assessments differ as much as they do in this report, informing public policy in a loose sense is the most that can be expected."<sup>366</sup> Meilaender would not disagree with this assessment. It may just be a limit we must learn to deal with as we live through the tension in working through these issues.

### Conclusion

We began this chapter with an overview of Meilaender's vision of political life. Drawing heavily on Augustine, Meilaender argues for both a limited politics and a politics of limited expectations. Rather than the extremes of the night-watchman state,

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<sup>365</sup> Personal Interview, 7/25/07.

<sup>366</sup> James F. Childress, "Human Cloning and Human Dignity: The Report of the President's Council on Bioethics," *Hastings Center Report*, Vol. 33 No. 3, 17.

which aims for a lowest-common-denominator morality, and the fraternal state which forces a concept of the common good to unity the citizenry, he offers the Chalcedonian state where the purpose of political rule is to preserve personal bonds and communities that inculcate the deeper virtues. Ultimately that state benefits from citizens who have the virtues necessary to sustain the life of the society.

We saw that for Meilaender, the idea of a chastened and limited politics does not mean a politics denuded of all values save consent and choice. He believes religion may and often does have a part to play in such a state. Skeptical of any concept of a “neutral” state, Meilaender appeals to his two-tiered ethics arguing that, from within the life of faith, believers should expect to find common moralities with those outside the faith. In fact when one considers the “things relevant to this mortal life,” many of which appear in issues in bioethics, they often involve moral values whose sources are religious convictions. Meilaender suggests that rather than appealing to some form of civic religion, which involves abandoning particular religious beliefs for some general religious view, the proper role religion can play in politics is simply through conversation. Rather than restraining ourselves from appealing to our private convictions in the public square, those of differing religious and non-religious views should dialogue with each other in a manner that is mutually respectful with a fervent desire to learn and understand from each other and to persuade others of our views. In the end we use the democratic process of voting and compromise to find a way to live together with our differences. Even after voting, the conversation never ceases and we attempt to understand and persuade one another. Conflict and tension will almost certainly be

present and some issues will continue to be intractable, but that is simply what it means to live through the tension.

In this chapter we returned to the narrative and suggested how Meilaender would answer the questions that story presented. Meilaender places himself firmly in the third position, exclusivism, which states that it is perfectly appropriate for a person to appeal to religious reasons, even exclusively so, when supporting or opposing public policy. However, he issues some important caveats in placing himself there. Significantly, he recognizes that what constitutes an appeal to a “religious reason” is open to debate. While one can do so directly, one can also do so indirectly. Religious convictions are often embedded in one’s general moral outlook and Meilaender believes that these constitute an appeal to religious reasons also, just not directly so. Meilaender also acknowledges that appeals to religion are not always necessary or strategically wise. Given the two-tiered ethic he argues that believers should expect to often find common moral ground with non-believers. He also recognizes that on some moral issues there may not be common ground and in which believers must just acknowledge their religious convictions. This is certainly more respectful than hiding them from our fellow citizens.

In the final part of this chapter we examined how Meilaender put his views into practice. My goal here was two-fold: I wanted first to show how Meilaender often appeals to religious convictions, sometimes directly, but often indirectly, in his discussions on public policy in the secular arena. I also wanted to show that when Meilaender does make such appeals he does so with humility, respect for other views, and in a civil way while not compromising his own position. In order to accomplish this I decided to look at two places where Meilaender addresses the public square. First I

selected a representative sample of an article addressed primarily to a secular audience. My point was that, while not referencing his religious convictions, Meilaender did appeal to deep and rich values which, for him, flowed from his religious beliefs. Due to his two-tiered ethics, he was able to argue for these values, such as the connection between procreation and marriage, from a commonly shared morality.

I then concentrated on Meilaender's dealings with the government councils looking at both his two appearances before the NBAC as well as his work on the PCB. I also contrasted Meilaender's two "case studies": his assessment of the approach of the Human Embryo Research Panel and his assessment of the approach of the PCB. Meilaender believes by eschewing the primary goal of reaching a consensus, the PCB is freed up to seriously consider a wide variety of divergent views in which all arguments - scientific, moral, philosophical and religious - can be expressed and debated. There may not always be agreement (though on many points there is) and one may not always be able to persuade those who come from different philosophical or religious perspectives (though sometimes one does), but at least there can be understanding and respect for differing views. Meilaender says that, for Christians who must adopt a limited politics and a politics of limited expectations, this may be the best we can achieve while living through the tension of being residents of two cities. For, as Meilaender says:

Taking seriously our shared humanity and shared history, we can press toward shared moral agreement - or, where this does not exist, shared understanding of moral differences. Taking seriously our particular and personal moral and religious outlooks on the world, we can decline to bracket them or underplay their importance also in public life, while we seek ways to permit them to enter into and shape our discussion and debate.<sup>367</sup>

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<sup>367</sup> Gilbert Meilaender, "Bioethics: Attempting to be both 'Rich' and 'Public'," unpublished paper, delivered at the University of Richmond, 2004.

## Chapter Four

### Meilaender in Dialogue

A citizen has an obligation sincerely and conscientiously to pursue a widely convincing secular rationale for her favored coercive laws, but she doesn't have an obligation to withhold support from a coercive law for which she lacks a widely convincing secular rationale.

Christopher Eberle, *Religious Conviction in Liberal Politics*

### Introduction

Having explored and analyzed Meilaender's position on the question of religious reasons and public policy, we now are prepared to evaluate it. In this chapter I am going to evaluate Meilaender by placing him in dialogue with two other individuals who have written on this topic. A final epilogue will conclude with my own assessment.

I will begin this chapter by contrasting and comparing Meilaender's political vision with that of Jeffrey Stout and his discussion of the place religious reasons can and should play in supporting or opposing public policies as presented in *Democracy and Tradition*. I select Stout as he and Meilaender have a history of dialogue on this topic. While Stout does not deny a place for religion in public policy, his political vision is significantly different from Meilaender's. After contrasting Stout with Meilaender, I will then return to Christopher Eberle's "ideal of conscientious engagement" discussed in the first chapter. In that ideal he establishes six criteria that constitute what it means to respect one's fellow citizens when supporting or opposing a coercive public policy. I intend to use each of these criteria to evaluate Meilaender's position on this issue. The

question I will attempt to answer is: Can Meilaender maintain his position and still be respectful to his fellow citizens?

### Meilaender and Stout

Before looking at Stout's *Democracy and Tradition* we need to look at a short passage from his earlier work, *Ethics After Babel*<sup>368</sup>. In this work Stout briefly addresses Meilaender's argument of the three models of liberal states: the night-watchman state, the fraternal community and the Chalcedonian state. Stout's discussion of Meilaender occurs in the third section of his book where he attempts to answer critics, like Alasdair MacIntyre, who suggest that moral discourse in a pluralistic liberal society is unattainable and that we must withdraw into communities who have a shared conception of the good. While some have suggested that a universal moral language, often referred to as moral "Esperanto," is the liberal answer to MacIntyre, Stout disagrees. He suggests that there are nonstandard forms of liberalism and one of these is an Augustinian form. He refers to Meilaender as a proponent of this form.

Stout characterizes Meilaender's view of liberalism as "the most we can hope for from the earthly kingdom at its best . . . is a measure of order that can secure private space in which we can form friendships and families and voluntary associations."<sup>369</sup> While Meilaender would affirm that "a measure of order" is the primary purpose for the modern liberal state, he would not agree with Stout that it is "the most we can hope for." Order may be the minimum we can hope for but the state can and often does provide

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<sup>368</sup> Jeffrey Stout, *Ethics After Babel* (Boston: Beacon Press, 1988).

<sup>369</sup> Stout, *Ethics*, 233.

more than order. However, Stout is correct when he says that, for Meilaender, we find our meaning in the private bonds and that politics is no substitute for those. He is also correct in his assessment of Meilaender's rejection of the fraternal state, or communitarians, as Stout refers to them.<sup>370</sup> As we saw in the last chapter, Meilaender saw the fraternal state as more dangerous than the liberal night-watchman state, even excessively individualistic liberals, since the fraternal state is likely to lean towards totalitarianism in its treatment of citizens. Stout recognizes that, for Meilaender, even though there is the danger of a "seepage" problem with liberalism, a chastened liberal politics, in the form of the Chalcedonian state, is better than communitarianism because it supports the freedom necessary for private bonds and communities to flourish, develop virtues and values, and to pass those virtues on to future generations.

Stout seems to find much in Meilaender to agree with; however, he is critical of him in one respect. According to Stout, Meilaender seems to hold that the political sphere exists only to support and foster private social bonds like family, friendships, clubs, church or local neighborhoods. "[He] seems not at all concerned to promote fraternal solidarity among the citizenry."<sup>371</sup> Stout suggests a "middle way" between Meilaender's Augustinian vision of the political sphere and the "fraternal community," one where politics not only exists to support private social bonds but also to foster a "sort of public life in which members find some part of their identity as citizens of a republic directed to the common good."<sup>372</sup>

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<sup>370</sup> Stout equates the fraternal state with communitarians who in *Democracy and Tradition* will be the "new traditionalists." While Stout is not wrong here, Meilaender's conception of the fraternal state is broader and in fact Meilaender places Stout himself under that conception.

<sup>371</sup> Stout, *Ethics*, 235.

<sup>372</sup> *Ibid.*



Stout has provided a needed correction to Meilaender here, one that Meilaender would not disagree with: "I may have underplayed a little of the truth that some part of our identity is surely also civic. I don't think I'd want to deny that we should, at least ordinarily, find some part of the meaning of our life in what we might call civic identity."<sup>373</sup> What bothers Meilaender is the language "fraternal solidarity" and "common good." For him, this simply leans too close to the fraternal community state that Meilaender rejects.

In fact Meilaender affirms the good of the political sphere: "It is one important sphere in which human need is served. It is the locus of many common interests and some shared purposes. But it is not the home we seek. The person is made for God."<sup>374</sup> What Meilaender mostly objects to is Stout's implication that the spheres are on an equal level with none superior to the other. Stout writes, "No sphere can rightly occupy the position of be-all-and-end-all in our lives without throwing the rest out of proper proportion - neither vocation, nor family, nor voluntary association, nor private projects, nor politics."<sup>375</sup> Meilaender acknowledges that most of the time the requirements of the politically liberal state and Christian convictions work in unity without coming into conflict. However, he never wants us to forget that Christians continually live with divided loyalties and that, at times, there may be a conflict between the demands of the political state and the demands of God. At those times Christians are required, not to seek a balancing of "proper proportions," but to be faithful to God. There are different concepts of balancing. If something has, by nature of what it is, more weight than

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<sup>373</sup> Personal Correspondence, 8/16/2007.

<sup>374</sup> Gilbert Meilaender, "The Limits of Politics and a Politics of Limited Expectations," *dialog* Vol. 28 No. 2 (Winter 1987), 99. Michael Walzer's influence on Meilaender is strongly evident in this article.

<sup>375</sup> Stout, *Ethics*, 235.

another, then the proper way to balance them is to take that weight difference into account. Not to do so results in an improper balance. Our faithfulness and commitment to God weighs more by the nature of what it is, and therefore should receive more consideration. So while the political sphere is important, a point Meilaender does not deny or even downplay, it is not the pre-eminent sphere. Our commitment to God is not just *one* of many spheres, our religious convictions *are* the "be-all-and-end-all in our lives." As we will see below this objection will become even more forceful in Meilaender's assessment of Stout's *Democracy and Tradition*.

It would be difficult to overestimate the significance of Stout's *Democracy and Tradition*<sup>376</sup> on the question of religion and public policy. It is a tightly argued and well nuanced work that will provide much fodder for discussion and deliberation, not to mention dissertations, for many years to come. It is impossible to do justice to everything Stout covers in this book and so I will confine myself to just those aspects that are pertinent to our discussion, having to leave much very interesting material on the cutting-room floor.

Stout recognizes a divisive cultural war in America. The two opposing factors in this war are "secular liberals" on the one side and "new traditionalists" on the other side. According to Stout, secular liberals (whom I have previously referred to as justificatory liberals) are those who hold to two concepts: the ideal modern liberal democratic state is neutral when it comes to comprehensive doctrines and political deliberation is done on the basis of public reason. Richard Rorty and John Rawls embody these two concepts.

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<sup>376</sup> Jeffrey Stout, *Democracy and Tradition* (Princeton: Princeton University Press, 2004).

The "new traditionalists"<sup>377</sup> see these two concepts as definitive of modern democracy and reject them and all of liberal democracy along with them. Stout writes:

"Traditionalists claim that democracy undermines itself by destroying the traditional vehicles needed for transmitting the virtues from one generation to another."<sup>378</sup>

Therefore, according to Stout, traditionalists often actively encourage alienation and withdrawal from public discussions on moral issues and instead promote identification with religious communities or pre-modern traditions. Alasdair MacIntyre, John Milbank, and Stanley Hauerwas embody the ideals of the traditionalists.

Stout suggests that the resolution to the impasse between these two extreme views is to locate a middle path between secular liberals and traditionalists in two ways. First, through immanent criticism,<sup>379</sup> he exposes internal problems for both extreme views of democracy proposed by the secular liberals and the traditionalists. Second, he proposes an alternative view of democracy: democracy as a tradition. Stout argues that, in fact, his "alternative" view of democracy is currently lived out in modern American political life. I will briefly explore both of these arguments.

Against the secular liberals, like Rawls and Rorty, Stout finds their arguments and positions to be unrealistic and implausible. He writes, "It would be unrealistic to expect membership in religious groups to have no influence on democratic decision making and debate, for one function of religious traditions is to confer order on highly important

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<sup>377</sup> Stout never identifies who the "old traditionalists" are. From this point forward we will refer to this group simply as "traditionalists."

<sup>378</sup> Stout, *Democracy*, 12.

<sup>379</sup> Stout defines immanent criticism as "a form of internal criticism where one starts with the stated beliefs of one's interlocutor and then presses questions about the coherence among those commitments or about the coherence between those commitments and the way the interlocutor is actually living." Personal correspondence with the author.

values and concerns, some of which obviously have political relevance."<sup>380</sup> As for the plausibility of their positions, Stout particularly is critical of Rawls's concept of the "reasonable person." Recall from our first chapter that Rawls said that a public reason is that which all reasonable persons can subscribe to regardless of their comprehensive doctrines. What constitutes "reasonable" persons? They are those who "are willing to govern their conduct by a principle from which they and others can reason in common."<sup>381</sup> In other words in order to be regarded as reasonable in the Rawlsian sense, one must agree to his contractarian concept of public reasons. Stout finds this implausible. According to Stout, a person can reasonably, meaning with good reason, reject Rawls's conception of the principle of self-restraint. Stout points first to the norm of free expression that is inherent in any form of the modern liberal democracy. "Rawls seems to be saying that while the right to express our religious commitments freely is guaranteed twice over in the Bill of Rights, this is not a right of which we ought make essential use in the center of the political arena, where the most important questions are decided."<sup>382</sup> Stout's second point is that, if Rawls were correct, we would have to dismiss some of the most brilliant and eloquent political discourses given in our history as morally inappropriate. He mentions the speeches of Martin Luther King and Abraham Lincoln's Second Inaugural Address as two prime examples expressing religious reasoning.<sup>383</sup>

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<sup>380</sup> Ibid., 9

<sup>381</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 49, n. 1

<sup>382</sup> Stout, *Democracy*, 68.

<sup>383</sup> I have already commented on the convoluted argumentation that Rawls must go through to allow for these two examples to be allowed under his restriction.

With those who argue that to introduce religion into public discussion is to show disrespect towards those of differing religious views, Stout disagrees. One can criticize others' views through giving them reasons they should recognize from within their point of view and still be respectful. Stout wonders why rejecting an individual's reasons due to holding a different point of view is deemed disrespectful. He writes, "Rawls is too caught up in theorizing about an idealized form of reasoning to notice how much work candid expression and immanent criticism - declaration and conjecture - perform in real democratic exchange."<sup>384</sup> We arrive at our moral norms through a host of sources and influences, religion being only one of them. Stout believes all these sources need to be openly considered and debated.

Stout goes into considerable detail in his immanent criticism of the traditionalists, much of which we will need to pass by. Judging by both sheer quantity (four chapters) and the detail in which he writes, it is obvious that his concern in this book is more with the traditionalist response to secular liberalism than with secular liberalism itself. I will briefly discuss two general points he raises against traditionalists.

First, Stout believes that traditionalists are reacting to an extreme form of modern liberalism that, for the most part, is not currently practiced in America. While it is true that several political theorists have argued for the marginalization of religious voices, those theorists are out of step with the average citizen. Rawlsian liberalism should not be seen as the official mouthpiece modern liberalism.<sup>385</sup> Stout believes that this perception by traditionalists has led to a false bifurcation within our culture between the anti-

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<sup>384</sup> Ibid., 73.

<sup>385</sup> Ibid., 3.

religious form of liberalism on the one side and an authoritarian form of traditionalism on the other and both sides tend to demonize the other. The truth, says Stout, is that these two sides have inflated the significance of differences on some issues into a full-fledged cultural war. "The debates, over issues like abortion and same-sex marriage, that do nowadays occasionally erupt into uncivil behavior are more accurately described as marginal skirmishes than as warfare, at least when viewed in historical or cross-cultural perspective."<sup>386</sup> Stout argues that, instead of perceiving modern liberalism as anti-religious, both traditionalists and secular liberals need to see that religion and religious voices have historically played an important part in forming and informing democratic culture and continue to do so. It is true that sometimes religious expression can lead to an impasse. This is because "there are many important issues that cannot be resolved solely on the basis of arguments from commonly held principles."<sup>387</sup> However, Stout claims the way around the impasse is not by marginalizing religious voices but through conversation which he defines as "an exchange of views in which the respective parties express their premises in as much detail as they see fit and in whatever idiom they wish, try to make sense of each other's perspectives, and expose their own commitments to the possibility of criticism."<sup>388</sup>

Stout's expresses his second general argument against traditionalists as follows:

One of my central claims is that modern democracy is not essentially an expression of secularism as some philosophers have claimed and many theologians have feared. Modern democratic reasoning is secularized, but not in a

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<sup>386</sup> Ibid., 10. Stout may be right that we agree on many issues more than we disagree. However, I would hardly refer to these disagreements as "marginal skirmishes." Disagreement over abortion has polarized many factions in this country. It seems to be more than a "marginal skirmish."

<sup>387</sup> Ibid.

<sup>388</sup> Ibid., 10-11.

sense that rules out the expression of religious premises or the entitlement of individuals to accept religious assumptions.<sup>389</sup>

While it is true that modern liberalism is *secular*, it is not *secularism* - a distinction that is important to Stout. He does not deny that there is a sense in which ethical discourse in modern democracy is secularized "for such discourse is not 'framed by a theological perspective' taken for granted by all those who participate in it."<sup>390</sup> But this does not imply a commitment to *secularism* which, according to Stout, entails a rejection of theological assumptions and the expulsion of religious expression from the public sphere. To support this claim Stout offers his version of the historical roots of modern secular liberalism. In Stout's version, the primary reason secular appeals became the norm in modernism was the dethroning of the Bible as a source of public authority. By the end of the seventeenth century public arguments in general did not appeal to biblical revelation as support, but appealed instead to secular reasons.

Stout is not claiming that people became more secular in their personal beliefs at the same time. Many still held to biblical authority on a personal level. They just ceased to make public appeals on that basis because such appeals were ineffective. In this sense public discourse became secular while a general secularism was not adopted (nor need be adopted in a modern liberal democracy). Stout's concept of secularization is that participants in a given discursive practice simply cannot take for granted that their interlocutors are making the same religious assumptions they are. This is the sense in which public discourse in modern democracies tends to be secularized.<sup>391</sup> Because modern liberalism is committed only to secular discourse thus defined and not to

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<sup>389</sup> Ibid., 11.

<sup>390</sup> Ibid., 93.

<sup>391</sup> Ibid., 97.

secularism, Stout believes that traditionalists need not reject liberalism as necessarily anti-religious.<sup>392</sup>

As I mentioned above, Stout has a two-prong argument. He first was critical of the arguments of both secular liberals and traditionalists. His second prong is the most significant part of his attempt to resolve the cultural war. He suggests that, rather than viewing democracy as an "inherently destructive, atomizing social force" and "the antithesis of tradition," it is more appropriate to view Democracy as a tradition itself. He summarizes his position as follows:

Democracy, I shall argue, is a tradition. It inculcates certain habits of reasoning, certain attitudes of deference and authority in political discussion, and love for certain goods and virtues, as well as a disposition to respond to certain types of actions, events, or persons with admiration, pity or horror. This tradition is anything but empty. Its ethical substance, however, is more a matter of enduring attitudes, concerns and dispositions, and patterns of conduct than it is a matter of agreement on a conception of justice in Rawls's sense. The notion of state neutrality and the reason-tradition dichotomy should not be seen as its defining marks.<sup>393</sup>

The values and norms of democracy are not just procedural, they are substantive. They are found in the preamble of the Constitution; "to establish justice, insure domestic tranquility, promote the general welfare, secure blessings of liberty for us and our posterity." The norms of our democratic tradition are reflected in our Bill of Rights, the Emancipation Proclamation and other public documents. Mostly Stout shows how democratic traditions are found in the influential writings of Dewey, Emerson and Whitman, each of whom he claims "actively identified normative sources within their

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<sup>392</sup> I am intentionally not discussing Stout's specific criticisms of John Milbank, Alasdair MacIntyre and Stanley Hauerwas which make up a large number of his criticisms of the traditionalists. Such a discussion would lengthen an already extended treatment more than is desired by weary, and probably by now watery, eyes.

<sup>393</sup> *Ibid.*, 3.



own society that were worthy of their endorsement. . . . Their task as intellectuals was to articulate the substance of democratic commitments in a way that would allow such commitments to be held self-consciously and self-critically."<sup>394</sup> In his discussion of these three intellectuals, Stout specifically concentrates on the need for character and the virtue of piety. The piety here is not religious piety, but civic piety: a respect for the sources for one's existence and progress through life. This reduces to self-reliant piety: taking responsibility for one's commitments by making them explicit in the form of a claim for which reasons can be requested.

That such a democratic tradition is in place becomes obvious to Stout by simply observing the behavior of citizens. The task of the modern liberal intellectual is simply to make explicit what is implicit in the actions, motives and discourse of citizens as they live and work within our modern democracy. Stout claims that the "ethical inheritance in American democracy consists, first of all, in a way of thinking and talking about ethical topics that is implicit in the behavior of ordinary people. Secondly, it also consists in the activity of intellectuals who attempt to make sense of that way of thinking and talking from a reflective and critical point of view."<sup>395</sup> These both make up the democratic tradition. Stout refers to the activity of making the implicit to be explicit as pragmatic "expressive rationalism" as it is expressing reasons that are implicit in our thinking and talking. Democratic norms are implicit in what we do when we demand reasons for some actions, commitments, and arrangements while treating others acceptable by default. But

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<sup>394</sup> Ibid., 8.

<sup>395</sup> Ibid., 7.

norms can be made explicit in the form of principles and ideals. Stout says, "Norms are creatures of discursive social practices."<sup>396</sup>

Therefore, the heart of democracy is conversation: the shared public deliberative practices of citizens. According to Stout, a citizen is one who accepts some measure of responsibility for the condition of society. As such he articulates his moral reasons with other citizens and expects other citizens to do the same. Hence Stout summarizes the liberal democratic tradition:

Central to democratic thought as I understand it is the idea of a body of citizens who reason with one another about the ethical issues that divide them, especially when deliberating on the justice or decency of political arrangements. . . . The democratic practice of giving and asking for ethical reasons, I argue, is where the life of democracy principally resides.<sup>397</sup>

As was stated above, some of these reasons are bound to be founded upon one's religious convictions. Stout has no problem with those having such convictions to speak out of and to vote on the basis of those religious convictions. He does acknowledge that such reasoning in a liberal democracy will usually have little effect and that the citizen who chooses to do so needs to be aware that, due to a pluralism of beliefs, many other citizens will not be persuaded by such arguments. Religious citizens should not nor cannot presuppose shared theological convictions in a pluralistic liberal society. But they are under no moral or rational obligation to refrain themselves from making such appeals.

While Meilaender praises Stout for raising questions that need to be addressed and for his defense of appeals to religious reasons in the public arena, he has serious

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<sup>396</sup> Ibid., 246. There is a lot packed into this comment that I cannot address with any justice at this juncture, including Stout's concept of contextual justification and his answer to the charge that this leads to ethical relativism.

<sup>397</sup> Ibid., 6

concerns over some of the proposed answers to the questions raised. In a review article entitled "Talking Democracy,"<sup>398</sup> he offers a number of criticisms against Stout's conception of democracy which Meilaender characterizes generally as "an American democratic tradition for which Emerson and Whitman are central and for which a 'self-reliant piety,' though acknowledging dependence on the sources of our existence, asserts that 'it is our own responsibility to imagine' these sources and then 'to fashion lives worthy of our best imaginings.'"<sup>399</sup> Many of his criticisms are minor and will not concern us. However, he raises three serious criticisms that are worth exploring.

His first criticism is generated by an epigraph Stout places at the beginning of his book from John Dewey: "Democracy is a form of government only because it is a form of moral and spiritual association."<sup>400</sup> Meilaender comments, "This sentence might warn believers to be cautious about embracing the defense offered. For to view democracy as a spiritual association may begin to raise questions about where our ultimate loyalties ought to lie."<sup>401</sup> While it is possible that Meilaender may be reading more into this epigraph than intended, as in fact Stout claims in his response,<sup>402</sup> there is good reason to believe that he may have a point here. Recall Stout's comment in *Ethics after Babel* that "no sphere can rightly occupy the position of be-all-and-end-all in our lives." Meilaender is apprehensive that, while religion is being allowed a voice in the public square, it is at the price of subservience to democracy. Stout writes, "Great urgency attaches to the general project of cultivating identifications that transcend ethnicity, race and

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<sup>398</sup> Gilbert Meilaender, "Talking Democracy," *First Things*, No. 142, April 2004.

<sup>399</sup> *Ibid.*, 25.

<sup>400</sup> *Ibid.* The quote is from John Dewey, "The Ethics of Democracy" (1895) and is quoted in Stout, *Democracy*, viii.

<sup>401</sup> Meilaender, "Talking," 25.

<sup>402</sup> Jeffrey Stout, "What's Beyond Politics?," *First Things*, No. 148, December, 2004, 9.

religion.”<sup>403</sup> Meilaender finds this troubling and asks, “Identifications that *transcend* one’s religious identity?” When Stout comments that all Stanley Hauerwas and Richard John Neuhaus seem to agree on is that they are both Christians, Meilaender responds:

But is that not the point? Precisely in so identifying themselves they make clear that their primary loyalty is to the “moral and spiritual association” that is the Church . . . If this primary loyalty must be relinquished in order to argue for democracy, the price is too high.<sup>404</sup>

Meilaender asks, “With friends like these, who needs enemies?” He sees Stout as welcoming religion into the public square but only in a tame and docile form; just one idea among many. If it attempts to assert itself, it is viewed as strident or uncivil. Such is the result of democracy as understood as a “spiritual association.” Meilaender asks, “Will the acceptance of public religious speech come with the suggestion that religion lay aside its ultimate claim upon our loyalty and identity?”<sup>405</sup>

This criticism should not surprise anyone familiar with Meilaender’s political vision as we laid it out in the last chapter. Meilaender does not want a politics of “spiritual and moral” association. That is not a limited politics. Stout is getting too close to the fraternal community that Meilaender rejected. Meilaender himself wants to steer a middle path between the perceived strident rejection of Hauerwas and the Rawlsian rejection of religion. Unlike Stout’s Emersonian middle path, Meilaender chooses an Augustinian route: one that recognizes the problems of liberal democracy, such as a lack of true piety and the constant danger of excessive individualism, and yet can still embrace democracy as a “way station” on the journey towards our final destination. It would not be unfair to characterize Meilaender’s vision as follows: Emersonians inflate the

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<sup>403</sup> Quoted in Meilaender, “Talking,” 27. Meilaender did not reference any of his quotations from Stout.

<sup>404</sup> Ibid.

<sup>405</sup> Ibid.

importance of democracy, traditionalists reject democracy, and Meilaender deflates the importance of democracy. It has its place, but it is just one sphere of life. He writes,

These sorts of Augustinians and Stout's kind of Emersonian might well reach a limited *political* (not *ethical*) consensus - though this seems less likely, I have to say, if the Emersonians really view democratic government as a form of spiritual association that ought to transcend all other sources (including religious ones) of our identity. I don't think any Augustinian could affirm that.<sup>406</sup>

A second criticism Meilaender raises is that Stout's narrative of the rise of secular discourse is simplistic, and therefore, misleading. He is not saying that the account given by Stout is wrong, but, as he writes, "A more complicated narrative would lead to a story with a rather different plotline from Stout's."<sup>407</sup> Meilaender agrees with Stout that part of the reason public discourse in the West turned secular was due to conflicts between different factions (including religious wars) and the fading of ecclesiastical authority. However he believes Stout ignores other important factors in his account. For example, Meilaender argues that the "personal liberty" that is so much a part of the democratic tradition had its beginnings in the Church. Rather than an "Emersonian self-reliant piety," Meilaender claims that the rise of political freedom is mostly a story of the limiting of political power achieved through devices such as the separation of powers, through the development of commerce and institutions of civil society separate from the state, and through the continued independence of the Church. This is what made citizens able to participate in the give and take of democratic life.<sup>408</sup> Meilaender faults Stout's narrative as narrowly focused on just "the image of conversation" and "self-trusting *individuals*." Meilaender claims a more accurate telling of the story needs to take into

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<sup>406</sup> Ibid., 28

<sup>407</sup> Ibid., 26.

<sup>408</sup> Ibid.

account the "mediating *institutions* of civil society in which we may locate the social origins of the self."<sup>409</sup>

Meilaender's third major criticism has to do with Stout's concept of democratic discourse as the heart of democracy. How should argument within a democracy take place? Stout is not against appeals to authority, but holds that all appeals must be subject to the give and take of democratic argument. However, if authority does not justify an argument, what does? Stout's answer is found in his concept of contextual justification. Citizens make arguments that are justified from within the context of their own noetic systems. This means that different citizens may hold substantially different positions on a particular moral issue and yet both be completely justified in their belief. Meilaender comments, "There is no assured way of resolving their differences, no agreed upon starting point by which to adjudicate them and no authority to settle them."<sup>410</sup> According to Meilaender, the only thing Stout offers is further conversation in which we continue to hold each other accountable to offer reasons in support of the claims we make. We resolve moral problems by talking about them and if we can't find a resolution we just keep talking.

Meilaender sees a number of problems with this conception. First, he argues that Stout does not take into account the power of adjudication possessed by government institutions like the courts and regulatory agencies. They often have the power to shut down the talking. Second, there is the inevitable problem of moral relativism that seems to follow from such an individualistic contextual justification. Stout argues that this does

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<sup>409</sup> Ibid. emphasis mine.

<sup>410</sup> Ibid., 28.

not necessarily follow: contextual justification does not necessarily imply contextualization of the truth. Epistemology is one thing, ontology is another. It is perfectly rational to hold that while two persons can be justified holding two logically incompatible views, there could still be one true view which either one may or may not hold but both cannot. Meilaender has no problems with Stout's account of justification and truth. However Stout's adoption of an "ethics without metaphysics" (the title of one of his chapters) causes Meilaender to wonder how long we can sustain an ethic that refuses to move beyond just talking. Meilaender writes, "A philosophy designed chiefly to sustain an ongoing political discussion may not always engage the questions of greatest human significance. It may leave us as permanent residents in Plato's cave, talking together of shadows on the wall of the cave."<sup>411</sup>

Not that Meilaender has any problems with talking. In our last chapter we saw that Meilaender himself encourages conversation among citizens of differing views as a way to understand each other and to cooperate on political endeavors like forming public policy. Meilaender believes that *politics* without metaphysics may be possible, but doubts an *ethics* without metaphysics will be satisfying or that it will ultimately be able to sustain a democracy. Good politics and good ethics are not the same thing. Meilaender is worth quoting at length:

In declining to pursue very far questions about how the moral law finally judges us, in contenting himself with declaring that the existence of conflicting communities of competent judges is less a philosophical puzzle than a practical question, he loses some of the depth of our moral experience. The picture in which he delights - of a 'loosely structured democratic conversation in which variously situated selves tell their own stories on their own terms' - may perhaps portray adequately a politics in which nothing is ever finally settled, but it is

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<sup>411</sup> Ibid., 29.

inadequate for describing a moral world in which sound judgment requires more than being true to oneself, and in which cultural and religious traditions are more than resources for personal self-cultivation.<sup>412</sup>

How are we to evaluate Meilaender's criticisms of Stout? In general I think he has made some good points. However there is more of value in Stout's argument than Meilaender gives him credit for. For one thing, Stout has successfully mollified many of the fears of traditionalists. First, he makes an excellent case for the fact that democracy is a tradition. If by a tradition we mean a set of social customs incorporating norms, virtues and values that is passed down from one generation to another, then it seems to me that democracy falls under that definition, at least American democracy does. Americans have strong views affirming values like freedom to pursue activities and goals, fair play in dealing with others, and the duty to protect the innocent. Stout is right that not all Americans always live up to these values, but such values are part of the concept of American democracy. I also agree that many of these norms and values are implicit in our behavior and often are explicitly expressed only when we reflect on them. I disagree with Stout that all of them are implicit. I think Wolterstorff has it right when he says that many of our most important norms "were brought to birth not by the activity of making explicit the implicit but by the imagination of visionaries."<sup>413</sup>

However, Meilaender has a point about Stout's conception of democracy as primarily a "moral and spiritual association." His criticism is that it's not so much that Stout elevates democracy up to the level of religion as that he reduces religion to the level of democracy. All spheres are on the same level. Coming from a religious perspective,

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<sup>412</sup> Ibid.

<sup>413</sup> Nicholas Wolterstorff, "Jeffrey Stout on Democracy and Its Contemporary Christian Critics," *Journal of Religious Ethics*, Vol. 33 No. 4, 2005. 636.



one can argue that the reason we value those particular ideals listed above is because they reflect something significant and true beyond democracy. It can be argued that those values are logically prior to democracy and hence are the reason we find democracy attractive. Were democracy to vanish from the earth and no one were to actually be practicing those ideals, they would still arguably possess value.

Stout also makes a good case that just because democratic discourse is secular, it is not committed to a philosophy of secularism. Meilaender is probably right that secularism does dominate much public policy decision making (recent Supreme Court decisions sometimes seem to reflect that). However, this is not primarily the fault of democracy in and of itself.<sup>414</sup> I also agree with Stout that a Rawlsian democracy, where religion is marginalized or completely abandoned in the public arena, is ineffective and not reasonable and should be rejected. But more importantly, I think Stout is right that Rawls's version of public discourse has never really been incorporated in the democracy currently practiced and likely never will be. It is unreasonable to ask people to marginalize what is most important to them. Even Rawls has a hard time justifying the King and Lincoln speeches. I applaud Stout's openness to religious reasons in the public square. In this sense, contra Meilaender, he is more friend than foe. Wolterstorff is right when he says the reason religious voices are not more prevalent in the public square is not so much because they have been marginalized. "It's because the religious person discovers that, in our religiously and irreligious pluralistic society, if one is to be persuasive one has to find arguments whose appeal goes beyond one's coreligionists."<sup>415</sup>

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<sup>414</sup> Though I do not deny that democracy has perhaps contributed somewhat to the rise of secularism.

<sup>415</sup> Ibid., 637.

There are some problems with Stout's position and some of Meilaender's criticisms hit their mark. I think Meilaender's case for a limited politics and politics of limited expectations, discussed in the last chapter, rings true. From that perspective, it does seem to me that Stout tries to make more of democracy than is warranted. While he denies that he is trying to raise democracy to the level of religion<sup>416</sup> it is the opposite case that often comes across in his writings: he ends up lowering religion down to the level of politics. For Stout, it's just one sphere among many. Though Stout denies the criticism some have made that religion has only instrumental value for him, it's hard to come away from his book without that feeling.

Meilaender's criticism concerning Stout's narrative of the rise of secular discourse was a bit strong and off the mark. From my reading, Stout was not trying to make a full-blown case for the rise of secular society. He was rather trying to show how secular discourse replaced religious discourse. His narrative is reasonable and rings true for the most part.

Finally I think Meilaender's final criticism finds its mark. If one attempts to establish an "ethics without metaphysics" as Stout does, one is forced to ask: "To what shall we appeal to adjudicate our moral conflicts?" Stout's only answer seems to be, "We just talk it out." Conversation seems to be all he offers. This may work for politics where we usually end the talking by compromise or voting. But ethics needs something more than just talking. How long democracy can be sustained by just talk is an important question. Stout himself addresses this at the very end of his book. He relates a question raised by Jean Bethke Elshtain, "How long before the stream runs dry?" Stout explains,

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<sup>416</sup> Stout, "What's Beyond Politics," 9.

"The stream, I take it, is a metaphor for the sources of ethical and religious virtue that sustain our democracy. Her worry was that citizens of democracies are in the process of losing virtues needed for having a democracy at all. It is only a matter of time, she feared, before the stream runs dry."<sup>417</sup> Unfortunately Stout doesn't really answer the question. He simply says that "The stream is in us and of us when we engage in our democratic practices."<sup>418</sup> By "practices" Stout is again referring to democratic discourse. However, one wonders if conversation alone is enough to keep the streams running very long or very deep in a democracy. It may be that some of the traditional critics have a point when they claim that modern democracy is surviving on a residual morality from an earlier period when morality and religion, or something very much like it, were more closely aligned.

### **Meilaender and Eberle**

In our first chapter we considered the arguments of Christopher Eberle. Eberle examined the "respect objection" often raised by justificatory liberals and concluded that one is not exhibiting disrespect by appealing to religious reasons alone in supporting or opposing a particular public policy. However, Eberle also said that a citizen *is* exhibiting disrespect if she does not at least attempt to pursue a "public reason" that one's fellow citizens can understand. Therefore, when citizens are deciding to implement coercive laws on other citizens, respect for those citizens demands that those who are deciding reflectively consider what they are doing and arrive at rational reasons for doing so.

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<sup>417</sup> Stout, *Democracy*, 308.

<sup>418</sup> *Ibid.*

According to Eberle these do not necessarily have to be public reasons, but we should at least pursue reasons that our fellow citizens can understand, even if they might disagree. However, if we do not find reasons they can follow, as long as we have attempted a public justification and as long as the reasons we hold are rational in the sense we explicated above, we have shown respect to our fellow citizens. Eberle writes: "A citizen discharges his obligation to respect his compatriots by articulating his best reasons for a favored coercive law, where his best reasons constitute a sufficiently high degree of rational justification for the claim that that law was morally appropriate."<sup>419</sup>

As we saw in that discussion, this became the basis for Eberle's *ideal of conscientious engagement*. This ideal is made up of six criteria for judging if and when a citizen is respectful of her fellow citizens when it comes to the reasons she privately holds and publicly offers for supporting or opposing a coercive public policy. They also form a reasonable standard with which to judge Meilaender's position and activity. The criteria are:

- (1) She will pursue a high degree of rational justification for the claim that a favored coercive policy is morally appropriate.
- (2) She will withhold support from a given coercive policy if she can't acquire a sufficiently high degree of rational justification for the claim that that policy is morally appropriate.
- (3) She will attempt to communicate to her compatriots her reasons for coercing them.
- (4) She will pursue public justification for her favored coercive policies.
- (5) She will listen to her compatriots' evaluation of her reasons for her favored coercive policies with the intention of learning from them about the moral (im)propriety of those policies.
- (6) She will not support any policy on the basis of a rationale that denies the dignity of her compatriots.<sup>420</sup>

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<sup>419</sup> Christopher J. Eberle, *Religious Conviction in Liberal Politics* (Cambridge: Cambridge University Press, 2002), 98.

<sup>420</sup> Ibid., 104-105

In this section, I will use each of these criteria to evaluate Meilaender to see how well he holds up under each of them.

The first criterion is: "She will pursue a high degree of rational justification for the claim that a favored coercive policy is morally appropriate." In order to understand this criterion we need to briefly review Eberle's concept of rational justification. A person is rationally justified in holding a belief when two elements come together: (1) she has arrived at the belief through a rational means (appropriate use of the laws of rational inference, a proper examination and perusal of the best available evidence, etc.), and (2) the belief is in accord with the person's evidential set which is "the fund of beliefs and experiences he assumes to be true or reliable."<sup>421</sup> Because evidential sets can vary from person to person, a rational justification is highly perspectival or, as Stout would say, contextual. This is why it is perfectly reasonable for person A to disagree with person B about a belief, C, and still acknowledge that B is rational in his belief about C. Affirming that a belief is rationally justified is different from affirming the belief is true. Rationality has to do with what we reasonably *believe* to be true, not whether a belief is *actually true* or not. Eberle also distinguishes between a belief being rationally justified and being able to justify that belief to others. The state of being justified is different from the activity of justifying to others. It is certainly possible for a person to be justified in holding a belief and not be able to provide reasons that others would find convincing.<sup>422</sup> That is why it is perfectly reasonable to hold that one might find an argument to be rational, but not compelling. This criterion of the ideal of conscientious engagement is

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<sup>421</sup> Ibid., 61.

<sup>422</sup> Eberle is not claiming that just because a person bases their belief on an accepted evidential set, that the belief is now rational in an objective sense, for it is possible that an evidential set could contain false beliefs. He is merely claiming that it is rational to that person.

not saying that a person must be able to rationally justify her belief concerning the moral appropriateness of a coercive law to others; it just must be rationally justified to the person herself.

The evidence is solid that Meilaender meets this criterion. In his discussions of bioethics he always takes great care in detailing his reasons for the beliefs that he is supporting. When one examines those reasons they meet Eberle's two requirements: they were arrived at through a rational means and they accord with Meilaender's evidential set, which in his case would be his Christian worldview. For example, when he discusses genetic therapy, Meilaender argues there are a number of positive benefits to somatic cell therapy and the dangers and risks are minimal (assuming the ethical research protocols are maintained). However, he is leery of germ line therapy and of attempts towards enhancements. Therefore he stresses that we should proceed with extreme caution. The reasons he offers are that we may be trying to extend our limits into future generations with little real knowledge of what the outcomes of such therapy might be. We simply cannot know at this time the consequences of actions that may not show themselves for generations.<sup>423</sup> Meilaender says that our finiteness should humble us. Concerning enhancement, Meilaender argues that the tension felt between our finite abilities and our desire to transcend those abilities is so great that it is often difficult to draw a hard and fast line between therapy and enhancement. He argues that we should be wary of enhancement as it can lead to marginalizing and discriminating against others who do not match up to what some believe human beings should be.

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<sup>423</sup> Meilaender has not suddenly become a consequentialist. His appeal to consequences here shows that he recognizes the part they play in moral reflection. But they are not the basis for determining that germ line therapy is right or wrong.

Meilaender arrives at these arguments by rational means. He considers the evidence seriously and draws reasonable inferences. He does not make alarming or inflammatory predictions nor does he use rhetorical or loaded language. There are no obvious fallacies in his discussion. Those who know Meilaender can see how he derives his argument from his Christian worldview and yet he formulates it in a way that those outside of that worldview can easily follow his reasoning. As we saw in Chapter Two, he speaks of the tension between our freedom and finiteness. It is this tension that drives us to desire to know more, but limits us in what we are allowed to do in attempting to fulfill that desire. Meilaender believes tension is caused first by the fact that we are created by God as both transcendent and yet finite beings. The second cause of this tension comes out of the fact that, as Christians, we are both sinners and saints. Meilaender says we will never resolve this tension this side of heaven and must learn to live within it in faithfulness to God.

Awareness of Meilaender's worldview and the reasons he offers makes the rational justification of his position on germ line therapy and enhancement apparent. In fact one would be surprised if he were to arrive at any other conclusion. This does not mean that he is right, that his belief is true, that his argument is compelling, or that one cannot offer counter arguments against his position. However, none of these counts against the fact that he is rationally justified in claiming what he does about germ line therapy and enhancement. This is just one example, but it is typical of Meilaender's writings. He easily fulfills the first of Eberle's criterion.

Eberle's second criterion states, "She will withhold support from a given coercive policy if she can't acquire a sufficiently high degree of rational justification for the claim

that that policy is morally appropriate." This criterion is a corollary of the first one. It basically says that if one cannot arrive at any rational justifications for a particular view concerning a coercive public policy, one should refrain from supporting it. So then, one might ask, what should one do? Eberle would say first, one should try to find a rational justification for one's position. Perhaps one needs to reflect longer or harder on the question at hand, and/or should research, read or listen to reasons others offer on the question. By becoming better informed one may be more prepared to render a rationally justified judgment concerning the question. However, if one cannot then Eberle says she should do nothing. That means she neither supports nor opposes the coercive law. She simply refrains from voting on it. It would be a sign of disrespect to other citizens if one were to take a position on a law that would coerce other citizens, limit their freedoms and act on it through voting if one did not have a rational reason for doing so.

What about intuitions or feelings? Should they be given some weight? Possibly, if we were to broaden the meaning of rational justification to include intuitions in an externalist sense, they might be considered part of what is meant by "rational."<sup>424</sup> Eberle certainly seems to allow for other kinds of justification when he discusses Alston's Christian Mystical Practice. The point of this second criterion is that one should not support or oppose a coercive public policy if one has insufficient reasons however one might interpret that.

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<sup>424</sup> It is not my purpose to enter into the epistemological debate between internalism and externalism at this juncture. Briefly, an externalist could argue that one might have warrant to hold a belief even if one cannot or does not have access to reasons for holding that belief. Hence it would be "reasonable" (a term usually preferred by externalists over "rational") to hold that belief. Internalism holds that one must have access to the reasons for one's beliefs and must be aware of them in order to rationally justify that belief.



Does Meilaender fulfill this criterion? Because this is stated as a negative criterion - about what a person will *not* do - it is more difficult to demonstrate. Like most writers, Meilaender writes mostly about what he *can* support or oppose, but rarely discusses those issues he can't support or oppose because he has insufficient evidence. If he has insufficient evidence one way or the other, he usually, and wisely, says nothing. However, we can provide some evidence that would give us strong reasons to believe that Meilaender fulfills this criterion.

First, given all the presumptive evidence, especially in light of what we said under the first criterion, we have every reason to believe that Meilaender fulfills this criterion. The burden of proof would have to be on the critic to find some evidence where. Meilaender has supported a coercive policy without having a rational justification for doing so. Having read almost everything he has written, I have found nothing to lead to that belief. In fact it would be highly out of character for him to do so. He often might have an initial reaction in favor or against a particular policy. But given what we know of him, it is highly dubious that he would actually support or oppose a coercive policy without thoroughly investigating and reflecting on the moral implications.

Second, Meilaender often exhibits epistemic humility in those areas where he does not have all the facts or is unsure of certain elements concerning an issue. He demonstrates this in a number of ways. For example, he has changed his view when new evidence comes to light. In the "Abortion" chapter of the first edition of his book *Bioethics: A Primer for Christians*, published in 1996, he wrote the following concerning fixing the point of the beginning of a new individual: "There are good reasons to hesitate [in holding that a new individual came to be at conception], reasons why we might fix the

beginning of individual human life slightly later than conception."<sup>425</sup> His major reason for withholding his view that individual human beings begin at conception was the "twinning argument":

For the first fourteen days after fertilization, the individuality of the developing entity is not firmly established. Up to that point the developing blastocyst can "segment" - that is, "twinning" can occur if the one blastocyst divides into two (or more) of the same genotype. Therefore it is difficult to argue that an individual human being exists prior to that point.<sup>426</sup>

By the time he wrote the second edition of his book his view had changed. By then he believed that enough evidence was available to counter the twinning argument and more strongly affirm that conception is an appropriate point to claim that a new individual comes into being: "After fertilization it is hard to find any other equally decisive break in the process of development."<sup>427</sup> He explains the twinning argument but then goes on to say, "This argument seems less persuasive to me than it once did - in part because its philosophical ground is doubtful, and in part because its basis in our knowledge of embryological development has become increasingly shaky."<sup>428</sup> He then takes the next couple of paragraphs to provide the philosophical and scientific evidence to support his view. It demonstrates great epistemic humility to admit in print that you believe you were wrong concerning a position you once held.

Meilaender also exhibits epistemic humility when he compromises on an issue because there is not enough evidence to hold a particular position too strongly.

Meilaender refers to this when he discusses some compromises he made in some of the

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<sup>425</sup> Gilbert Meilaender, *Bioethics: A Primer for Christians* (Grand Rapids: Wm. B. Eerdmans Co., 1996), 30.

<sup>426</sup> *Ibid.*, 31.

<sup>427</sup> Gilbert Meilaender, *Bioethics: A Primer for Christians* (Grand Rapids: Wm B. Eerdmans Co., 2005), 29.

<sup>428</sup> *Ibid.*

PCB decisions. For example, he refers to a recommendation in the 2004 report of the committee on reproductive technologies entitled *Reproduction and Responsibility: The Regulation of Biotechnologies*. One of the legislative recommendations made by that council was to "Prohibit the use of human embryos in research beyond a designated stage in their development (between 10 and 14 days after fertilization)."<sup>429</sup> Meilaender comments that agreeing to this recommendation was a bit of a compromise for him and some other conservatives on the council. They would rather prohibit research on embryos at any stage of their development. Meilaender's justification for compromising here was to stop at least some research from being done. But he also compromised because of what the report did not specifically state - that it was *endorsing* embryonic research before the 10-14 day limit.<sup>430</sup> In other words, because it was silent on this issue, Meilaender did not have enough epistemic justification to vote against the regulation and that gave him an opportunity to find a compromise. The fact that Meilaender exhibits such willingness to compromise on appropriate occasions means we are *prima facie* justified in saying that Meilaender meets Eberle's second condition.

To grasp the importance of Eberle's third criterion, "She will attempt to communicate to her compatriots her reasons for coercing them," we need to review his concept of what it means to respect a person. Eberle states that "a citizen respects his compatriots as persons only if he accords due moral weight to the fact that they are persons, which in turn requires this fact to make a moral difference to the way he acts."<sup>431</sup>

<sup>429</sup> President's Council on Bioethics, *Reproduction and Responsibility: The Regulation of Biotechnologies* (Washington, DC, 2004), 223.

<sup>430</sup> In fact the report specifically states: "This recommendation should not be construed as silently endorsing (or opposing) embryo research at earlier stages." Ibid.

<sup>431</sup> Eberle, 86.

For Eberle this involves two aspects. The first is recognizing that persons care about things; things *matter* to them. For Eberle it is this "mattering" that citizens need to take into account as they consider coercive laws. A person has a set of concerns and commitments that can be either fulfilled or frustrated by coercive laws. Hence those laws matter. However, mattering by itself is not enough. The other aspect is recognizing that citizens can "reflect" about what matters to them. A person "can form 'higher-level' desires, beliefs, cares and concerns about his lower-level desires, beliefs, cares and concerns."<sup>432</sup> Taken together, Eberle refers to these aspects as reflective mattering and they form the basis for his concept of respect.

Eberle's third criterion is necessary specifically to fulfill the second aspect of respecting a person. Eberle argues that if one fulfilled the first two criteria and had a rational justification for one's support of or opposition to a coercive law; she would be fulfilling the first aspect of respect. She would be showing that she recognized that this law matters to some citizens and, because it matters, she needs to have a rational justification for her support or opposition. However, if she never communicated it to her compatriots she would be failing to fulfill the second aspect by not allowing her fellow citizens to reflect upon her reasons and either be convinced of them or to produce counter arguments against them. Hence communication of one's reasons to one's fellow citizens is a necessary criterion in showing respect to them.

There is no reason to belabor this criterion as its fulfillment is apparent simply by noting the sheer magnitude of Meilaender's writings. It is not just quantity that Meilaender offers, but the quality of his writing shows that he meets this criterion as well.

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<sup>432</sup> Ibid.

He is a model of an effective writer. He writes with clarity and presents his arguments in a well-ordered structure so that the cogent reasoning is apparent. He also takes into account the audience to whom he is communicating. Meilaender is aware of the kinds of reasons that are most effective in making his case and tailors his argument to the particular group he is addressing.

The discussion about reproductive technologies in Chapter Three is a good example of his tailoring. When he was addressing a largely secular audience in critiquing Robertson's position, he appealed to reasons that would likely persuade a secular audience: Robertson's lack of conceptual clarity concerning the meaning, scope and importance of reproductive liberty; his underdeveloped and poorly defended moderately pro-choice abortion argument; and his inadequate consideration of deeper issues involved in the meaning of human procreation.<sup>433</sup> When he discusses the same issues with a primarily Christian audience he appeals to reasons that they would identify with: the juxtaposition of the terms "procreation" and "reproduction" is clearly explained in relation to the religious phrase "begotten, not made" and God's work of creation; in discussing the importance of the marriage bond in procreation, he more fully relates it to the bond between the Father and the Son. The point is that Meilaender is an accomplished writer who masterfully explains and argues his position and thus fulfills Eberle's third criterion. He shows that he not only recognizes that these things matter to others, but by carefully and clearly presenting his arguments he recognizes the ability of

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<sup>433</sup> I argued in that chapter that, while these are reasons that a secular audience would find persuasive, it does not mean that Meilaender sees them as "purely" secular.

his audience to reflect on his arguments. Hence he shows them respect, even and especially when he disagrees with them.

Not only does Meilaender communicate his reasons with others, he holds that this is the heart of respecting others. When asked about what it means to show respect to another, he replied:

Well it certainly doesn't mean to conceal from them whatever reasons are most important to you. I would say it means to be willing to engage in discussion and even argument with them and in so doing to do your best to take their argument seriously while being honest with them about why the other argument does not persuade you. What else could it mean other than that?<sup>434</sup>

Eberle's fourth criterion of the ideal of conscientious engagement states, "She will pursue public justification for her favored coercive policies." There are a couple of items within this criterion we need to clarify before we can evaluate Meilaender in regards to it. First, what does Eberle mean by "public justification" here? Recall that Eberle developed two conceptions of public justification: a populist conception and an epistemic conception. In the end, Eberle concluded that neither conception was adequate to support the justificatory liberal's doctrine of restraint. However, this doesn't mean that neither of these conceptions is unworkable in all respects. Eberle believes that the populist conception can be employed as a way of demonstrating respect. Eberle defines a populist conception loosely as "one according to which a rationale counts as a public justification just in case the members of the public find that rationale convincing given their actual epistemic conditions."<sup>435</sup> A populist conception of public justification is one which a particular audience would affirm as rational though not necessarily compelling. Eberle

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<sup>434</sup> Personal interview, 7/25/07.

<sup>435</sup> Eberle, 198.

makes clear it need not be one that the arguer even finds convincing, it just needs to be rational to her audience.

We also need to clarify the specific obligation involved in this criterion. In order to respect one's citizens this criterion states that one must *pursue* a public justification, but it does not state that one must actually find one. Earlier we saw that Eberle distinguished two distinct principles usually conflated by the justificatory liberal:

*The principle of pursuit:* a citizen should pursue public justification for his favored coercive laws.

*The doctrine of restraint:* a citizen should not support any coercive law for which he lacks a public justification.<sup>436</sup>

Eberle denied the second of these, but affirmed that the first is necessary in showing respect to one's citizens. Because coercive public policies matter to citizens who can reflect about them, one is respectful when he attempts to locate reasons citizens would embrace as being rational. However, one is not being disrespectful if one sincerely attempts to locate reasons citizens would affirm as rational and fails to find any. As long as one sincerely attempts to locate a public justification, one is fulfilling this criterion.

In evaluating Meilaender in regards to this criterion, we should note that he would probably take issue with the term "public justification." One might remember that he wasn't sure if categories like "public reasons" and "religious reasons" were accurate and very helpful. He would be more comfortable with thinking in terms of moral "commonalities" derived from his two-tiered conception of Christian ethics. His idea is that from within the Christian faith we should expect to find a shared moral understanding on a variety of matters and issues. He says, "There are going to be some

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<sup>436</sup> Eberle, 68

things that won't be shared, but many of the basic moral questions that come up any time human beings need to cooperate and live together in society flow out of the created nature that we share; you don't have to be a Christian to see that, so it seems to me there is bound to be that overlap."<sup>437</sup> Because of this, Meilaender thinks that one should, if one can, seek reasons that others can affirm as rational. This is also strategically wise. If one's goal is to persuade others of the truth of a position, one is not going to get very far if she appeals to reasons they cannot affirm as rational. He comments:

In a lot of circumstances I don't always try to drop some religious insight. Partly because I expect that we'll have some common shared ground and I may just be able to recognize that. Partly because, there is no reason to try to deliberately lose arguments. If I know that making a specific religious argument here is just counter-productive, why would I do that? If I think I can persuade you with an argument that seems less religious and not likely to persuade you with one that is, well, I am interested in persuading you and I'll do that. So, it's not as if I am constantly looking for ways to make religious arguments.<sup>438</sup>

Meilaender often appeals to commonly shared moral reasons his audience would affirm as rational in making his arguments. For example, in discussing the abortion issue he might appeal to a specific religious appeal such as "The life of the child in the womb is God's creation, and that child is part of the world Christ came to redeem."<sup>439</sup> This reason would be rational, in the sense Eberle takes, not only to Meilaender, but would also be "publicly rational" to those Christians he is specifically addressing in this passage. However, there are numerous examples where he also appeals to a broader public audience including those outside of the Christian community by using reasons that they would affirm as rational, such as: "We learned a lot in the course of history about slavery in this country and one of the things we learned is that it's dangerous to make distinctions

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<sup>437</sup> Personal interview, 7/25/07.

<sup>438</sup> Personal interview, 7/25/07.

<sup>439</sup> Meilaender, *Bioethics*, 2nd ed., 35.



about human status on the basis of capacities, power, appearance, or anything like that."<sup>440</sup>

Not all will find Meilaender's arguments compelling or convincing. However, the criterion is that Meilaender should seek reasons that his audience can affirm as rational, not to find reasons that they would find compelling.

The criterion also states that all one must do to show respect is to pursue reasons one's audience would affirm as rational; one does not have to successfully persuade them. Meilaender recognizes that there may be times when one simply cannot find a secular reason to support a particular position. This is part of the tension of being a citizen in two kingdoms. At times Christians may, in faithfulness to God, have to affirm a moral principle of which they cannot find a reason that a broader audience outside the Christian community would affirm as rational. An example might be the question of same-sex marriages.<sup>441</sup> One might not be able to formulate an argument apart from Christian convictions against legalizing same-sex marriages. At those times Christians should explain their reasons as best they can and listen to the arguments of others. In the end, if they are unconvinced by the arguments they have heard, they are free to hold the view they do and vote accordingly. For Eberle, this is acceptable as long as one attempted to locate a reason that one's audience would affirm as rational.

In sum, we can affirm that, while Meilaender might be uncomfortable with the language of "public justification," he would agree that respect entails that one should sincerely attempt to provide reasons for one's view on a coercive public policy that one's

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<sup>440</sup> Personal interview, 7/25/07.

<sup>441</sup> This is the issues that Eberle uses in his opening narrative.

audience would affirm as rational. In this relevant and broader sense, he fulfills the fourth criterion.

The fifth criterion of the ideal of conscientious engagement states: "She will listen to her compatriots' evaluation of her reasons for her favored coercive policies with the intention of learning from them about the moral (im)propriety of those policies." Eberle states that true respect for one's fellow citizens means not only that one will arrive at a rational justification for one's beliefs and that one will attempt to provide them with reasons they can affirm as rational, but it also implies a "willingness that requires her to subject her political commitments to her compatriots' scrutiny and to change her commitments if given sufficient reason to do so."<sup>442</sup> This criterion is demonstrative of the virtue of epistemic humility often referred to as *fallibilism*. One is a fallibilist if one is open to the possibility that one could be wrong about a particular belief. While there is a whole continuum of variants of fallibilism, in general we can designate two categories of fallibilists: strong and weak. A strong fallibilist is someone who believes it is impossible or almost impossible to hold any belief with any kind of epistemic certainty and therefore every belief must be held only tentatively at best. One must be completely open to being wrong. Radical skeptics would constitute an example of strong fallibilism.

Weak fallibilism would hold that if one's beliefs were rationally justifiable (in the sense in which Eberle delineates) in the absence of defeaters one is justified in holding to those beliefs with some amount of epistemic confidence. The amount of confidence would vary in accordance to the quantity and quality of evidence and the likelihood of encountering defeaters. One would remain open to new information that would discount

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<sup>442</sup> Eberle, 102.

one's belief, but in the absence of defeaters or the likelihood of defeaters one is justified in maintaining that belief and taking a firm stand on it. So, for example, I have a current belief that I am sitting at my desk listening to Copland's "Rodeo" while typing on my computer. I arrived at this belief rationally by being aware of certain sense impressions. There are no defeaters present, i.e. I have no reason to believe that my senses are unreliable (for example, I have not been taking mind-altering drugs). So I have a high degree of epistemic confidence that my beliefs about my current situation are true. This doesn't mean it is *impossible* for me to be wrong, but I have no reason to consider such a possibility a live option. Hence I am a weak fallibilist in this case in which I nevertheless hold strong convictions.

Eberle does not draw a distinction between strong and weak fallibilism in his discussion of the fifth criterion, but every indication leads one to believe he is advocating a weak fallibilist position.<sup>443</sup> A weak fallibilist will be open to listening to others. When it comes to moral and political concerns, an epistemically humble person will recognize two facts: (1) there are a plurality of incompatible moral beliefs many of which can be rationally justified, and (2) the quantity and quality of evidence is often unsettled and debatable on many of these questions. This does not mean that one cannot take a firm stand on a particular moral or political issue, but it does mean that one must maintain a certain amount of openness in at least a weak fallibilist sense. This involves listening to others, considering their arguments and adopting a willingness to change one's mind should the evidence persuade one to do so.

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<sup>443</sup> Eberle writes, "I interpret the scope of this fallibility requirement narrowly . . . . A citizen's obligation to respect her compatriots does *not* commit her to fallibilism regarding all of her convictions."

There are a number of places where we can point to Meilaender appearing to fulfill this criterion. In the quote above Meilaender states that respect "means to be willing to engage in discussion and even argument with them and in so doing *to do your best to take their argument seriously*." This is an aspect of Meilaender's whole approach to conflicts within a democracy: the idea of conversation. Recall in the last chapter Meilaender's conception of a political community as "an association of those with common interests, in need of shared standards of civility, but eschewing any common public search for the good life."<sup>444</sup> These "common interests" and "shared standards of civility" are maintained and promoted within the political community through public conversation which involves the respectful sharing of views with others in a genuine attempt to understand them better and to help them understand our views.

Meilaender also fulfills this criterion in his recognition and appreciation of the contributions of others to his reflections on particular issues including those with whom he often disagrees. For example, when William F. May left the PCB, Meilaender commented on his indebtedness to May "whom I consider a mentor and whose presence on the council I will miss."<sup>445</sup> Yet May and Meilaender certainly did not always agree - as their individual statements at the end of *Human Cloning and Human Dignity* make clear. Another example of Meilaender's willingness to "listen to his compatriots' evaluation of his reasons" can be found in a written symposium in which he participated in the March 2001 issue of the *Journal of Religious Ethics*. The topic of the symposium concerned the view of Augustine on food and sex and consisted of an original article by

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<sup>444</sup> Meilaender, "The Limits of Politics," 102.

<sup>445</sup> Gilbert Meilaender, "The Politics of Bioethics: In Defense of the Kass Council," *The Weekly Standard*, Vol. 9 No. 30 (April 12, 2004), 11.

Meilaender followed by a series of three responses<sup>446</sup> and concluding with a rejoinder from Meilaender addressed to the respondents. When one reads through the rejoinder one can note Meilaender's willingness to listen to and dialogue with each of the respondents in a respectful manner. In the process he acknowledges areas of disagreements, defends his own position and also acknowledges areas where he could be wrong and where his responders may be more correct. Throughout the rejoinder he is respectful and grateful of both the substantive comments of his responders as well as the manner in which they wrote. More than once he comments about the politeness of his respondents. A final example of his indebtedness to others is Meilaender's often-made comments in the footnotes of his articles and book chapters thanking others for their contributions to the ideas presented in the book. All of this shows Meilaender's willingness to put his ideas out there for others to critique and his openness to learn from what others have to say.

Eberle's final criterion, "She will not support any policy on the basis of a rationale that denies the dignity of her compatriots," may seem at face value to be obvious, but is perhaps the most problematic criterion. Exactly what does Eberle mean by "dignity" here? The idea of dignity commonly recurs in ethical discourse, especially bioethical discourse. One often hears of "death with dignity" or how a certain procedure or policy "protects the dignity of the patient." But rarely do those who appeal to the concept define or clarify what they mean by it. They usually just assume we all know what it means. This is not just a problem on the popular level, but even academics and experts do not explain their meaning of the term. Hence James Childress comments on the PCB

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<sup>446</sup> Respondents included Lisa Cahill, Charles Mathewes and Elie Spitz.

report on human cloning, "The report takes great pains to define and specify various concepts, but it leaves the concept of human dignity strangely undeveloped."<sup>447</sup>

Eberle himself writes only one paragraph to explain this criterion and even he is not clear as to what exactly he means. At one point he refers to denying someone's dignity as "denying their personhood," and uses the example of a Nazi who thinks of a Jewish person as "bacilli" and treats him as such. This would be denying his personhood and hence a denial of his dignity. However, at the end of the same paragraph he states, "A responsible citizen in a liberal democracy will refuse to support a coercive law on the basis of any claim that denies the *personhood and dignity* of his compatriots, no matter how he arrives at those claims."<sup>448</sup> This statement seems to imply a relationship of dignity to personhood, but seems also to imply that they are separable and one can deny one without denying the other.

It is not my purpose to enter into a lengthy treatise on the meaning of human dignity this late into an already long dissertation. However, Meilaender has recently done some exploration into the concept of dignity and noting some of his thoughts might be helpful at this juncture.

Meilaender notes that there are two ways we use the term 'dignity': in a comparative and in a non-comparative sense. In the non-comparative sense, we think of dignity as an "ethic of equality" - valuing all human beings in light of their common humanity. This is what we mean we talk about treating each individual person equally and it is what the Declaration of Independence affirms when it says that all men "are

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<sup>447</sup> James Childress, "Human Cloning and Human Dignity: The Report of the President's Bioethics Council," *Hastings Center Report*, Vol. 33, No. 3 (May-June, 2003), 16.

<sup>448</sup> Eberle, 104.

created equal." This phrase is obviously not true when it comes to a non-comparative sense, for we are not equal in merit or abilities. However, we are equal in humanity. The comparative sense of dignity is used in terms of an "ethic of quality"- valuing life when it embodies certain humanly fitting characteristics. We are employing dignity in this sense when we think of attributes or actions that contribute to or detract from our dignity. We might speak of some actions as "undignified" or to incur a "loss of dignity." For example, some believe that the presence of certain debilitations or diseases involve a loss of dignity. Usually these involve a certain amount of loss of control, a key aspect of dignity for many persons. Many fear the onset of Alzheimer's disease because they fear they will lose their dignity. Meilaender recognizes that both of these conceptions of dignity are appropriate at some time and in some situations. The question is how do we relate them together and use them simultaneously? He states,

If we assert that every human has dignity, someone is certain to ask from us an account of what it is about human beings that gives them this dignity. And of almost every characteristic or property which we might point it is likely that some human beings may lack it or lose it, or that some human beings may have it in more developed or more excellent ways (and, hence, may seem more worthy or more deserving of our respect).<sup>449</sup>

Meilaender suggests that the best way to relate these two accounts is to allow the comparative notion of dignity to be shaped and transformed by the non-comparative notion. He notes that, while there are legitimate times to think of dignity in the comparative sense (as in an undignified act as being sub-human), there is something offensive involved in the non-comparative sense. It is too aristocratic and elitist a way to depict human dignity. Hence "we have learned to let the comparative notion of dignity

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<sup>449</sup> Gilbert Meilaender, "Human Dignity and Public Bioethics," *The New Atlantis*, Vol. 17 (June, 2007), 37.

be transformed when brought into contact with the non-comparative and egalitarian [notion]."<sup>450</sup> If the non-comparative notion of dignity as equality is to dominate the comparative notion, one naturally wonders what grounds this notion. Meilaender believes it is very difficult to ground human dignity in the non-comparative sense outside of a religious context. It is the fact that we are made in God's image that supplies our dignity and that we are all "equidistant" from God that makes us equal. Meilaender recognizes the problems this religious grounding produces:

Here, then, is our problem, from which we cannot long continue to avert our gaze: Our society is committed to equal human dignity, and our history is in large part a long attempt to work out the meaning of that commitment. Christians and Jews have an account of persons - as equidistant from God and of equal worth before God - that grounds and makes sense of this commitment we share. A society that rejects their account but wishes to retain the commitment faces, then, a serious crisis in the structure of its beliefs. And often we can do little more than posit an equality about which we are, otherwise, largely mute; for the truth is, as Oliver O'Donovan has assertively put it, that this belief "is, and can only be, a theological assertion." We are equal to each other, whatever our distinctions in excellence of various sorts, precisely because none of us is the "maker" of another of us. We have all received our life - equally - as a gift from the Creator.<sup>451</sup>

One may comment that this is all well and good, but the question remains as to what exactly do we mean by the term 'dignity'? Meilaender suggests that perhaps it is best to conceptualize the term as functioning primarily as a "placeholder," that is, as a term that stands in the place of "larger understandings or background beliefs not easily articulated in shorthand ways."<sup>452</sup> Briefly, Meilaender says that the term captures those properties that place human beings directly between beasts on the one hand and God on the other. "The human being is a sort of 'in-between' creature. Not quite a beast. Not quite a God. Hence, to flourish as the human species, to manifest human dignity, is to live

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<sup>450</sup> Ibid., 40.

<sup>451</sup> Ibid., 41-42.

<sup>452</sup> Ibid., 45.



within certain limits - as creatures whose life is an integrated whole of body, mind, will and spirit."<sup>453</sup> This resonates well with Eberle's identification of human dignity as being closely associated to human personhood. Therefore, to deny one's dignity is in some sense to deny one's personhood. Meilaender would just want to ensure that we think of a human person as an *embodied* human being. If Eberle means that, and I think he would agree with that, then Meilaender is in complete accord with the last of Eberle's criteria.

We can conclude that Meilaender meets all the criteria of Eberle's concept of the ideal of conscientious engagement and, therefore, according to these criteria at least, that he demonstrates respect to his fellow citizens even when he appeals to exclusively religious reasons.

### Conclusion

In this chapter I evaluated Meilaender's conception of religion and public policy by placing him in dialogue with two other thinkers. Both of these writers addressed a the question about religious reasons and public policy or approached the question from a different angle. This afforded us the opportunity to evaluate Meilaender from a variety of diverse perspectives.

In contrasting Meilaender with Jeffrey Stout, I arrived at the conclusion, opposite of Meilaender, that when it comes at least to the use of religious reasons in supporting or opposing public policy, he is certainly more friend than foe for Christians. His criticisms of Rawlsian liberalism are welcome, as is his identification of many of the problems with the new traditionalists. While I agree with him that democracy is a culture

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<sup>453</sup> Ibid., 46.

with its own set of virtues and values, I stand in agreement with Meilaender that Christians must be careful that Stout may be expecting more of democracy than it can ultimately offer. Perhaps what Augustine said of Sallust might be said of Stout: he praises Rome too highly because he has no other city to praise.

I then evaluated Meilaender in light of Eberle's "ideal of conscientious engagement." I discussed each of Eberle's six criteria for determining respect for one's fellow citizens and provided evidence to show that Meilaender meets each criterion. He pursues a rational justification in Eberle's sense by following acceptable principles of reasoning in accord with his evidential set. No evidence has been presented that he supports a coercive policy that he cannot rationally justify, and in fact all the evidence suggests the contrary. He is a model of what it means to communicate with his compatriots his reasons for holding his views. While he would eschew the term "public justification," he would hold that one should seek to locate reasons that one's audience would affirm are rational. He demonstrates a willingness to listen to and learn from his compatriots and exhibits epistemic humility in making claims and receiving criticism. Lastly, he accepts a concept of dignity that accords with Eberle's and upholds the principle that no public policy should deny any man his dignity.

## Epilogue

At a recent televised Democratic presidential debate the Reverend Reggie Longcrier, pastor of the Exodus Mission and Outreach Church in Hickory, North Carolina, asked Senator John Edwards about his opposition to gay marriage based on his religious views. "Most Americans agree that it was wrong and unconstitutional to use religion to justify slavery, segregation, and denying women the right to vote. So why is it still acceptable to use religion to deny gay Americans their full and equal rights?" Edwards's answer was very interesting. He said, "I think Reverend Longcrier asks a very important question, whether it is fundamentally - whether it's right for any of our faith beliefs to be imposed on the American people when we're President of the United States. I do not believe that is right." The moderator pressed Edwards, asking, "Why is it okay to quote religious beliefs when talking about why you don't support something?" And Edwards continued, "It's not. I mean, I've been asked a personal question which is, I think, what Reverend Longcrier is raising, and that personal question is, do I believe and do I personally support gay marriage? The honest answer is that I don't. But I think it is absolutely wrong, as President of the United States, for me to have used that faith as a basis for denying anybody their rights, and I will not do that when I'm President of the United States."<sup>454</sup>

My purpose in relating the above account is to address a significant point. I am aware that there are some who believe that this debate over the use of religious reasons in

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<sup>454</sup> CNN.com, "CNN/YouTube Democratic Presidential Debate Transcript," <http://www.cnn.com/2007/POLITICS/07/23/debate.transcript/index.html>.

supporting or opposing public policies is, for the most part, over. For example, Charles Mathewes states in the Introduction of his new book, "This book builds upon previous debates on religion's role in public life, but does not contribute to it. It assumes that those debates have by and large ended, and that what we may call the accommodationists won, and the 'public reason' advocates lost."<sup>455</sup> While it may be true that on an academic level this debate may have peaked and is now on a decline, it is still a live issue on the political and popular level, as the above account shows. The fact is that many citizens strongly believe that religion and politics should not mix, that there is an impenetrable "wall" of separation between church and state, and that, in a Rawlsian or Rortian fashion, one should not appeal to one's personal religious convictions when it comes to coercive public policies.

The purpose of this dissertation has been to examine one response to this debate. Meilaender offers a vision of a limited political state, one of deflated expectations but not devoid of all references to religion. He attempts to steer between the two extremes of the night-watchman state, which aims for a lowest-common-denominator morality, and the fraternal state, which seeks to blend politics and ethics in an attempt to relieve the tension between individuals and community by forcing a common good. Meilaender's conception of the political state is an association of those with common interests, in need of shared standards of civility, but eschewing any common search for the good life. Its primary purpose is to provide an environment to foster private, social bonds between citizens - families, friends, communities, and congregations. A limited state is not one

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<sup>455</sup> Charles Mathewes, *A Theology of Public Life* (Cambridge: Cambridge University Press, 2007), 3. I am grateful to Dr. Mathewes for an advance copy of his work.

stripped of appeals to religion. In fact, Meilaender argues that it would be difficult to conceive of any code of civic righteousness that can successfully be sealed off from religious convictions. Many values of modern liberal democracy have religious concepts embedded within them. Religious beliefs often influence our conceptions of justice and our commitments to human equality as we saw in Meilaender's discussion about human dignity in the last chapter.

Within Meilaender's political vision, conversation - the respectful sharing of views with others in a genuine attempt to understand them and to acquire their understanding - is encouraged among all citizens. Such conversation may often appeal to religious reasons as justifications for one's beliefs about coercive public policies. Meilaender holds that all religious (and non-religious) perspectives should be part of the on-going public conversation in all of their particularities. For Meilaender, this includes not only citizens, but legislators and executives. In the end everyone has the right and the responsibility to both justify their position on the basis of reasons they find rational and to vote on public policy in accordance with whatever view they think is correct. In all but the rarest occasions, all agree to acquiesce to the decision of the majority.

Meilaender recognizes that within his vision there will be conflicts and tension. However, he believes as long as citizens are respectful in their disagreements, no serious threat to social stability exists. While we strive to work together in society, for believers the tension will never completely disappear. The tension is the consequence of being citizens of two kingdoms with divided loyalties and therefore we must learn to live within it.

Harkening back to this dissertation's initial agenda, there are two questions which I need to address at this juncture. First, is Meilaender's political vision consistent with his conception of Christian ethics? Second, is Meilaender's vision workable? Can one hold his position while maintaining respect for one's fellow citizens?

The answer to the first of these questions is a strong yes. Not only is Meilaender's political vision consistent with his conception of Christian ethics, but it actually grows out of it. In analyzing Meilaender's overall conception of Christian ethics, I located two themes that unified the basic elements of that conception: tension and limits. The aspect of tension in Christian ethics was due primarily to two factors: the conflict within our *created natures* as finite yet transcendent, and the conflict between our *redeemed state* as simultaneously sinners and saints. Meilaender affirms that this tension is a normal and necessary aspect of the Christian life and something we cannot fully resolve this side of eternity. This tension affects every area of the Christian life, but is most strongly felt when we consider Christian moral development. The other theme - limits - is the recognition that as finite and fallen creatures we are by nature limited in what we can do and what we should do. The greatest temptation we face is to attempt to live and act beyond the limits God has placed upon us as creatures and as Christians. Even love and doing good has its limits. These two themes are closely related: it is because of the temptation to act beyond our limits that we often encounter much tension in the moral life.

These two themes are also primary in Meilaender's political vision. His vision is of a limited political state: one that is limited in what it can do and what it should do. The political state often confronts the temptation to act beyond its limits: to offer more

than it can or should offer; to try to be more than just "an association of those with common interests." Because the modern political state is pluralistic, a loose association of communities with differing concepts of the good life, there will inevitably be conflict and tension. Most times we will work through this tension through compromise and voting. However, while we try to work together, complete resolution of the tension will never occur. As in his conception of Christian ethics, Meilaender affirms that here too we must learn to live through the tension.

Another aspect of Meilaender's conception of Christian ethics that affects his political vision is his idea of the two-tiered ethic. While Meilaender conceives of Christian ethics as primarily singular, qualified and limited by the narrative of scripture and of Christian tradition, there is a part of Christian ethics that is general in that it seeks and expects to find common ground and universal elements with those who are not members of the Christian community. It is this idea that there is much common ground between Christians and non-Christians that makes the conversation element of Meilaender's political vision work. We can respectfully dialogue on topics that are important to human life and its fulfillment because we share many basic ideas of the good life in common. While we do not share everything in common and there are some distinctive differences that cause conflict and tension, we can use those areas we do have in common to keep the conversation going.

These two aspects of Meilaender's conception of Christian ethics demonstrate that his political theory is intimately connected to that conception and coherently flows from it.

My second question was whether Meilaender's vision is workable? By that I mean, can one hold his position while maintaining respect for one's fellow citizens? The answer to this question depends on one's conception of respect and what it means to be respectful towards one's fellow citizens. Some, such as Richard Rorty, have argued that to raise religion in public at all is a sign of disrespect. It is in "bad taste" as it "stops the conversation." Others, like Reverend Longcrier above, believe it is disrespectful for public officials (and perhaps even ordinary citizens) to make decisions about coercive policies on the basis of personal religious convictions. Many injustices in the past, such as slavery and racism, have been justified by appeals to religion.<sup>456</sup> Many people merely assume that the oft' quoted phrase, "separation of church and state," implies that religion should be completely excluded from all discussions of public policies. To raise it is offensive. Such a conception of respect is too restrictive and therefore we need a more reasonable conception of respect by which to evaluate Meilaender.

To that end I offered Christopher Eberle's "ideal of conscientious engagement" as a standard for measuring respect as it seems reasonable and is well defended. There is no question that Meilaender meets that standard. However, what of the other standards raised, such as by Rawls and Audi? Meilaender does not meet those standards. Both of them argue that one may raise religious reasons, but respect for one's fellow citizens requires an appeal to at least one public reason accessible to all. Such views seem extremely problematic. A full account as to why would require another dissertation. I will raise three general objections and defer to Eberle's and Stout's excellent critiques for

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<sup>456</sup> I personally do not know how much weight should be granted to such arguments. As has been noted elsewhere in this dissertation, there are many who have argued against slavery and racism on the basis of religious convictions. One rarely hears others appeal to these examples in the popular debate.



a more detailed assessment. First, Rawls and Audi do not take seriously the hallmark of freedom of religion and freedom of expression that is at the heart of the modern liberal democracy. They deny these freedoms to religious believers who hold as part of their religious beliefs their obligation to speak out and vote on the basis of those beliefs. Second, I agree with Meilaender's criticism that while religious believers are informed that they should restrain themselves from appealing to their religious beliefs, others regularly appeal to their own personal comprehensive doctrines with little objection. In fact, it is Rawls and Audi whose conceptions are unworkable. It is difficult to believe that most people (if any) are going to shelve their comprehensive doctrines when it comes to supporting or opposing coercive public policies, especially controversial ones. Third, withholding one's real reasons for supporting or opposing a public policy hinders rather than benefits the spirit of the modern liberal democracy. I honor my fellow citizens by sharing my reasons with them in a respectful manner, when I listen to their reasons, when I explain why I am or am not convinced by their arguments, and finally when we agree to disagree on these issues. That is what the ideal of modern democracy is about.

Will this work? Most times yes, maybe sometimes not. There will still be conflict and tension. That will not disappear. Some citizens may allow their passion and zeal to overrule their better natures, a point which holds for both religious and non-religious individuals. But the fact that we can recognize this speaks volumes about what we understand about respect. We don't all have to agree with the reasons given or the outcome of the vote to respect one another.

Some might still object, "But what about all of these intractable moral problems? Will they ever be resolved?" I would be misrepresenting Meilaender if I gave the

impression that he has no interest or hope in resolving many of the perennial issues that plague public policy debates. He would not be working on the President's Council if he did not believe that real progress can be made. He is anything but completely pessimistic. However, he believes it is often necessary to deflate people's expectations in finding a "political" solution to many of these issues. The problems often go deeper than politics; they go to the heart of what it means to be a human being. These are moral and religious questions and will require moral and religious answers. Within a pluralistic society, it is likely we will often not come to an agreement on the answers. In the modern liberal democracy we usually come to a type of decision through voting, and then acquiescing to the majority, or find some places where we can compromise with those with whom we disagree. However, even after voting or compromising we are deluded if we think the issue is at last resolved. The discussion and debate still goes on. It would be unrealistic to assume, for example, if P54 were passed and abortion were suddenly made illegal in Virginia except in extremely rare cases, that abortion-rights proponents would suddenly cease to advocate for their view. Some issues will simply not just go away, involving as they do fundamental conflicts of commitments. And so we will have to continue to live within the tension.

In offering his political vision, Meilaender has primarily been arguing against justificatory liberals like Rawls and Audi who attempt to resolve the tension by simply removing religion from the public square (or at least marginalizing and deflating its influence). However, Meilaender's political vision also has something important to say to another group that might be considered the opposite of justificatory liberals. I am referring to those usually referred to as the religious right.

The phrase "religious right" has been used to designate a loose group of religious conservatives that have been politically active and growing since the early 1980s. The group is generally made up of Protestant fundamentalist and evangelical Christians as well as many conservative Catholics. Without caricaturing them, one can affirm that the mission of the religious right has been to return America to its "Judeo/Christian" heritage from which they firmly believe it has departed. They do this through aggressive political activity such as: speaking out on moral and political issues, campaigning against "liberal" policies and candidates for public office and for "conservative" alternatives, and promoting ballots and laws that fit with their overall mission. They have become a very powerful force in American politics.

I believe Meilaender's political vision provides an important corrective to the excesses of the religious right. In the end, the religious right fails to grasp the concept of a limited politics and a politics of limited expectations. Instead they strive to achieve an extreme version of the fraternal state and closely mix politics and ethics. While advocating a separation of church and state on one hand, they often promote the state's enforcement of Judeo/Christian moral values on the other. The problem is not that those on the religious right support conservative positions on public policies. The problem is that they often lose sight of the fact that, as believers, they are citizens of two kingdoms and this world is not their ultimate destination. Some, perhaps many, of those on the religious right seem to believe that the main function of the church today is to save America and transform it into a Christian state. They have an inflated view of politics. Adopting Meilaender's political vision of the limited but not denuded state would correct much of the extreme thinking among those in the religious right.

Meilaender is not advocating a withdrawal from political activity. He is not un-American or unpatriotic. To the contrary he would encourage civic duty among Christians and would echo those who say we love society best when we love God most. He harbors nothing against liberal democracy as long as one has a balanced view of its place. It is one sphere of our lives, but only one. Our commitments to personal bonds like family, friends, church and community all get priority over the state in Meilaender's vision. He deflates our view of the political and by doing so tempers our view of political activity and political expectations. He would not deny that there are many aspects of American life where he would like to see change and he encourages Christians to be involved politically in voting for and supporting public policies that correlate with their views as Christians. However, Christians always need to be guided by the ideal that this is not our ultimate home. We are pilgrims passing through.

Both justificatory liberalism and the religious right are attempts to resolve the tension that Meilaender claims cannot be completely resolved. While justificatory liberals attempt to resolve the tension by removing religion from the public square, the religious right attempts to resolve the tension by saving America and morally transforming it into a something akin to a Christian state.

Adopting Meilaender's political vision frees Christians from the tyranny of thinking it is their mission to "fix" America. That is not now, nor has ever been, the mission of the church. The mission of the church is to be a light on the path that leads to God and a love for those who need to experience the love of Christ. That mission can be fulfilled no matter what political state is in charge. This does not mean that we will not

encounter tension, but the task of the church is to be faithful to God while living through the tension.

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