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COLLABORATIVE JUSTICE: AN ANALYSIS OF THE USE OF “JUSTICE” IN THE
WRITINGS OF LISA SOWLE CAHILL

A Dissertation

Submitted to the McAnulty College and Graduate School of Liberal Arts

Duquesne University

In partial fulfillment of the requirements for
the degree of Doctor of Philosophy

By

Dennis Feltwell

May 2013

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Dennis Feltwell

2013

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WRITINGS OF LISA SOWLE CAHILL

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ABSTRACT

COLLABORATIVE JUSTICE: AN ANALYSIS OF THE USE OF “JUSTICE” IN THE WRITINGS OF LISA SOWLE CAHILL

By

Dennis Feltwell

May 2013

Dissertation supervised by Elizabeth A. Cochran, Ph.D.

This dissertation explores the role of justice in the writings of Catholic ethicist Lisa Sowle Cahill. Since 1990, Cahill has supported theological voices participating in the public forum, which she describes as a meeting ground for diverse intellectual and religious traditions. Good argumentation is necessary but not sufficient to resolve ethical dilemmas within the politically liberal context in which Cahill makes her claims. Instead, her commitment to justice underwrites those narratives and practices which demand one’s fullest possible participation in contributing toward the common good. Cahill’s notion of justice develops correlatively to the degree that she integrates the principles of Catholic Social Teaching into her project. The dissertation describes this expansion in Cahill’s later essays as “collaborative justice.” The dissertation concludes with an examination of her writings on human genetic engineering as a potential application of

collaborative justice. Cahill's strong arguments can be helpful in steering the process toward less-harmful outcomes. In doing so, Cahill's principles of collaborative justice look beyond act-focused considerations of Catholic ethics or the procedural justice of liberal traditions, and leaves open the possibility of reconciliation should such future genetic intervention prove undesirable.

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INTRODUCTION

The American Jesuit ethicist James Keenan recently wrote that the nature of contemporary Catholic moral theology is constantly shifting. These transformations refer to moral theology's methodologies, interlocutors, and even purposes.¹ What remains constant is the church's search to conform itself to the call of Christ. This pursuit also presents a challenge: to dialogue with those outside of the tradition in a way that is at once faithful to itself and intelligible to others. On the one hand, if Catholicism's public voice employs an exclusively theological vocabulary, then we end up speaking largely to ourselves. While this strategy might bolster the church's internal workings, especially its institutional agenda, it becomes difficult to evangelize the world in a manner that honors Jesus Christ's Great Commission to his disciples (Matt 28: 16-20 – *NRSV*). On the other hand, if the church surrenders too much of its foundational symbols and guiding practices, then it can be asked: what is distinctively "Catholic" about the Catholic voice in the public forum?

Since the Second Vatican Council (hereafter Vatican II), the Catholic Church has sounded a clarion call: Christians *must* engage the world. Since then, it has not offered detailed solutions to specific problems in the world, but instead has insisted on basic

¹ James F. Keenan, *A History of Moral Theology in the Twentieth Century: From Confessing Sins to Liberating Consciences* (New York: Continuum, 2010), 5.

human dignity and the concomitant rights that follow from it.² This human rights approach has evolved as part of the century-old tradition of Catholic Social Teaching (hereafter CST). Over the years, CST has aimed toward the goal of “social justice,” which describes an ideal condition where human dignity is found in every corner of the world.³ While recent papal social encyclicals have become increasingly grounded in Sacred Scripture, they have also retained their roots in the natural law, which is knowable in principle to all reasonable persons. As such, it is always possible in a pluralistic society to improve the conditions of justice, though as believers we work in hope of its perfection in the future, when the Kingdom of God becomes fully realized.

Located within the context of this diverse engagement, this dissertation will study the usage and meaning of the term “justice” in the writings of Roman Catholic ethicist Lisa Sowle Cahill, who is one prominent and influential voice in the aforementioned public moral discourse. Over a venerable career that has spanned five decades, her notion of justice has developed in direct correlation to her integration of the Catholic social tradition into her scholarly work. Sometimes, Cahill refers to “justice” as a personal virtue (i.e., giving persons their due). One can find this characterization of justice especially at the early part of her scholarship. At other points, she employs the word as an overarching philosophical principle, often (but not always or consistently) implying egalitarianism. Still other times, justice refers to an increasing participatory role in public life and larger society, especially for the marginalized. In undertaking this study, it is necessary to examine Cahill’s work in light of the two distinct intellectual traditions from

² Second Vatican Council, *Gaudium et Spes* (December 7, 1965), paragraph 41.

³ Pius XI, *Quadragesimo Anno* (May 15, 1931), 57-58.

which she writes: the Roman Catholic moral tradition and contemporary American philosophical context.

While elucidating an understanding of “justice” from Cahill’s writings is the ultimate aim of this dissertation, I am also interested in how her conception of “justice” might be applied to a reasoned public debate about bioethics, and especially about human genetic enhancement at the germline level. It may seem strange to discuss an essentially futuristic mode of enhancement, but I am prepared to argue that now is the ideal time to undertake such a discussion. This claim is partly due to the church’s expressed desire to remain relevant in the public forum. For over two decades, Cahill has argued – convincingly, I think – in support of theological voices to assert their right to participate in public moral debate. Her claims about public policy discourse, coupled with her writings on what constitutes justice, offers Christian voices (and others that speak from theological contexts) an opportunity to earn leading roles in future conversations about this technological possibility -- or inevitability, as some have argued.⁴ Thus, this dissertation explores the concept of justice in Cahill’s work with a special focus on her bioethical writings. This dissertation’s epilogue describes Cahill’s negative assessment of germline enhancement and engineering as a direct function of her focus upon justice, which is a hallmark of her later writings.

The impetus driving this study is that justice is a fundamental concept when approaching bioethical questions in theological and philosophical contexts alike. The

⁴ William Gardner, "Can Human Genetic Enhancement Be Prohibited?" *The Journal of Medicine and Philosophy* 20, no. 1 (February 1995): 65-84. See also Francis Fukuyama, *Our Posthuman Future: Consequences of the Biotechnology Revolution* (Baltimore: Johns Hopkins Press, 2002), especially 72-102; and Françoise Baylis and Jason Scott Robert, "The Inevitability of Genetic Enhancement Technologies," *Bioethics* 18, no.1 (2004), 1-27.

development of new forms of technology raises familiar questions which are ultimately rooted in justice: What does this do for humanity? What does this do *to* our humanity? What does this do for *me*, and at what cost? Can it even be regulated? Such questions affect all interested persons, who bring diverse intellectual, philosophical and religious claims to discussions about contemporary technological developments. In other words, it is a public moral issue. Although many nations regulate these new technologies through strict legal guidelines, it is feasible that willing would-be parents, reproductive clinicians, and research scientists can easily circumvent the law by pursuing experimental interventions in a nation where reproductive technology is less well-regulated.⁵ I contend that Cahill, a prolific and influential scholar, offers a fresh perspective in helping to resolve such bioethical dilemmas. While affirming her commitment to Christian tradition, Cahill develops a compelling argument to give theological voices a role in public debate over bioethical issues.⁶

My thesis is that it is not so much Cahill's strong philosophical and theological argumentation, which is necessary but not sufficient in her pluralist and democratic context. Instead, it is her firm commitment to justice that undergirds her calls for participation. This appeal to justice is also foundational to her negative, at times even

⁵ The inevitability of human genetic enhancement and of its potential consequences is argued forcefully by Gardner, 65-84, as well as Baylis and Robert, 1-27.

⁶ See Lisa Sowle Cahill, "Genetics, Theology, and the Common Good," in *Genetics, Theology Ethics: An Interdisciplinary Conversation*, ed. Lisa Sowle Cahill (New York: Crossroad, 2005), 117-136; "Genetics, Ethics, and Feminist Theology: Some Recent Directions," *Journal of Feminist Studies in Religion* 18, no. 2 (Fall 2002), 53-77; (Ed.), "Theology and Bioethics: Should Religious Traditions Have a Public Voice?" *The Journal of Medicine and Philosophy* 17, no. 3 (June 1992), 263-272; and "Can Theology Have a Role in 'Public' Bioethical Discourse?" *Hastings Center Report* 20, no. 4 (July-August 1990), 10-14.

harsh, moral assessment of germline enhancement.⁷ Another interesting facet of Cahill's project is the development from a particular theological standpoint (personalist ethics in a North American Roman Catholic context, with a tendency toward a feminist perspective) to the aforementioned participatory, social mode, which achieves a global perspective in her most recent writings.⁸ In this transnational context, Cahill grounds her bioethical arguments upon an explicit commitment to the Catholic Church's social justice tradition.⁹ In her later scholarship, Cahill insists that justice is required from and afforded to each and every member of society, and its scope includes social structures like church and secular governance, political and social organizations, and policymaking entities. Moreover, her conception of justice requires constraints on activities to the degree that they concentrate social power into privileged, stratified classes of persons. In Cahill's account, justice empowers everyone – individually and collectively – to contribute to and participate in the pursuit of the common good. In Chapter Four, I refer to this methodological development in Cahill's later work as "collaborative justice."

In examining Cahill's views of justice, I situate her writings in relation to two contemporary conversations which are important for her context. At the theological margin, I focus primarily on Roman Catholic theologians writing after the Second Vatican Council. On the philosophical edge, I emphasize select ethicists writing since the 1970s, when Cahill's writings first appear in publications. Within both boundary lines, I

⁷ Cahill, "Germline Genetics, Human Nature, and Social Ethics," in *Design and Destiny: Jewish and Christian Perspectives on Human Germline Modification*, ed. Ronald Cole-Turner (Cambridge: The MIT Press, 2008), 157; and *Theological Bioethics* (Washington, DC: Georgetown University Press, 2005), 235-239.

⁸ Cahill, *Theological Bioethics*, 81-85. See also *Bioethics and the Common Good* (Milwaukee: Marquette University Press, 2004), 41-50.

⁹ Cahill, *Bioethics and the Common Good* (Milwaukee: Marquette University Press, 2004), 41-50. see also "Germline Genetics," 145-166.

focus on women and men who are writing primarily to audiences in North America, with extensive (though not exclusive) emphases on bioethics. As I will demonstrate, Cahill dialogues with scholars in both fields, and these limits are necessary to examine her understanding of justice.

Chapter One begins with a brief exploration of the philosophical and theological influences on Cahill's work at various points in her career. In order to describe the expansion of Cahill's perspective on justice as precisely as possible, I divide her essays into two general periods: earlier and later. "Earlier" refers to her work before 1990, and "later" signifies those essays after 1990. In the latter part of the chapter, I analyze Cahill's argument in favor of theological voices participating in the public forum. The chapter concludes with a summary of Cahill's guiding principles which allow such voices to facilitate intelligibility to others while remaining faithful to the tradition.

Chapters Two and Three provide a general discussion of six contemporary accounts of justice in order to locate Cahill's notion of justice within the streams of philosophical and theological scholarship. Chapter Two explores three philosophical perspectives from John Rawls, Alasdair MacIntyre, and Michael Walzer. Rawls and Walzer represent two strains of American liberal thought, which attempts to construct a society of free individuals who can pursue their own life plans. By contrast, MacIntyre's perspective is more communitarian in scope and presupposes a narrative tradition, which requires that its members fulfill a prior social role in the pursuit of their individual life goals. Not only are these three thinkers influential within their fields, but they also have borne some degree of influence on Cahill's work. While several points of similarity can be made with each account of justice, Cahill's notion of human dignity sometimes

demands that liberal notions of liberty and choice be set aside for the sake of the common good. I should clarify here at the outset that Cahill does not insist that social justice ought to come at the expense of individual choice. Rather, it is ideal that individual choices of privileged persons should not come at the expense of individual choices of the poor and others at risk for marginalization. At the same time, her insistence on vigorous participation from all in the larger political community attempts to avoid the danger of social marginalization of religious voices.

Chapter Three analyzes three significant views of justice from the Catholic tradition. One comes from the Catholic hierarchy since Vatican II. Here, I consider select conciliar documents and later papal encyclicals, especially those from John Paul II and Benedict XVI. I also explore the American pastoral letter *Economic Justice for All*, which attempts to define “basic justice” in the particular context of the late twentieth century United States. Next, I examine the work of two American representatives of the contemporary Catholic virtue tradition: Jean Porter and James Keenan. Considered separately, these two scholars offer contrasting accounts of virtue insofar as they differ on the degree to which the Christian tradition from which they argue can be expressed intelligibly to others. Taken together, though, both demonstrate that the virtue tradition is eminently communal in its roots and deeply relational in its anthropology. Third, I look to the specific realm of Catholic bioethics, where Cahill has written extensively throughout her career. In this part, I investigate the writings of Thomas Shannon and Margaret Farley, who have also collaborated with Cahill in various works. Shannon and Farley also point out the unique challenges of achieving justice in the distribution of scarce healthcare resources.

Chapter Four turns to an extended analysis of Cahill's writings that ultimately synthesize into her later conception of collaborative justice. I divide her work chronologically into three sections in order to trace several developments in her expression of justice. The first covers her earliest writings, spanning from 1976 until 1990, where her work focuses on the deconstruction of Roman Catholic personalist ethics. The second describes a "transitional" period in Cahill's scholarship from 1991 through 1996. Not only does she fully endorse Catholic participation in public discourse during this time, but she also undertakes a new integration with Catholic social thought. The final section explores what I have called Cahill's notion of "collaborative justice." It is built upon a worldview that entails global interdependence and a responsibility toward society's marginalized populations, especially women.

The dissertation concludes by way of an epilogue that considers future bioethical applications of Cahill's understanding of justice. Collaborative justice is particularly relevant to genetic intervention, and challenges the liberal context which privileges autonomous choice above all other considerations. Because of the possibility of exploitation and further stratification of society according to wealth and privilege, Cahill is consistently inclined toward a strongly negative appraisal of human germline enhancement. If human germline enhancement is inevitably on the horizon, it seems that Cahill's strong claims regarding its contingent wrongness can be diffused by procedural or other applications of justice. But the cooperative, networked practices, which are inherent in Cahill's later notion of justice, look further than the immediate questions of whether and how to proceed with the act of genetic manipulation. In fact, if enhancement is a foregone conclusion, then Cahill's conception of justice might function even more

strongly in steering that process toward a less harmful outcome, and in caring for those affected by such interventions.

CHAPTER 1

LISA SOWLE CAHILL AND PUBLIC MORAL DISCOURSE

This first chapter serves three purposes which will ground the analyses of Cahill's work on justice in Chapter Four. First, it is necessary to explore some of the major theological and philosophical influences upon Cahill's work in order to appreciate her scholarship against the broad backdrop of Catholic theology in particular and Christian ethics in general. Second, since her essays attempt to address urgent social and ethical concerns to others both inside and outside of her faith community, it is important to analyze her significant contribution in support of theological voices participating in the public sphere. In her later writings, she makes an explicit case to identify justice with such participation. Third, and as a corollary to the first two, Cahill brings certain values, many of which are drawn from Catholic Social Teaching, into the kind of public discourse that she envisions. Therefore, it is vital toward this dissertation's aims to outline these values, as they underwrite her conceptions of justice, of contemporary society, and of moral theology and especially bioethics, all of which will be addressed in the remaining chapters.

The research here is presented in two major sections. The first part briefly highlights a few of the many individual philosophers and theologians whose work has significantly informed Cahill's essays at various points in her scholarship. It also summarizes Catholic Social Teaching, which is a distinct element that has created an indelible impact upon her later work. Catholic Social Teaching offers relevant anthropological principles based on human dignity and the common good, which Cahill firmly endorses and applies, especially in her later essays. Various illustrative examples

are provided in this section, especially as Catholic Social Teaching relates to her views on justice.

Next, for over two decades, Cahill has argued in favor of theological voices participating in public discussion regarding significant moral issues and has offered solid warrants for this participation. The second part analyzes the premises of her arguments and finds them compelling. However, as this part of the chapter also demonstrates, difficulties arise for religious thinkers with regard to their ability to articulate a positive argument in a public forum while attempting to maintain the integrity of the theological foundations behind that argument. Cahill offers three clarifying principles to resolve this problem. Finally, the second section concludes with an analysis of some of the major philosophical and theological issues at stake for participants in public moral discourse. At the same time, this section will elucidate a few essential values of the Catholic standpoint from which Cahill argues. Not only do her writings indicate a strong commitment to the anthropological principles of Catholic Social Teaching, but they also exhibit a critical cognizance of the liberal, democratic values within the socio-political context from which she contributes to this discourse. Also, she occasionally uses the terms “values” and “virtues” seemingly interchangeably. This feature of her work raises a few questions, particularly regarding the value/virtue of justice, which will need to be worked out in Chapter Four.

Philosophical and Theological Influences in Cahill’s Work

This first chapter section presents some of the thinkers and ideas who have influenced Cahill over the span of her writing career. It is laid out in two parts. The first

part simply highlights some of the individual philosophers who have exerted significant influence in her essays. However, the second parts describe in greater detail Cahill's most important theological foundation: Catholic Social Teaching (hereafter CST) and its affirmation of human dignity, human sociality, and the common good. Part two of this section outlines CST's contours, and describes precisely how they influence Cahill's work, especially in bioethics. CST is an essential element to Cahill's context, and her deepening appreciation of it over time becomes apparent through a chronological reading of her texts in Chapter Four.

Philosophical Influences

First, the dissertation turns to the philosophers that have influenced Cahill's work. It must be stated at the outset that Cahill remains fully conversant with contemporary trends in social and moral philosophy. She is a frequent contributor to and editor for the *Journal of Medicine and Philosophy*, *The Hastings Center Report*, and other "secular" periodicals. In individual essays, she considers the work of many philosophers, including Mary Ann Glendon, Alasdair MacIntyre, John Rawls, Charles Taylor, Michael Walzer, and many others. However, within the totality of her writings there are three philosophers who have positively influenced her theological work: the moral philosophy of Mary Midgley as well as the collaborative writing of Albert Jonsen and Stephen Toulmin. These next few pages summarize their influence and its significance for the rest of the dissertation.

Mary Midgley's Influence on Cahill's Early Natural Law Scholarship

With regard to moral philosophy, Midgley's thought seems to have the most prevalence in Cahill's earlier writings. Midgley's influence is especially palpable in Cahill's theological anthropology. At several points in Cahill's earlier work on sexual ethics, she appropriates Midgley's writings regarding the complexity of the human person.¹ With respect to human sexual experience, Cahill calls attention to some of the negative impulses toward sexuality in early Christianity. For instance, Augustine of Hippo refers to "the shameful motion of the organs of generation," and other ancient writers express a subtle (and at times overt) suspicion of sex in general.² Nonetheless, the sex drive remains as an irresistible animal drive, and sexual desire should be strongly regulated. Midgley's work counteracts some of this suspicion by first of all asserting that such interpretations miss the point that "animality," including its sexual dimension, is constitutive of but not totalizing of human experience.³

Furthermore, following Midgley, Cahill argues that animal nature directly affects the sociality of human beings beyond sexual acts and into familial structures.

The philosopher Mary Midgley once wrote that our distinctively human capacities arise within the patterns established by our animal nature, not over against them. This is a wise observation, insofar as it cautions us against defining relational ideals and moral obligations in a way antagonistic to the working material genetic inheritance provides to us. On the other hand those qualities which humanize us also need to transform our animal behaviors.⁴

¹ Cahill, *Between the Sexes: Foundations for a Christian Ethics of Sexuality* (Philadelphia: Fortress Press, 1986).

² e.g., Augustine, *City of God*, XIV, 21; cf. Cahill, *Between the Sexes*, 2-4.

³ Mary Midgley, *Beast and Man: The Roots of Human Nature* (Ithaca: Cornell University Press, 1978).

⁴ Cahill, "Sex, Gender, and the Common Good," in James Donahue and M. Theresa Moser ed., *Religion, Ethics, and the Common Good* (Mystic: Twenty-Third Publications, 1996), 150.

Applying Midgley's claims to her own argument, Cahill demonstrates that while social hierarchy is common in mammalian species, and sometimes violently maintained, the varieties of human societies demonstrate common capabilities that lend themselves to respect for others beyond kinship and other particular social groups and resolution of conflicts. These capacities are constitutive of human nature.⁵

Further still, Midgley's work impacts Cahill's thought with respect to natural law ethics. Within the evolutionary context of natural law, there is a growing reliance upon normative descriptive accounts of humanity in excess of scripture and tradition, including contributions from the natural and social sciences. Cahill frequently addresses this development throughout the corpus of her scholarly work.⁶ Again drawing Midgley into her argument, Cahill claims that empirical evidence demonstrates that the "whole cluster" of human qualities, including voluntary behavior, affectivity, cognition, and judgment.⁷ Moreover, these traits are located neither exclusively nor predominantly in one sex. Rather, differences are spread throughout humanity and not reducible to inferiority in either males or females.⁸

To note Cahill's critical understanding of natural law theory is not to say that she has abandoned it. In fact, she often returns to natural law as the privileged language with

⁵ Ibid., 150; cf. Midgley, *The Ethical Primate: Humans, Freedom, and Morality* (London: Routledge, 1994).

⁶ For example, see Cahill, *Between the Sexes*, 83-100; *Sex, Gender, and Christian Ethics* (Cambridge: Cambridge University Press, 1996), 16, 49; *Bioethics and the Common Good* (Milwaukee: Marquette University Press, 2004), 8-9; and Cahill, Hille Haker, and Eloi Messi Metogo ed., *Human Nature and Natural Law* (London: SCM Press, 2010), 8, 10-11.

⁷ Cahill, *Between the Sexes*, 88-89.

⁸ Midgley, *Beast and Man*, 353.

which to engage in public moral discourse. Moreover, she demonstrates an appreciation for the cultural and ideological pluralism present in natural law discourse, and this approbation is exemplified especially in her bioethical writings. For instance, in an earlier discussion of the Catholic position on *in vitro* fertilization, she argues that norms articulated through the language of any moral tradition, especially a religious one, limits the scope of what one might reasonably claim in public settings.⁹ Again, Cahill cites Midgley on natural law thinking in ethics, which makes claims about those purposes or goals which are ideal or fulfilling for human persons. “We all believe that understanding what we are naturally fit for, capable of, and adapted to will help us to know what is good for us and, therefore, to know what to do.”¹⁰ Cahill qualifies Midgley’s claim:

A modest natural law moral claim requires an inductive judgment based on the consistent elements in humanity’s *de facto* physical, psycho-spiritual, and social constitution – known experientially, refined critically and socially, and expressed in generalizations.¹¹

In other words, natural law claims, according to Cahill, can be neither fully derived through deductive reasoning, nor perfectly expressed in universal norms. Instead, such claims are in part dependent upon the human experience at the local level, and only then are they persuasive and applicable to the community. As others have argued, nature is not

⁹ Cahill, "Moral Traditions, Ethical Language, and Reproductive Technologies," *The Journal of Medicine and Philosophy* 14, no. 5 (October 1989): 497-522 (hereafter "Moral Traditions") cf. John Rawls, *Political Liberalism* (Cambridge: The Belknap Press of Harvard University Press, 1993), 59.

¹⁰ Midgley, *Beast and Man*, 177.

¹¹ Cahill, "Moral Traditions," 510.

merely a given, but is itself an “interpreted category.”¹² To call something ‘natural’ is not just to report on it, but to recommend its acceptance or approval.¹³

On this last point, it might be argued that “approval” in this context could imply a mode of argumentation that amounts to “emotivism,” as Alasdair MacIntyre calls it.¹⁴ A detailed consideration of MacIntyre’s work and its relevance to Cahill’s context will be taken up in Chapter Two. At this point in the dissertation, though, it is more fruitful to explore Cahill’s enduring attention to the broad scope of cognitive claims and moral values within the postmodern context, which includes both rational and non-rational modes of argumentation. It is also a worthy point of departure to discuss the influence of Stephen Toulmin’s thought on Cahill’s own theological arguments.

Albert Jonsen’s and Stephen Toulmin’s Influence on Cahill’s Work

With regard to philosophical argumentation, the work of Albert Jonsen and Stephen Toulmin seems to have produced a lasting effect on Cahill’s writings in two ways. One, it has helped her both to embrace and to critique her own traditions (i.e., the Roman Catholic moral tradition and the United States political tradition), particularly in the realm of casuistry. Two, it has challenged her, especially in her reflections on public moral discourse in the postmodern situation, to make her claims intelligible and

¹² Alister E. McGrath uses this phrase to describe the interaction between observing nature and constructing it. See *A Scientific Theology 1: Nature* (Grand Rapids: William B. Eerdmans Publishing Company, 2001), 113. Jean Porter critiques McGrath’s view of nature; *Nature as Reason: A Thomistic Theory of the Natural Law* (Grand Rapids: Eerdmans, 2005), 59-68. Porter’s view of the natural law will be discussed in greater detail in Chapter Three.

¹³ Cahill, "Moral Traditions," 511.

¹⁴ Alasdair MacIntyre, *After Virtue*, 3 ed. (Notre Dame: University of Notre Dame Press, 2007), 12-13.

persuasive through mediating language that is sometimes not translatable directly to her Catholic context.

First, casuistry, broadly defined, is a tradition of moral argumentation which helps to delineate the limits of received moral principles through the consideration of hard cases. The practice of casuistry in the Christian tradition is said to have flourished between the thirteenth and seventeenth centuries. It is also claimed that casuistry has often been abused.¹⁵ This abuse first of all refers to its misuse in the history of casuistry. For example, in the seventeenth century, the variety of positions that could conceivably be taken in a particular case led not only to moral perspectives such as probabilism, but also to the extremes of rigorism and laxism.¹⁶ Later, the Neo-Scholastic manuals of the nineteenth and early twentieth centuries approached casuistry with their solutions modeled on Modernity's ideal of scientific truth, in continuity with the respective cognitive claims of their day.¹⁷ That is, the manuals proceeded deductively from universal, immutable principles to certain conclusions in any hard case. These solutions, like the principles from which they were derived, were also universal in their application.

¹⁵ Jonsen, "Casuistry" in Jeremy Sugarman and Daniel P. Sulmasy ed., *Methods in Medical Ethics* (Washington: Georgetown University Press, 2001), 105.

¹⁶ Probabilism attempts to move from practical doubt to necessary certitude when application of the moral law was in dispute by allowing for a range of probative positions with respect to the selfsame law. There several classifications of probabilism, but all of them aim for a middle course between an extreme adherence to the letter of the law (rigorism) and a diametric freedom from it, which results in wide permissiveness (laxism). See John Mahoney, *The Making of Moral Theology: A Study of the Roman Catholic Tradition* (Oxford: Clarendon Press, 1987), 138-143.

¹⁷ Thomas F. Kopfensteiner, "Science, Metaphor, and Moral Casuistry," in James F. Keenan and Thomas A. Shannon ed., *The Context of Casuistry* (Washington, D.C.: Georgetown University Press, 1995), 207. See also Richard M. Gula, "Normative Methods in Ethics: Surveying the Landscape of Ethical Pluralism," in Todd A. Salzman ed., *Method and Catholic Moral Theology: The Ongoing Reconstruction* (Omaha: Creighton University Press, 1999), 11.

However, casuistry in the contemporary context has been recovered by way of fruitful revision, which is documented extensively in the work of Jonsen and Toulmin.¹⁸ Instead of applying a universally-recognized principle to a single case by use of deductive reasoning, contemporary casuistry argues by analogy.¹⁹ The ethicist takes a paradigm case that has reached a successful, consensus resolution in the past, and determines the suitability of that case to the morally relevant circumstances of a more complex issue at hand. Moreover, casuistry is not a practice accomplished for its own sake, but is set within the context of the moral striving of the agents involved and their moral community. As such, the resolution of the hard case is meant to be an inductive and dialogical process that requires careful discernment of the complementary and competing considerations in each case.²⁰ Therefore, prudence is a required virtue that

¹⁸ Albert R. Jonsen and Stephen Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (Berkeley: University of California Press, 1988).

¹⁹ Philosophers frequently employ arguments from analogy in order to illustrate the function of a particular moral principle. However, the analogy still requires a dimension of deductive reasoning in order to determine its suitability. Analogies in moral philosophy are very similar to case studies, in that the scenarios are frequently contrived or imaginary. A famous example is Judith Jarvis Thomson's analogy of an unwanted fetus to a famous violinist [Thomson, "A Defense of Abortion," *Philosophy and Public Affairs* 1, no.1 (Fall 1971), 47-66]. Cahill responds to Thomson's argument and other analogies by pointing out four interrelated shortcomings in them: 1. They imply that conception is arbitrary, and portray the fetus as a hostile alien in relation to the mother; 2. They rely on inappropriate and often negative connotations regarding gestation; 3. They neglect the uniqueness of maternal-fetal relations; and 4. They are often founded on a liberal notion of freedom that generates all moral obligations. See Cahill, "Abortion and Argument by Analogy," *Horizons* 9, no.2 (Fall 1982), 271-287.

²⁰ Thomas Aquinas writes: "Actions should be considered differently in view of different conditions of the person, of time, and other circumstances." *Summa Theologiae* I-II, q.18, aa.10-11. Hereafter, the *Summa* is abbreviated *ST*.

lends itself to the achievement of a reasonable and fruitful conclusion, not just for the agents, but also for the community in which their moral wrangling is set.²¹

Utilizing Jonsen's and Toulmin's work, Cahill analyzes proportionate reason and applies it to the common good.²² Starting with the Catholic method of double effect reasoning, Cahill argues that it suffers from a similar shortcoming to casuistry in its traditional and revisionist forms.

They take principles and rules that have evolved as short-hand, experience-based safeguards against biased thinking and action, and turn these prudential maxims into logically necessary and practically absolute characteristics of individual moral behavior. As scholars of casuistry have already shown, principles like double effect were refined, eclectically and over centuries, precisely to guide analogical thinking that compared present situations to dilemmas that had been satisfactorily resolved in the past.²³

This analogical application to individual acts introduces considerations of "context and specificity" to moral discernment. One can also strive for the ideal of moral objectivity while simultaneously acknowledging the relativity of standpoints and needs.²⁴

Furthermore, Cahill expands this mode of individual discernment to cover the practices of social groups. Citing again the work of Jonsen and Toulmin, Cahill notes the depth of agreement on public bioethical issues despite the plurality of social contexts of its participants.²⁵ Jonsen and Toulmin attribute this consensus to Aristotelian practical reasoning. Again underscoring prudence as a guiding virtue in this discussion, they claim

²¹ Jonsen and Toulmin, 130-131; cf. MacIntyre, *After Virtue*, 190.

²² Cahill, *Bioethics and the Common Good*, 18-20.

²³ *Ibid.*, 30.

²⁴ *Ibid.*, 18.

²⁵ Here, Cahill refers to Jonsen's and Toulmin's work with the National Commission for the Protection of Human Subjects in the mid-1970s. Cahill, *Theological Bioethics: Participation, Justice, Change, Moral Traditions*, ed. James F. Keenan (Washington: Georgetown University Press, 2005), 44.

that discourse provides good judgment in particular over formal deduction of universal norms.²⁶ Cahill endorses this view, and applies it to her religious context. Rather than providing master theories to solve bioethical dilemmas, theology in the public sphere encourages a “social and intellectual milieu in which the social priorities of religious communities can be recognized sympathetically.”²⁷ Consequently, in the public sphere, which “is actually a meeting ground of the diverse moral traditions that make up our society,” there is a possibility of an overlapping consensus on particular moral dilemmas.²⁸ This consensus corresponds to the “locus of certitude” that Jonsen and Toulmin claim as a possibility in moral discourse.²⁹ Without necessarily endorsing the foundational beliefs of an individual participant, the group might find his or her argument persuasive, and they will likely be convinced on different grounds. This persuasion works analogously. For example, one might not endorse the Judeo-Christian belief that humans are created in the image of God, but one can accept the “human dignity” that is derived from this religious belief. On the grounds of common humanity, one can conclude that this solidarity is required to participate in a just society. Through this analogous reasoning, a participant might come to any number of agreements regarding access to health care, education, or other pressing concerns. This consensus in public discourse relies on contextual rather than universal claims.³⁰

²⁶ Jonsen and Toulmin, 341.

²⁷ Cahill, *Theological Bioethics*, 45.

²⁸ Cahill, “Can Theology Have a Role in ‘Public’ Bioethical Discourse?” *Hastings Center Report* 20, no.3 (1990), Supplement, S11.

²⁹ Jonsen and Toulmin, 16-19.

³⁰ Cahill, “Can Theology Have a Role in ‘Public’ Bioethical Discourse?” S13.

Before moving to the influential theologians and religious frameworks that are significant to Cahill's work, it should be reiterated that Cahill remains firmly engaged in public discourse, and is cognizant of the prevalent philosophical trends. As such, there are many other philosophers whose work she cites and critiques. She addresses the work of the philosophers analyzed in the next chapter, but there are many others. For instance, she frequently cites the work of legal scholars like Hillary Charlesworth, Mary Ann Glendon and Amy Gutmann; of social ethicists such as Martha Nussbaum and Jeffrey Stout; and of bioethicists like Allen Buchanan and Sidney Callahan. However, Cahill usually addresses their writings within individual essays or for illustrative purposes. By contrast, Midgley's thought and that of Jonsen and Toulmin, cited throughout Cahill's work in multiple writings, and in many instances, are constitutive components of her argumentation.

Theological Influences

In addition to the aforementioned individual philosophers in the previous section, there are also a number of Christian theologians who have had a weighty influence on Cahill's work. The late American Jesuit Richard McCormick is pre-eminent among these theologians with a telling effect on Cahill's scholarship. Throughout her career, Cahill analyzes McCormick's attempts to work through contentious issues in Catholic ethical methodology and broad disagreement on moral dilemmas which have developed since the Second Vatican Council.³¹ His method is a useful supplement to the theological

³¹ See (chronologically) Cahill, "Within Shouting Distance: Paul Ramsey and Richard McCormick on Method," *The Journal of Medicine and Philosophy* 4, no. 4 (December 1979): 398-417; "Teleology, Utilitarianism, and Christian Ethics,"

elements of Cahill's scholarship described herein. According to Cahill, this utility is derived from the dialectical relationship between McCormick's Roman Catholic tradition from which he writes and the North American political context to which he addresses himself. Nonetheless, while his influence on Cahill's thought is notable, she tends to depart from his work when she discusses the common good. Instead, she often employs McCormick's vocabulary with regard to the personalist concerns of "human beings, integrally and adequately considered" and his description of embryos as "nascent human life."³²

Furthermore, James Gustafson's theocentric ethics has deeply influenced Cahill's work throughout her career.³³ Cahill frequently utilizes his various theological models as frameworks for her own theological reflection, one of which will be summarized in the next section of this chapter. Other theologians, like the array of philosophers mentioned at the close of the previous section, are addressed frequently in individual essays. For

Theological Studies 42, no. 4 (December 1981): 601-629; "Can Theology Have a Role in 'Public' Bioethical Discourse?" S11-13; and Thomas Shannon, *Religion and Artificial Reproduction* (New York: Crossroad, 1988), 118-120. "On Richard McCormick: Reason and Faith in Post-Vatican II Catholic Ethics," in Allen Verhey and Stephen E. Lammers ed., *Theological Voices in Medical Ethics* (Grand Rapids: William B. Eerdmans Publishing Company, 1993), 78-105; "Religion and Theology," in Jeremy Sugarman and Daniel P. Sulmasy ed., *Methods in Medical Ethics* (Washington: Georgetown University Press, 2001), 51, and especially 56-58; "Richard A. McCormick, S.J.'s 'To Save or Let Die: The Dilemma of Modern Medicine,'" in Jennifer K. Walter and Eran P. Klein ed., *The Story of Bioethics: From Seminal Works to Contemporary Explorations* (Washington: Georgetown University Press, 2003), 131-148; *Bioethics and the Common Good*, 10-41; and *Theological Bioethics*, 104-105.

³² Cahill, *Sex, Gender, and Christian Ethics*, New Studies in Christian Ethics, ed. Robin Gill (Cambridge: Cambridge University Press, 1996), 238-239; "Stem Cells and Social Ethics," in Nancy E. Snow ed. *Stem Cell Research: New Frontiers in Science and Ethics* (Notre Dame: University of Notre Dame Press, 2003), 123.

³³ Cahill, "James M. Gustafson and Catholic Theological Ethics," *Journal of Moral Theology* 1, no.1 (2012), 92-115.

instance, the Methodist ethicist Paul Ramsey usually appears in her writings in tandem with and contradistinction to McCormick's work. Also, the feminist theologian Margaret Farley, whose writings on justice will be analyzed in Chapter Three, is cited in many of Cahill's writings. Finally, given his central place in Catholic theology, Cahill frequently engages the work of Thomas Aquinas as a representative of classical Catholic thought.

However, the tradition of Catholic Social Teaching (hereafter CST), especially its notion of the common good, is elemental to her work. This section discusses CST with respect to how it influences Cahill's thinking on public moral discourse. However, the various aspects of CST will reappear throughout the later chapters of this dissertation. First, this chapter section addresses three foundational, interpenetrating facets of CST: inviolable human dignity, essential human sociality, and the common good. Next, it offers several examples from the breadth of Cahill's writings that demonstrate CST, particularly its later expressions, is an essential component to her context in myriad ways.

Three Basic Affirmations of Catholic Social Teaching

To begin, for over a century, CST has attempted to relate the Catholic faith to human social conditions. This is not to say that the church's hierarchy was uninterested in social matters prior to the late nineteenth century, but it is customary in Catholic theology to locate Leo XIII's encyclical *Rerum Novarum* as the starting point for modern social teaching – a starting point with which Cahill also concurs.³⁴ Likewise, it is not implied

³⁴ E.g., Kenneth Himes (ed.), *Modern Catholic Social Teaching: Commentaries and Interpretations* (Washington: Georgetown University Press, 2005), 3; and Charles E. Curran, "The Changing Anthropological Bases of Catholic Social Teaching," in Curran ed., *Change in Official Catholic Moral Teaching* (New York: Paulist Press, 2003), 171; cf. Cahill, "Globalization and the Common Good," in John A. Coleman and William F.

here that CST has been monolithic since *Rerum Novarum*. Indeed, Leo himself accepted social and economic inequalities as a symptom of the fallen world in which people live, a position rejected seventy years later by the Second Vatican Council.³⁵ As CST evolved, however, it has consistently upheld three basic values: the inviolable dignity of the human person, the social nature of human beings, and a universal notion of the common good. These values are inexorably interrelated, though the last figures most prominently in Cahill’s writings.

First, citing the creation stories of Genesis 1-2 and the song of praise in Psalm 8, the Second Vatican Council (hereafter Vatican II) locate basic human dignity with a createdness that is common to all human persons. As part of the created order, this dignity is “sublime” and demands protection for the “universal and inviolable” rights of all persons. In addition to the rights considered normative within a liberal democracy, such as freedom of conscience and religion, the Council affirmed other positive rights that, while applied to individuals, are required for participation in social life. These rights include food, clothing, employment, and self-determination, among others.³⁶ Since these rights are in constant flux from place to place, subsequent papal social encyclicals have

Ryan ed., *Globalization and Catholic Social Thought: Present Crisis, Future Hope* (Maryknoll: Orbis Books, 2005), 43.

³⁵ Leo XIII, *Rerum novarum* (1891 – Hereafter RN), 18-19; cf. *Gaudium et Spes* (GS), 29. All papal encyclical references are taken from the Vatican’s website: www.vatican.va. All documents from the Second Vatican Council referenced are from Austin Flannery ed., *Vatican Council II: The Basic Sixteen Documents* (Northport: Costello Publishing Company, 1996).

³⁶ GS, 26.

stressed the need for human development on a global scale.³⁷ Still, this development always built on the transcendent and prior dignity of the human person.³⁸

Second, CST does not assert these individual rights for the sake of isolated, autonomous action. From the time of Leo XIII, wages for labor signified far more than personal wealth and contractual obligations. Instead, he implies that compensation should support the survival of the employee's family, which is the first natural society.³⁹ Later, John Paul II explicitly calls this fair pay a "family wage."⁴⁰ Moreover, rights such as a living wage represent a basic justice that allows human beings to participate more fully in their society. Human dignity is thereby placed within the context of the manifold and interdependent human relationships within society.⁴¹ In fact, it is humanity's social nature that enjoins church leaders at Vatican II to engage in active dialogue with the modern world.

Today, there is an inescapable duty to make ourselves the neighbor of every individual, without exception, and to take positive steps to help a neighbor whom we encounter, whether that neighbor be an elderly person abandoned by everyone, a foreign worker who suffers the injustice of being despised, a refugee, an illegitimate child wrongly suffer for a sin of which the child is innocent or a starving human being who awakens our conscience by calling to mind the words of Christ: "As you did it to one of the least of these my brothers or sisters, you did it to me" (Matt 25:40).⁴²

³⁷ See Paul VI, *Populorum Progressio* (1967 - PP); John Paul II, *Sollicitudo Rei Socialis* (1987 - SRS), 20; and most recently, Benedict XVI, *Caritas in Veritate* (2009 - CV), 22-25.

³⁸ PP, 14.

³⁹ RN, 12-13.

⁴⁰ John Paul II, *Laborem Exercens* (1981), 19.

⁴¹ GS, 25.

⁴² GS, 27.

The fulfillment of the aforementioned rights that facilitate active participation in turn discloses a call to identify those who cannot fully participate. Thus, there is a polar yet creative tension between individual and society that requires each Christian to attend to the amelioration of both – that is, to advance the common good.

Third, Vatican II understands this common good as “the sum total of social conditions which allow people either as groups or as individuals, to reach their fulfillment more fully and more easily.”⁴³ As an aggregate condition, the common good requires both the respect for human dignity and the development of human societies. However, there is also another level of polarity found here: the political community within a world of other communities. As such, there is a certain particularity of these conditions within the local group that, relative to itself, may be rightly called the “common good.” This community maintains and promotes the common good from within itself.

On the one hand, as the philosophers discussed in Chapter Two of this dissertation point out, there will always be some level of disagreement about the constitution of the common good within each society.⁴⁴ On the other hand, Vatican II envisions a transcendent common good.

Close ties of dependence between individuals and peoples are on the increase world-wide nowadays; consequently, to facilitate effective and successful work for the universal common good the community of nations needs to establish an order suited to its present responsibilities, especially its obligations towards the many areas of the world where intolerable want still prevails.⁴⁵

⁴³ GS, 26.

⁴⁴ For example, John Rawls accounts for this disagreement in the reflective equilibrium regarding the original position from which the principles of justice are chosen, *Political Liberalism*, 8. Michael Walzer and Alasdair MacIntyre point to these disagreements as signs of life within a healthy political community, though they come to differing conclusions about how they are resolved. See Walzer, *Spheres of Justice*, 313; MacIntyre, *After Virtue*, 222.

⁴⁵ GS, 84.

With these words, the leaders at Vatican II offer a perspective of the world that is rooted in human dignity and sociality, and also treats developing political communities analogously as persons in need. They point to the necessity of global organizations and international cooperation in order to achieve this vision of an overarching common good, especially with regard to agriculture and education.⁴⁶ In fact, later in the document, they call attention to the exemplary activity of Christians working to foster such a universal community, though they do not mention any specific Christians or organizations.⁴⁷

Furthermore, a required virtue to achieve and maintain the common good is solidarity. At its root, solidarity implies a fundamental respect for human dignity that might be formulated according to the Golden Rule (Matt 7:12).⁴⁸ More importantly, solidarity carries a social connotation that requires the responsible use of all natural and manufactured resources for the good of everyone in order to sustain and develop life. Pius XII identifies this use as the “law of human solidarity and charity.”⁴⁹ As this notion of solidarity developed, later encyclicals further identified it as an opportunity for conversion: a turning away from sin, which, in addition to breaking one’s relationship with God, also destroys friendship with one’s neighbor, either an individual or a community.⁵⁰ For instance, John Paul II claims that one must be attentive to the ways that one’s pursuit of wealth and prosperity affects others.

⁴⁶ GS, 84-85.

⁴⁷ GS, 90. By contrast, Cahill frequently identifies individuals, organizations, and policymaking entities that contribute to the common good, e.g., see Cahill, *Theological Bioethics*, 181.

⁴⁸ Cf. *The Catechism of the Catholic Church* (CCC), paragraph 2407.

⁴⁹ Pius XII, *Summi Pontificatus* (1939), 3.

⁵⁰ John Paul II, SRS, 38.

When interdependence becomes recognized in this way, the correlative response as a moral and social attitude, as a "virtue," is solidarity. This then is not a feeling of vague compassion or shallow distress at the misfortunes of so many people, both near and far. On the contrary, it is a firm and persevering determination to commit oneself to the common good; that is to say to the good of all and of each individual, because we are all really responsible for all.⁵¹

International solidarity is required order to achieve the universal common good described by John Paul. In addition, he adapts the motto of his successor Pius XII: "peace as the fruit of justice," to what John Paul claims is identically precise and equally biblically founded: "peace as the fruit of solidarity."⁵² Or, put another way, peace is the fruit of reconciliation, in light of a deeply rooted practice of solidarity.

Before describing how CST has become an indispensable element in Cahill's writings, it is important to mention that this understanding of solidarity and the common good has become more and more tied up with various conceptions of justice. This section began with the conventional starting point of Leo XIII, and described his call for a living wage that moved beyond contractual obligations. However, Leo locates the obligation to pay a living wage within the context not of justice but of *charity* – "a duty not enforced by human law."⁵³ As the tradition evolved, the common good and solidarity have become constitutive of social justice. As a result, more will need to be said about CST's theological conception of justice in Chapter Three.

⁵¹ SRS, 38. This emphasis on conversion and reconciliation will be analyzed further in Chapter Two.

⁵² SRS, 39; cf. Isaiah 32:17.

⁵³ RN, 22.

Cahill and Catholic Social Teaching

Moving now to Cahill's context, it is difficult to underestimate the importance of post-conciliar CST, especially with regard to her later writings. While much more will be said in light of her writings on justice in Chapter Four, a brief survey of her work here demonstrates the three-fold considerations of human dignity, human sociality and the common good that are affirmed in CST. This survey addresses two distinct research interests that Cahill has pursued throughout her career. The first involves her theological perspectives on the family, gender and sexuality. The second delves into bioethical concerns regarding aging, biotechnology, and HIV/AIDS.⁵⁴ Within this survey, it is apparent that Cahill's writings especially emphasize the common good and its requisite solidarity, while tacitly presuming the former two affirmations of dignity and sociality within the context of her arguments. There is also a major, polar departure from CST in that Cahill describes the community as *prior to* the individual. This discrepancy might be accounted for by the implied presumption of human dignity throughout her work.

Cahill on Sex, Gender, and the Family

Though they are conceptually distinct issues, Cahill usually address the moral concerns that arise from human sexuality, gender differences, and family dynamics as a unity. Her cohesive approach is derived from the biological, political, and religious aspects of sexuality. Because of its procreative capability, sex is ultimately at the service

⁵⁴ Cahill's scholarship on human germline enhancement will be addressed in detail in the dissertation's conclusion. Her account of the common good described here, as well as her conception of justice analyzed in Chapter Four, will factor into that discussion.

of the species – the human community writ large.⁵⁵ Since Cahill’s approach to theology privileges the specific, local context, this “service” is rendered more immediately at the level of the local community. Within Christian communities, sexual activity is informed by its foundational sources of scripture and tradition. This community is also informed by the values of the larger political community in which Christians participate. For example, in the United States, Roman Catholic couples have struggled with the magisterial teaching on artificial contraception at least since Paul VI’s encyclical *Humane Vitae* in 1968. However, the American political community already resolved the problem of birth control three years earlier.⁵⁶ By the time *Humane Vitae* was promulgated, a significant number of men and women in the United States were engaging in “free love,” “sexual revolution,” and “women’s liberation,” much of it due in part to the acceptance of the benefits afforded by the oral contraceptive pill.

Furthermore, Christianity has exhibited ambivalent or negative attitudes toward sexuality, especially with respect to women. The previous section alluded to Augustine’s “shameful,” involuntary appraisal of sexual activity. Cahill describes Augustine’s sublimation of sexual desire through the rational will as consistent with his notion of human dignity, which is grounded in neo-Platonic thought.⁵⁷ Nonetheless, in the New Testament era which preceded Augustine, celibacy and perpetual virginity were upheld as positive values in light of the eschatological vision especially of Paul, and also against the sexual norms of the larger communities in which Christians lived. Cahill points out

⁵⁵ Cahill, *Between the Sexes*, 139-143.

⁵⁶ See the landmark Supreme Court decision *Griswold v. Connecticut*, *United States Reports* 381 (1965), 479. John Rawls envisions the U.S. Supreme Court as the exemplar of public reasoning (see Chapter Two of the dissertation).

⁵⁷ Cahill, *Between the Sexes*, 2.

that the longest New Testament discussion of sexual matters takes place within Paul's discourse on ethics for a healthy, kingdom-minded Christian community (1 Cor 5:1-8:13).⁵⁸ She writes, "Paul sees, not just marriage, but also all preoccupation with one's social state in life, as a distraction and a hindrance to communal membership." Paul relativizes marriage and other temporal statuses to the immanence of the coming of the kingdom of God. Instead, the norm of Christian membership is located in service to the community and awaiting the arrival of the *eschaton*.⁵⁹

Later Catholic tradition, especially papal encyclicals on the family, emphasized the Christ-Church analogies from the New Testament's "household codes," which require women's submission and men's headship within the family (Eph 5:21-33; Col 3:18-21; Titus 2:3-5; and 1 Peter 3:1-7). The encyclicals did not harbor the same eschatological vision that Paul exemplified in 1 Corinthians, but they did begin to note the freedom that came with a growing liberalism in their societies. One example is found in Leo XIII's 1880 encyclical on Christian marriage, where he insists on male headship, though he also espouses mutual love and limits the power of fathers by permitting their children to freely choose their own spouses.⁶⁰ Another example is Pius XI's *Casti Cannubii*, where he calls for an "order of love" within the Christian household. There, his body imagery mirrors the New Testament language of Ephesians 5, but extends it beyond duties of submission on the part of wives. The husband is the "head" of the family, but the mother is its

⁵⁸ Ibid., 62-65.

⁵⁹ Ibid., 64.

⁶⁰ Leo XIII, *Arcanum Divinae Sapientiae* (1880), 12, 15.

“heart.” Furthermore, the dignity of women precludes them from being treated paternalistically or deprived of liberty.⁶¹

At the end of the twentieth century, John Paul II wrote multiple encyclicals on the family, many of them under the banner of CST. Among them, he describes the family as the “domestic church.” As a sacramental reality, the family transcends biological bonds of genetic kinship and the social bonds of contractual marriage. By contrast, the family “constitutes a specific revelation of ecclesial communion.”⁶² The family still reflects the analogical Christ-church images presented in Ephesians 5, but not strictly in terms of hierarchical structure. Instead, the family imitates and communicates Christ’s self-giving love, and becomes a “saving community.”⁶³ More importantly, John Paul connects his theological reflection to CST by describing the family as a “school of deeper humanity,” one that shares benefits and burdens among itself, and extends its action beyond itself in service to the larger society.⁶⁴

The Christian family is not closed in on itself, but remains open to the community, moved by a sense of justice and concern for others, as well as by a consciousness of its responsibility toward the whole of society.⁶⁵

Thus, this ideal of the family in John Paul’s thought is far more substantive an account than Leo’s “first natural society,” as he called it in *Rerum Novarum*. The family becomes the primary contributor to the common good.

⁶¹ Pius XI, *Casti Cannubii* (1930), 26.

⁶² John Paul II, *Familiaris Consortio* (1981 - FC), 21.

⁶³ Cahill, “Commentary on *Familiaris Consortio*,” in Kenneth Himes ed., *Modern Catholic Social Teaching: Commentaries and Interpretations* (Washington: Georgetown University Press, 2005), 372; cf. FC, 49.

⁶⁴ FC, 21.

⁶⁵ FC, 64.

While this increasingly positive appraisal of sexuality and family life in the papal encyclical tradition has been well received in Cahill's writings, it is not unproblematic. Part of the problem is located within church tradition, as it frequently has insisted on assigning gender roles within the Christian community.

For most of Christian history, it has been taken for granted that biological sex entails specific gender roles that go beyond reproduction and child care to include significant differentiation in most domestic and social roles. Behind this assumption is the idea that women were created primarily for reproduction, and are in all other ways weaker than men. Men are assumed to be the natural leaders in public affairs, as well as the supervisors of women's fulfillment of domestic responsibilities.⁶⁶

Cahill's observation here is rooted in critiques from a variety of feminist writers in the Christian tradition. However, she also notes on the one hand the broad range of religious opinion on the implications of these inequalities for individual communities and on the other hand the increasing consideration of women's participation within the complexities of those opinions. For example, Augustine's pessimistic view of sex notwithstanding, Cahill insists that he was no misogynist. His strict view of sexual norms applies equally to men and women.⁶⁷ During the Middle Ages, church interventions such as greater attention to women's rights in marriage and vowed celibacy in convents modified women's social roles and offered alternatives to the larger societies in which they lived.

Moreover, as these examples illustrate, the Christian vision of sexuality and family life, particularly in light of CST, offers a constructive critique of the liberal values toward sexuality in contemporary society. It also marks a significant development in Cahill's work that demonstrates the growing importance of CST for her context. In her

⁶⁶ Cahill, "Gender and Christian Ethics," in Robin Gill ed., *The Cambridge Companion to Christian Ethics* (Cambridge: Cambridge University Press, 2001), 113.

⁶⁷ *Ibid.*, 118.

earlier writing on gender and sexuality, Cahill concludes that New Testament ethics is immanently and inherently communal.⁶⁸ Consequently, Christian marriage structures human sexuality and deflects the power of gender differences.⁶⁹ Historically, marriage is the vehicle that links the individual to the community, naming one's dynamic familial place, and its concomitant roles. Today's society envisions marriage and sexuality in a diametrically personal way. In the liberal vision of life in general, the person is an autonomous agent who exists to fulfill his or her own interests and needs, limited only by the competing rights of others. As such, liberal sexual ethics legitimize acts between consenting adults, with the absence of harm to others as the sole regulating moral criteria.⁷⁰ Cahill proposes a solution for Christians living within larger society that refines rather than redefines Christian sexual ethics. In formulating moral criteria, Christians should consider the sexual norm of a "lasting procreative union" between one man and one woman, while allowing for variance within the community. Departures from the norm include those conjugal situations which are found in contemporary society as "choices:" e.g., divorce and remarriage, pre-ceremonial cohabitation, contraceptive situations, and committed homosexual relationships.⁷¹ While these examples are excluded as moral choices in current Roman Catholic practice, they might be acceptable as part of the inclusive vision of the New Testament.

However, Cahill's later work utilizes CST to transform the society in which these choices are presented. For example, a decade after the work referenced in the previous

⁶⁸ Cahill, *Between the Sexes*, 67.

⁶⁹ *Ibid.*, 150-151.

⁷⁰ *Ibid.*, 141-142.

⁷¹ *Ibid.*, 148.

paragraph, where sex is at the service of the community, she switches the polarity with respect to its emphasis. She argues in her later work that the way sex and gender relate to the common good is primarily through the family.⁷² Her argument still rests on the major premise that sex is a fundamental service to the species, but modifies this assumption in that the gender roles within the family organize sexual activity and serve social purposes. Cahill also defines the common good as a “philosophical and moral concept which gives content to the notion of justice considered in its societal dimensions.”⁷³ The common good orients sex and procreation justly by requiring distinctly human capacities – e.g., empathy, commitment, solidarity, and responsibility. Her definition of the common good also implies corresponding notions of sociality, equality, and interdependence. Furthermore, she adds that this arrangement is not always just. Consequently, justice as constitutive of the common good is required in order for sex, gender, and the family to function properly in society.

Given these capacities, Cahill looks to three normative models of the family in current scholarship (sociobiology, “family values,” and deconstructionist) and why they fail in the Christian context.⁷⁴ Sociobiology and evolutionary psychology reduce sex and parenting to biological strategies that ensure species propagation. The “family values” approach describes the family unit in terms of its harmony and cooperation, with all members faithfully fulfilling their roles in the family, usually in conformity with socially conservative norms. The deconstructionist model asserts that there is no “natural” pattern

⁷² Cahill, “Sex, Gender, and the Common Good: Family,” in James Donahue and M. Theresa Moser ed. *Religion, Ethics, and the Common Good* (Mystic: Twenty-Third Publications, 1996), 145.

⁷³ *Ibid.*, 145-146.

⁷⁴ *Ibid.*, 157-160.

of the family because it is socially and historically constructed. In this model, all family ties are voluntarily bound, with no regard for kinship or other factors. The first two fall short because of their “givenness.” Sociobiology grants too little importance to these human capacities. As Midgley argues, human capacities arise within the patterns established by human nature, not in spite of them.⁷⁵ To Midgley’s claim, Cahill adds that our human capacities have a transforming effect on our animal nature, too.⁷⁶ The appeal to values is unsuccessful because it envisions the normative values only within a nuclear family paradigm. The third model fails because of its overemphasis on contractual and intentional aspects of human relationships.

Instead, Cahill argues for a model of the family that integrates the positive natural, moral, and historical aspects of the three insufficient models. The way to integrate them, she argues, is through CST. CST envisions family as a fundamental unit of society that engages the world. It brings freedom and responsibility together to serve the common good. The family is dependent upon society, but also ministers to transform it.⁷⁷ An organic part of Cahill’s argument here involves the family as “domestic church.” Here, she recalls the radical reinterpretation of family structures in light of her earlier work on the New Testament community.⁷⁸ The family becomes the primary educator for solidarity and service to the community and society at large.⁷⁹

⁷⁵ Midgley, *Beast and Man*, 24-34. See also *The Ethical Primate*, 27-40.

⁷⁶ Cahill, “Sex, Gender, and the Common Good,” 150.

⁷⁷ *Ibid.*, 160.

⁷⁸ Cahill, *Between the Sexes*, 64.

⁷⁹ Cahill, “Sex, Gender, and the Common Good,” 162.

Conversely, because families serve the common good, Cahill argues that societies should also provide social support to families in order to facilitate their participation.

Citing the U.S. bishops' letter on children and families, Cahill argues that this support is the "flip side" to the family's service in light of an "interdependent world."

Of all families, poor families (worldwide) need the most help. The question is not *whether* the middle class in our society has a duty to assist families needing welfare, but rather, *what form* of assistance expresses genuine *solidarity* and enables those families active, long-term *participation* in the common good.⁸⁰

In short, the family cannot serve the common good without a proportionate response from the society that is likewise served by the common good. The domestic church carries the moral vision of the larger church, and helps to transform its larger society.

However, Cahill notes a certain danger of the "domestic church" as an integrative model for the family, especially for women. She applauds the later papal encyclicals that have strongly advocated women's rights internationally. John Paul's writings, especially *Familiaris Consortio*, have moved far beyond male headship of the family to a paradigm of marital love among equals.⁸¹ Nonetheless, this equality is counterbalanced by an emphasis on complementarity that reifies domestic roles as normative for women. It also says little for women's leadership roles within the Catholic Church. Thus, Cahill's later work also argues that justice for women must include special attention to their lives not only in the family but also within the church.⁸²

⁸⁰ Ibid., 162-163; cf. National Conference of Catholic Bishops, "Putting Children and Families First: A Challenge for Our Church, Nation, and World," *Origins* 21/15 (1991), 397.

⁸¹ FC, 23.

⁸² Cahill, *Family: A Christian Social Perspective* (Minneapolis: Augsburg Fortress Press, 2000), 93.

In summary, this section has demonstrated how CST has exerted a vital influence on Cahill's later work on sex, gender, and the family. Utilizing CST, Cahill's writings on sexual ethics and the family have moved from its significance for sustaining the Christian community itself to how the values of solidarity and responsibility can transform the larger society in which Christians live. Employing John Paul's metaphor of the family as domestic church, Cahill confirms the interdependence of the family and society upon each other, calling on society to provide support for families, so that they might thereby work for the common good. Cahill also demonstrates that the Christian community has not yet achieved complete participation of its own membership. Thus, her commitment to justice for all within the community gives her some reluctance to utilize fully the metaphor of "domestic church."

Cahill's Bioethics of the Common Good

Turning now to the influence of CST on Cahill's bioethical writings, this section surveys her writings on biotechnology utilization and HIV/AIDS prevention. Since a detailed examination of her appraisal of human germline enhancement is forthcoming in the dissertation's conclusion, this section focuses on biotechnology with respect to aging. This section also considers her application of CST regarding HIV/AIDS as her paradigm illustration of a bioethics of the common good in practice. What is clear from this survey is that Cahill rejects what she perceives in the current ethos in contemporary society as attempts to medicalize issues which are primarily social concerns. Against this trend, she argues that allocation of particular medical practices should be prioritized relative to their contribution to the common good. Furthermore, she increasingly describes bioethics in

terms of the common good over and above the other two affirmations of human dignity and sociality.

First, Cahill deals with the problem of aging exclusively in her later writings – she first takes up aging in 1991 in a volume of *Concilium*.⁸³ It might be expected, then, that she would begin to integrate CST into her work, but in a brief editorial introduction, she alludes only to “social and cultural challenges” of a growing population of elderly persons, with no explicit reference to CST. Similarly, the articles presented in the issue attempt to read the “signs of the times” as they apply to aging (e.g., biblical and theological perspectives, and cultural responses to aging), but none of them refer to CST or its affirmations.

However, in more recent work, Cahill again has taken up the moral problems associated with aging, this time with a more fully developed theory that integrates CST as an element of her argument. In the United States, seventy-five percent of deaths occur in old age, with many leading causes of death disproportionately affecting the elderly.⁸⁴ Clearly, death is part and parcel with the experience of every human life, and longevity has changed the dynamics of dying in contemporary society. As the President’s Council on Bioethics has noted, because human beings live longer, they die differently than they have in the past.⁸⁵ So, the moral questions that arise are not about avoiding death, but

⁸³ Cahill and Dietmar Mieth ed., *Aging*. Concilium 1991/3 (London, SCM Press).

⁸⁴ Centers for Disease Control, “Deaths: Leading Causes for 2006,” *National Vital Statistics Report* 58, no.14 (March 31, 2010), 11, Online document. http://www.cdc.gov/nchs/data/nvsr/nvsr58/nvsr58_14.pdf, accessed January 4, 2013.

⁸⁵ President’s Council on Bioethics, *Taking Care: Ethical Caregiving in Our Aging Society* (Washington, D.C.: President’s Council on Bioethics, 2005), 12, Online document. http://bioethics.georgetown.edu/pcbe/reports/taking_care/taking_care.pdf, accessed January 4, 2013.

about the limits of prolonging life, the permissibility of hastening death, and the prudent employment of resources for the dying process. Implied in all three of these questions is the overarching issue about the general care and human dignity of the elderly, since other socioeconomic factors like poverty and gender enhance their vulnerability.⁸⁶

Furthermore, prolonging human life often involves the employment of technology that can be scarce, expensive, and even burdensome. Yet, in addition to durable medical equipment like oxygen concentrators, bariatric beds, and dialysis machines, newer anti-aging interventions are being developed that actually slow senescence. Such innovations include cell repair and hormone therapy, but like human genetic engineering, they remain in various stages of early research.⁸⁷ Looking at the current marketing strategies of pharmaceutical and medical equipment companies, however, Cahill remains pessimistic that future anti-aging interventions will serve the common good. Instead, she argues that such technology will be marketed to societal elites, with two dangerous consequences: 1. Aging will be increasingly medicalized; and 2. Technological approaches to aging will siphon resources away from more widely accessible modes of care.⁸⁸

One part of the problem, Cahill notes, is that decline and death are often seen as “outside the norm.”⁸⁹ For example, Michael Walzer, whose thought on justice is studied in Chapter Two, addresses a problematic understanding of human disease that might be expanded to describe the situation that Cahill criticizes. He claims that:

⁸⁶ Cahill, *Theological Bioethics*, 74.

⁸⁷ *Ibid.*, 76.

⁸⁸ Cahill, “Aging, Genetics, and Social Justice,” in Catherine Y. Read, Robert C. Green, and Michael A. Smyer ed. *Aging, Biotechnology, and the Future* (Baltimore: The Johns Hopkins University Press, 2008), 216.

⁸⁹ *Ibid.*, 219.

What has happened in the modern world is simply that disease itself, even when it is endemic rather than epidemic, has come to be seen as a plague. And since the plague can be dealt with, it *must* be dealt with. People will not endure what they no longer believe they have to endure.⁹⁰

Dealing with disease, however, requires costly medical research and a corresponding public effort. As he continues this line of argument, it must be stressed that there is only the perception that people should not have to endure a problem. But what happens when the “problem” is simply age-related? Then, medicine has moved from a practice of restoring or even maintaining health to one of providing for human wants. Therefore, the personal desire for longevity, coupled with the entrepreneurial proclivities of technology development, and both set within a context that prizes free choice, tend to undermine the common good.

Another part of the problem for Cahill is the increased isolation that the elderly feel as a result of the privatization and mobility of the nuclear family.⁹¹ A key source of this isolation is the growing distance among family members, who traditionally have been the primary caregivers for their elderly relatives. Furthermore, poverty exacerbates the declining health of older people because it tends to limit their means of access to health resources, proper nutrition, and other factors which facilitate active participation in society.

As a solution, Cahill offers three proposals that achieve the common good through cooperative strategies. The first involves the urgent needs of the elderly already living today. While anti-aging interventions might produce some future benefit, their realization is still found in the unpredictable future. Because these current needs are

⁹⁰ Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), 88-89, emphasis added.

⁹¹ Cahill, “Aging, Genetics, and Social Justice,” 233.

immediate, and their practical solutions “relatively clear,” a bioethics of the common good demands that they not be compromised by resource allocation toward futurist technology.⁹² The second recalls the “flip side” of providing for families as they promote the common good.⁹³ A solidaristic appreciation of justice for older persons finds an obligation on the part of society, especially through government action, to subsidize support for the elderly and their caregivers, allowing them to participate in community to the greatest extent possible. In several writings, Cahill underscores the call from Vatican II to seek the universal common good through direct action and activism. She highlights the work of organizations like the Catholic Health Association and the lay religious community of Sant’Egido, both of whom work to enhance the life of vulnerable populations like the elderly.⁹⁴ The third encourages legislative and financial restrictions on anti-aging interventions. Without such measures, allocation decisions will be determined by the market, and diseases will be treated according to their profit margins.⁹⁵

With regard to the use of biotechnology, Cahill makes a clear connection to the affirmations of CST, especially the common good. Her proposed cooperative strategies suggest that a just society must attend to the treatment of persons rather than diseases. She also encourages society to move beyond consumerist interests. To embrace the market, with its strongly individualistic concept of freedom, might bring about a “market only for the strong.” To allow people to decide within the context of voluntary

⁹² Ibid., 222-223.

⁹³ Cahill, “Sex, Gender, and the Common Good,” 162-163.

⁹⁴ Cahill, “Aging, Genetics, and Social Justice,” 223-225; and *Theological Bioethics*, 83-88.

⁹⁵ Cahill, “Aging, Genetics, and Social Justice,” 227.

association might allow for a “misguided compassion” that encourages the elimination and further marginalization of the elderly and other vulnerable people.⁹⁶

Moving now to Cahill’s bioethics of the common good in the context of HIV/AIDS, she describes this disease not only as a worldwide crisis that disproportionately affects women and the poor, but also as a useful case that poignantly illustrates the universal common good. In doing so, she highlights two major shifts in thinking about HIV/AIDS. The first is moves away from personalist sexual ethics that privilege autonomy and choice to a more structural paradigm that analyzes poverty and sexism. The second involves a reappraisal of absolute sexual norms within Catholic moral theology that prohibit condom use in light of this disease. While this latter shift might seem to remain a case of personal ethics in continuity with revisionist projects regarding sexual ethics, its reconsideration is actually located within and engendered by the larger framework of the former shift.

First, Cahill notes that American bioethicists in the 1980s initially described moral issues surrounding the AIDS crisis in personalist terms, encompassing problems of sexual promiscuity, illicit drug use, and medical confidentiality.⁹⁷ The initial response from Catholic bioethicists involved stricter observance of sexual morality, and increased responsibility to care for patients with AIDS.⁹⁸ Even as preventive measures were developed, bioethical discussion remained firmly planted within a framework of individualist concerns such as informed consent (among sexual partners), needle exchanges, and mandatory testing. This discourse is consistent with liberal American

⁹⁶ Cf. John Paul II, *Evangelium Vitae* (1995), 19.

⁹⁷ Cahill, *Theological Bioethics*, 156-157.

⁹⁸ Cahill, *Bioethics and the Common Good*, 67.

values like autonomy and liberty. Cahill argues that, absent a way to engage the larger problems of gender discrimination and poverty, analysis of the moral issues surrounding HIV will be ineffectual both in its treatment and prevention.⁹⁹ For instance, according to available statistics, three-fourths of HIV-infected persons are living in the developing world, but only about ten percent of them receive anti-AIDS medication.¹⁰⁰ The crisis is exacerbated by unrelenting poverty and patriarchal structures that especially affect women's choices regarding care for them and their children. One major part of this problem is that unmarried or widowed women, lacking the means to provide for themselves and their families, are forced into another marriage for their own survival. Another complication is the lack of women's sexual rights regarding abstinence or safer sex practices, and nearly no influence to change their husbands' sexual habits. Still another compounding problem is the stigma attached to HIV infection that is prevalent in developing countries.¹⁰¹ Stigmatization is located in the negative social interpretations, further isolating those already within marginalized communities.¹⁰²

Underscoring theological bioethics as a possible solution, Cahill encourages the current contribution of Christian organizations that help to alleviate HIV/AIDS, and advocates their continued participation in the global fight the disease. Deeply influenced by CST, including its emphasis on the common good and the "preferential option for the

⁹⁹ Cahill, *Theological Bioethics*, 158.

¹⁰⁰ *Ibid.*, 159.

¹⁰¹ In Christian communities, stigmatization of HIV is closely identified with sin, especially sexual sin. See Irene Tvedt Wangen, "HIV and AIDS-Related Stigmatisation: The Problem of AIDS, Sin and Sex," *Swedish Missiological Themes* 98, no.4 (2010), 425-452; and Margaret Farley, "Partnership in Hope: Gender, Faith, and Responses to HIV/AIDS in Africa," *Journal of Feminist Studies* 20, no.1 (Spring 2004), 133-148.

¹⁰² Cahill, *Theological Bioethics*, 160-161.

poor,” Cahill offers four interdependent aspects of the common good to restore its power.¹⁰³ One, a substantive account of the content of the common good is required. Contemporary CST has understood the common goods in terms of social justice and increased participation in a good society. Two, the means of achieving the common good must be located within the competent levels of authority. As such, subsidiarity is an important procedural principle that addresses not only “vertical” aspects of hierarchical structures of administration, but also “horizontal” aspects of maximizing the delivery of goods. Three, solidarity and hope are required in order to facilitate genuine commitment to the common good over and against pure self-interest. Solidarity helps to make religious symbols intelligible in a pluralistic world; hope transcends the current situation to continue work for a better future. Four, CST must interface effectively with other moral traditions and social traditions in order to achieve and maintain the common good.

Tied together with solidarity and subsidiarity, particular groups can work together to encourage compassionate and participatory action in order to advance the common good.¹⁰⁴ Cahill writes that

The global common good, to be served by CST, is participation of all peoples in a diverse and differentiated, yet solidaristic and collaborative world society. The global common good is both a normative ideal and an incipient form of life, embodying the cooperative and just interdependence of all human beings and cultures, and also of all that is human with the entire created universe.¹⁰⁵

¹⁰³ Cahill, “Globalization and the Common Good,” in John A. Coleman and William F. Ryan ed., *Globalization and Catholic Social Thought* (Maryknoll: Orbis Books, 2005), 47-54.

¹⁰⁴ Cahill differentiates between respect and compassion within the context of CST. Respect corresponds to the dignity of the person, while compassion corresponds to the solidarity of all in pursuit of the common good. This distinction will have further implications in comparing Cahill’s notion of collaborative justice with Farley’s understanding of compassionate respect in Chapters Three and Four. See Cahill, *Bioethics and the Common Good*, 70.

¹⁰⁵ Cahill, “Globalization and the Common Good,” 54.

In the case of HIV/AIDS, the universal common good is achieved through prudential reasoning about allocation of medication, while at the same time working to transform social structures that continue to complicate the epidemic. Because of the givenness of pluralism, this two-fold goal can be achieved only through a coalition with other health care organizations that do not endorse the “full range of Catholic values.”¹⁰⁶ Public moral discourse about bioethics, which will be discussed at length in the next section of the chapter, will encourage this partnership. This partnership is essential, since the Catholic Church provides about one-fourth of the total care of HIV/AIDS victims globally.¹⁰⁷

Next, with the ideal exceptions of sexual abstinence and absolute monogamy, condom use is the chief means of HIV prevention. This mode of prevention, though, is problematic from the standpoint of Catholic moral theology, which has an established tradition against using artificial means of contraception.¹⁰⁸ Papal teaching insists that “it is necessary that each and every marriage act remain ordered *per se* to the procreation of human life.”¹⁰⁹ Because condoms provide a barrier that prevents semen from moving freely, they have an apparent contraceptive use. However, this teaching is rooted in a church tradition which is “on the side of life.”¹¹⁰ The conjugal act with an HIV-infected

¹⁰⁶ Cahill, *Bioethics and the Common Good*, 72.

¹⁰⁷ Cahill, “Bioethics, Relationships, and Participation in the Common Good,” in Carol R. Taylor and Roberto Dell’Oro ed., *Health and Human Flourishing: Religion, Medicine, and Moral Anthropology* (Washington: Georgetown University Press, 2006), 219.

¹⁰⁸ This tradition originates in Pius XI’s *Casti Cannubii* (1930) and famously in Paul VI’s *Humane Vitae* (HV - 1968), 14, and has been upheld consistently in the writings of John Paul II. See *Familiaris Consortio* (FC - 1981), 32, and *Veritatis Splendor* (1993), 47.

¹⁰⁹ HV, 12.

¹¹⁰ FC, 30.

spouse seems to raise a paradox, as it risks the life of the uninfected partner if this teaching is to be upheld. Consequently, several Catholic theologians have attempted to resolve this issue through the principle of double effect or proportionate reasoning.¹¹¹ In fact, Benedict XVI has opened the issue further in recent statements by speculating that when conception is not at stake (i.e., in homosexual acts), condom use does not present an insuperable moral problem *per se*.¹¹²

In the context of the HIV/AIDS crisis, though, especially in situations like those in developing nations, where the disease is directly complicated by a corresponding lack of women's sexual rights, Cahill calls such attempts "a distraction" at best, and at worst "a contradiction" to the Catholic health care ministry's commitment to vulnerable populations.¹¹³ Even if condom use were permissible in a Catholic context, under double effect, proportionate reasoning, or some other justification, it would do little good because such a choice implies a freedom which women in particular – and the poor in developing nations in general – simply do not possess.¹¹⁴ Magisterial authority here is important, but it must be in an interdependent relationship with the receiving

¹¹¹ The warrant for using double effect is located in the permissibility of legitimate therapeutic interventions that include some contraceptive element, see *HV*, 15. This position has been taken up recently by Michael Dummett, "Indefensible: Moral Teaching after '*Humanae Vitae*,'" *Commonweal* 138, n.3 (February 11, 2011), 15-17. Also, though he does not support condom use, Martin Rhonheimer provides an insightful analysis of proportionate reason. See "A Debate on Condoms and AIDS," *The National Catholic Bioethics Quarterly* 5 (2005), 40-48.

¹¹² See Benedict XVI, *Light of the World: The Pope, the Church, and the Signs of the Times: A Conversation with Peter Seewald*, trans. Michael J. Miller and Adrian J. Walker (San Francisco: Ignatius Press, 2010), Appendix 3. For a clarification of the pope's comments, see BBC News Europe, "Pope's condom views clarified by the Vatican," November 23, 2010. Web. <http://www.bbc.co.uk/news/world-europe-11821422>, accessed January 4, 2013.

¹¹³ Cahill, *Bioethics and the Common Good*, 72.

¹¹⁴ Cahill, *Theological Bioethics*, 159.

community. Cahill locates that authority in the magisterium's power to illumine the "real situation," and offer guiding principles that respect human dignity and the common good.¹¹⁵ In short, theological debates are as much political as they are moral in scope.

Therefore, the solution to HIV prevention is not a straightforward moral choice, to be determined analogously through casuistry, or adjudicated according to proportionate reasoning. The discussion must return to the first shift away from one regarding personal behavior to one concerning the common good. A participatory bioethics informed by CST helps to translate that discourse. As she did with aging in the preceding paragraphs, Cahill names multiple Christian organizations and leaders that actively struggle against the epidemic and the social conditions that impair this endeavor. Groups like Catholic Relief Services, the Jesuit African AIDS Network, the Community of Sant'Egido, as well as the African Catholic Bishops, the Church of South India all work to one degree or another to provide anti-retroviral medication, AIDS education, community-based support, and other direct action to combat the spread of HIV. In particular, Cahill points to the leadership of the Sisters of Mercy, especially that of Margaret Farley (see Chapter Two), in order to illustrate the "global to local" Christian activism with regard to HIV.¹¹⁶

Starting with the feminist standpoint from which Farley most often writes, she collaborated with peers in the American theological community to form a movement of strategic planning and cooperative endeavors to raise awareness about the global scourge of HIV. In turn, her efforts became the springboard for the All Africa Conference: Sister to Sister, which developed financial interventions to support African women to do the

¹¹⁵ Cahill, "Moral Theology: From Evolutionary to Revolutionary Change," in James Keenan ed. *Catholic Theological Ethics in the World Church* (New York: Continuum, 2007), 222.

¹¹⁶ *Ibid.*, 166-167.

same in their local situation. This paradigmatic display of cooperation and solidarity, claims Cahill, is the essence of participatory theological bioethics.¹¹⁷

Cahill and the Relationship between the Community and the Individual

Before moving to Cahill's work on public moral discourse, one important contrast with CST in her writings must be discussed. As stated at the outset of this section, when employing the language of CST, Cahill emphasizes the common good over and above the other affirmations of human dignity and sociality. On the one hand, the papal social encyclicals generally use the dignity of the human person as their point of departure, trying to navigate between radical individualism and extreme collectivism.¹¹⁸ In fact, Paul VI reflects on some negative influences of the family on individual development, going so far as to claim that "the family's influence may have been excessive to the detriment of the fundamental rights of the individual."¹¹⁹ On the other hand, at different points in her most recent essays, Cahill reverses the polarity. One example is located in her discussion of abortion where, against the current liberal ethos of choice, she underscores the importance of moral bonds that arise out of human sociality, which she calls elsewhere "relationality:" interdependence with others in community.¹²⁰

A theory of the common good begins with the premise that persons are by definition interrelated in a social whole whose fabric of reciprocal rights and duties constitutes the very condition of their individual and communal agency and well-being. *The community is prior to the individual*, and each individual is

¹¹⁷ Ibid., 168.

¹¹⁸ GS, 25.

¹¹⁹ PP, 36.

¹²⁰ Cahill, "Bioethics, Relationships, and Participation," 208.

entitled to participate in the community and share in its benefits as well as obligated to contribute to the good of the whole and of fellow members.¹²¹

By absolutizing the value of choice, and exercising that primacy within an equally absolute context of autonomy, one neglects the social supports, personal obligations, and even human embodiment that interact within the milieu of a meaningful choice.¹²² It is unclear, though, what impact this priority of community relative to the individual might have in terms of personal accountability to that society.

Another example is found in her acceptance of coercive policies that enforce social change. Due to the consequences of human sinfulness, and especially the structural nature of some injustices, social transformation will never achieve a fully transcendent common good. As a result, power occasionally must be used against embedded power.

Thus, an element to be accentuated in social teaching of the future is the occasional, but still very definite, need for coercion to secure justice in social relations. Still needed is a principle of forceful intervention that is similar to the principle that undergirded the traditional just war theory. Once again, though, the structures of social agency have changed in the age of globalization; coercive authority is not limited to the nation-state, a comprehensive public authority, or international institutions. Activist networks and non-governmental organizations, along with dissenting national governments, can challenge and even coerce some aspects of global systems, at least some of the time.¹²³

In so many words, Cahill seems to be advocating revolutionary action to some degree or other in order to destabilize the *status quo*. The activism that she envisions seems to be political in nature, though her inference to just war theory renders this claim somewhat uncertain. Happily, in a footnote following this provocative quote, she lists two examples

¹²¹ Cahill, *Theological Bioethics*, 181, emphasis added.

¹²² *Ibid.*, 182.

¹²³ Cahill, "Globalization and the Common Good," 52.

of legislation and litigation to combat pressing social problems, buttressing the notion that Cahill is endorsing political solutions and deliberative remedies.¹²⁴

However, it would be imprudent to make much of these discrepancies with CST for two reasons. In the first place, issues like the marginalization of poorer women and their unborn children, the isolation of the declining elderly and the stigmatization of HIV victims are urgent, immediate concerns for Cahill. The *status quo* is unjust. The context of both illustrative quotes is the extreme individualism that CST attempts to counterbalance. By advocating direct action on behalf of the interests of the community's marginalized citizens, Cahill is tacitly upholding the human dignity of those affected negatively by the current ethos in both cases. In the second place, Cahill also presumes relationality (i.e., sociality according to CST) in these quotes. For instance, in her discussion of abortion, she notes that those who take a "pro-life" position on abortion, conforming themselves to the Catholic Church's absolute prohibition against killing the unborn, do not seem to adhere equally to CST's call for solidarity with the most vulnerable and exploited members of society.¹²⁵ The common good must be advanced by all and for all within the community. Given the relational nature of human beings, Cahill is affording those in power an opportunity for the aforementioned conversion that solidarity implies. Peace, indeed, is the fruit of reconciliation, which is borne by solidarity, the necessary virtue to achieve the common good.

In summary, this first section of the chapter has attempted to accomplish three tasks. First, it has demonstrated the philosophical and theological influences that are most relevant to Cahill's work, as they will underwrite her views on justice in Chapter Three.

¹²⁴ Ibid., 274, n.34.

¹²⁵ Cahill, *Theological Bioethics*, 182.

Second, chief among these influences is Catholic Social Teaching, which she firmly endorses and consistently applies especially in her later essays. Illustrative examples from her writings on sex, family, and bioethics were offered to present her application of CST to the point that it has become elemental to her theological context. Finally, this section analyzed what seemed initially to be a radical departure from CST by prioritizing the community over the individual, falling into the extreme of collectivism which CST seeks to avoid. However, this critical perception can be reconciled in light of Cahill's significant emphasis on the common good. In dire circumstances, justice seems to be completely absent from the given context. Respect for human dignity demands action on behalf of the marginalized; social interdependence demands that society identify those who most need aid and discern how to help them with compassion and respect. In closing, if CST's affirmations of human dignity and the common good are to be relevant, then they must be advanced in public moral discourse in innovative ways.¹²⁶ The chapter now turns to an analysis of Cahill's contribution to that discourse.

Cahill and Public Moral Discourse

In order to demonstrate how Cahill's writings on justice may apply to future public discourse about human germline enhancement, it is necessary to note her contribution in support of theological voices in the public sphere, since her later writings make an explicit case to identify justice as encompassing such participation.¹²⁷ Starting in the late 1980s, and continuing through today, a trajectory can be drawn through her work that first makes the case that theological voices *can* participate in public discourse, that

¹²⁶ Cahill, "Globalization and the Common Good," 43.

¹²⁷ Cahill, *Theological Bioethics*, 65-69.

they *should* participate, and finally, given the universal common good from CST that informs her later work, that they *must* participate. Also, Cahill notes the secularization of American bioethics and perceives a corresponding marginalization of religious voices during the 1970s and 80s. To counteract these inverse trends and to encourage wider, more inclusive participation, she offers guiding principles for religious yet public action to formulate policy discourse and to build political coalitions in support of their goals.

This section opens with a brief summary of Cahill's conception of public moral discourse. Next, it develops an historical analysis of her calls for participatory theological bioethics throughout various essays. Her strong argumentation entails a foundational claim that all knowledge is partial and perspectival; no standpoint can be considered, *prima facie*, more privileged or more reasonable than another. But this claim cuts both ways. As a result, a question might be raised: what, if anything, are theological voices surrendering in order to engage in public discourse? Put another way, what remains "theological" about theological bioethics in the public sphere? Cahill addresses these concerns by suggesting principles for theological voices involved in such participation. The concluding part of this section briefly analyzes these guidelines.

Bioethics and the "Public Sphere"

This section introduces two concepts that aid the reader in understanding the values that Cahill claims are at stake when theological voices engage in public moral discourse. The first is contextual, as it situates Cahill's writings within the historical framework of recent bioethics. It briefly addresses the secularization of bioethics that occurred over the last two decades of the twentieth century, and studies Cahill's reaction to this trend. The

second is more philosophical, in that it interprets the metaphor of the “public sphere” in a manner consistent with Cahill’s usage of the term. Taken together, they account for Cahill’s positive arguments on behalf of theological voices participating in public discourse, which will be analyzed in the next part of the chapter.

The Secularization of Bioethics

Considering the broad scope of philosophical and theological history, bioethics as a specialized discipline is a relative newcomer. In the latter half of the twentieth century, the development and refinement of medical technologies and increasing mercantilization of health care gave rise to moral problems that could no longer be contained within the hospital setting, under the aegis of “medical ethics.” Innovations like organ transplantation and kidney dialysis engendered concerns beyond principles of best practice involving the safety and efficacy of these respective interventions to issues of procedural justice regarding their deployment and utilization. Furthermore, the conversation included a wider range of participants beyond hospital staff; debates over these dilemmas involved not only physicians, but also policymakers and many others. Moreover, theological voices, particularly Christian and Jewish theologians, have been at the forefront of bioethics, and have served on prominent national policymaking and advisory boards for a half-century.¹²⁸ Since its inception, bioethics has been interdisciplinary and has included diverse religious elements.¹²⁹

¹²⁸ Cahill, *Theological Bioethics*, 13-14.

¹²⁹ James F. Childress, “Christian Ethics, Medicine, and Genetics,” in Robin Gill ed. *The Cambridge Companion to Christian Ethics* (Cambridge: Cambridge University Press, 2001), 261.

However, theological bioethics enjoyed this great success in the 1970s and 1980s in part because there was an air of “secularity” about them. In general, theologians opined with the language and methods of their secular counterparts. Some influential religious thinkers like Richard McCormick emphasized autonomous action and responsible choice. Because of his use of natural law, McCormick claims that his conclusions are not substantively different from reasonable nonreligious moral traditions.¹³⁰ Cahill claims this influence came at the cost of increasing marginalization of theologians, or at least the foundations of their craft.¹³¹ For example, Daniel Callahan notes that theologians in the field of bioethics rarely appealed to their theological convictions in their many and varied contributions. Moreover, as bioethics developed within a diverse society, the application of universal principles like autonomy, beneficence and justice were superior to private concerns like religion.¹³² Reflecting on thirty years of advances in bioethics, Daniel Callahan celebrates on the public acceptance of bioethics in a later essay.

It is hard to recall these days [1993] that there used to be a great deal of suspicion about any public talk on the matter of ethics. Even to suggest that we needed a public debate and discussion about issues of ethics ran into a fundamental problem. For many, particularly among educated people and particularly the educated elite, ethics connoted religion, and religion had been put behind them, at least within the universities.¹³³

According to Callahan, public acceptance of bioethics in the United States was accomplished first by clearing out its superfluous religious considerations. Callahan’s

¹³⁰ Richard McCormick, “Theology and Biomedical Ethics,” *Logos: Philosophic Issues in Christian Perspective* 3 (1982), 29.

¹³¹ Cahill, “Religion and Theology,” in Jeremy Sugarman and Daniel P. Sulmasy ed., *Methods in Medical Ethics* (Washington: Georgetown University Press, 1999), 50.

¹³² Daniel Callahan, “Religion and the Secularization of Bioethics,” *Hastings Center Report* 20, no.4 (July/August 1990), 3.

¹³³ Callahan, “Why America Accepted Bioethics,” *Hastings Center Report* 6, no. 23 (November-December 1993), S8.

claim betrays a secular worldview informed solely by the phenomenon of scientific advancement and consideration of its best utilization. There are traces of philosophical elitism that rings of Victorian secularism from the nineteenth century, and his claim is built on a premise that society has simply “outgrown” religion. Public moral discourse has no place for “private” matters like religion. As a result, ethical issues in the United States generally are resolved politically and economically, with both solutions grounded solely in Western liberal traditions.

Furthermore, philosopher Iris Young raises another problem of the “civic public” regarding moral issues.¹³⁴ Young argues that those who enter into public discourse generally do so with the goal of consensus in mind. In order to distill from the discussion the emotions, participants seek a “reasoned,” public discussion that wants all voices to be heard. The idea of “impartiality” creeps in, but this impartiality seeks to reduce plurality to unity, insofar as consensus is the goal of public discourse. As the discussion evolves, differences may be cast aside, but the impossible ideal of impartiality masks the inevitable partiality of perspective from which moral deliberation takes place. Thus, religious voices might be given a place at the table, and even heard with some deference. In the push toward resolution and consensus, though, difference must be wiped away, and to the degree that moral theology agrees with moral philosophy, its contribution will be accepted. However, any major difference can be accounted for by their religious

¹³⁴ Iris M. Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990), 96-121.

commitments, and the revelatory sources that they privilege.¹³⁵ Thus, moral theology runs the risk of being reduced to moral philosophy.

It should be noted that Cahill appreciates the growing suspicion of religious considerations in a public forum. She points to the political power of the American “religious right.” Socially conservative Roman Catholics and Evangelical Protestants undermined consensus on medical and social issues throughout the 1980s and 90s.¹³⁶ Nonetheless, Cahill sees a real contradiction in a public setting that excludes participants and creates new justice issues.¹³⁷ “Public” is distinct from “secular,” and the public sphere is strongly inclusive of all voices. It covers society’s diverse religious and secular moral traditions. Moreover, as the coming sections of this chapter bear out, Cahill argues that all moral discourse is tradition bound, and as one community among communities, it is unjust to exclude Christian thinkers simply because they are Christians.¹³⁸

¹³⁵ In the context of the HIV crisis in the strongly religious nation of Nigeria, Jude Aguwa points out that all religious traditions, especially Catholicism, are becoming less and less relevant in the resolution. While the primary source of this irrelevance is the moral rigidity of the Catholic teaching on condom use, Aguwa also notes that practices of “faith-healing” are on the rise in all Christian denominations. Taken together, they can exacerbate the crisis in two ways: 1. they distract attention from practical and medical resources; and 2. when infection occurs, and faith-healing fails, the first tendency is to blame the victim. See Aguwa, “Religion and HIV/AIDS Prevention in Nigeria,” *Cross Currents* 60, no.2 (June 2010), 209, 214.

¹³⁶ Cahill, “Religion and Theology,” 54.

¹³⁷ Cahill, “Can Theology Have a Role in ‘Public’ Bioethical Discourse?” *Hastings Center Report* 20, no. 4 (July-August 1990), 10-11.

¹³⁸ Many religious and secular thinkers, especially those analyzed in Chapter Two, agree with Cahill on this point. For instance, Alasdair MacIntyre notes that one does not engage in public dialogue unless he or she is convinced that there is a truth about the human good at stake. See *After Virtue*, 8 for a brief analysis. For a more detailed consideration, see chapter 18 of *Whose Justice? Which Rationality?* (Notre Dame: University of Notre Dame Press, 1988).

The “Public Sphere” as Place

Just as Cahill’s definition of “public” is at odds with Callahan’s presumption that bioethics is secular through and through, so is her account of the “public sphere” or “public square” contrasted with other views. By employing geometrical metaphors of a public “sphere” or “square,” one might be inclined to conceptualize public discourse as a space. For example, Charles Taylor defines the public sphere as a common space where ideas may be discussed and a “common mind” formed.¹³⁹ Though it is conceived of as a unity, the discourse is actually pluriform in that it is a multimedia locus for the exchange of ideas. The common mind can be described as the “public opinion,” which emerges from the discourse. But the “public sphere” is more than a meetinghouse for the exchange of ideas. Much less so is it a place for rational debate, and so “public arena” is also imprecise. Cahill finds the idea of the public sphere as “place” problematic, because it is far from a “neutral” territory.

The public sphere is never outside of or immune to the dialectics of power. Although the common space may not be identified with any one manifestation of institutionalized political power or government, the participants in discourse will have differentials of influence along a number of different axes – income, education, race, gender, age, profession – and so will the practices and institutions in which they participate. The public sphere is a space in which power is exercised and mediated, resulting both in conflict and in shifting equilibria.¹⁴⁰

Cahill’s appraisal here squares with Taylor’s account of the public sphere, but she takes it a step further by demonstrating theological bioethics potential role in transforming the dynamics of discourse. Others have noted that the public forum is usually convened

¹³⁹ Charles Taylor, *A Secular Age* (Cambridge: The Belknap Press of Harvard University Press, 2007), 185-196.

¹⁴⁰ Cahill, *Theological Bioethics*, 26.

within the context of a capitalist media, and so advertising dollars can unduly influence its editorial content.¹⁴¹

As a corrective to the power differential that frequently is found in policy debates, Cahill suggests an understanding of participatory bioethics that includes action and activism.¹⁴² Better still, participatory discourse involves multiple “spheres” and networks that transcend “secular” values, privileging specific goods while simultaneously excluding other goods. This exclusion thereby causes harm to those who cannot join in the discussion. For instance, using vocabulary similar to that of philosopher Michael Walzer (See Chapter Two) in her discussion of genetic therapy, Cahill argues that the value of this intervention collides against the “sphere” that values equitable access and, one could add, the value of money.

The moral center of Catholic social teaching is a concept of justice as including mutual rights and duties of all members and groups in society, the cooperation and interdependence of all in the common good of society, the moral and legal responsibilities of state, and the legitimate sphere of independence of local groups and institutions.¹⁴³

As medical technologies become increasingly scientific and market-driven enterprises, they risk excluding the humanistic and common-good dimensions of their utilization.

¹⁴¹ For instance, Noam Chomsky analyzes the chasm between popular opinion and elitist ideology in “The Media and Elite Opinion,” in Peter R. Mitchell and John Schoeffel ed., *Understanding Power: The Indispensable Chomsky* (New York: The New Press, 2002), 18-30. Using the work of Stephen Hart, Cahill also alludes to this difference by demonstrating that progressive religious movements fail to link popular values to any transcendent frame of reference which ground them, *Theological Bioethics*, 54-56. Walzer attempts to account for this shortcoming in *Politics and Passion* (New Haven: Yale University Press, 2004), xii.

¹⁴² Cahill, *Theological Bioethics*, 20.

¹⁴³ Cahill, “Genetics, Theology, Common Good,” in Lisa Sowle Cahill ed., *Genetics, Theology, and Ethics: An Interdisciplinary Conversation* (New York: Crossroad, 2005), 123.

Participatory theological bioethics works within a network of institutions, each with its own spheres of influence, vocabulary, and worldviews. It attempts to transform all three through cooperative strategies and political activism.

The next two parts of this section outline two vital components of this participation. What immediately follows is an historical analysis of Cahill's work regarding whether and to what degree theological bioethics can play in public discourse. After that, the final part examines her guiding principles regarding how to participate in these spheres. Also, these next two parts will refer back to the secularization of bioethics and the problem of the "public sphere" discussed in this opening part. Ultimately, this analysis reaches a conclusion that justice is the overarching value at stake, and will need to be analyzed in subsequent chapters.

Can (and Should) Theological Voices Participate in Public Moral Discourse?

Historically, Cahill's work encouraging theological participation in public discourse can be traced to her 1979 essay in *The Journal of Medicine and Philosophy*, where she contrasts the methods of theologians Richard McCormick and Paul Ramsey.¹⁴⁴ What is striking is that her essay (and the issue in which it appeared) characterizes theology as *the* primary voice in bioethics, a situation far removed from the marginalization she describes in her later work. The editors of that issue were theologians James Gustafson and Stanley Hauerwas. In their introductory editorial, Gustafson and Hauerwas remind readers that

¹⁴⁴ Cahill, "With Shouting Distance: Paul Ramsey and Richard McCormick on Method," *Journal of Medicine and Philosophy* 4, no. 4 (December 1979): 398-417.

In spite of secularization, there are still far more people who belong to religious communities in American [sic] than would warrant membership in that fictional denomination called autonomous rational moral agents to which our colleagues in moral philosophy seek to evangelize us.¹⁴⁵

However, Cahill envisions the theological wrangling between Ramsey and McCormick in a context quite remote from both Christian theology and public discourse. It is an exchange between two scholars, and, as such, their claims are not necessarily defended on the foundation of a comprehensive Christian faith. Furthermore, Cahill implies that public discourse helps to settle a *theological* matter. For example, she writes

For both [Ramsey and McCormick], theology provides a court with which to hear a moral case, but the outcome is decided only with the assistance of *amici curiae* (e.g., philosophy, the social and empirical sciences).¹⁴⁶

The question raised by the exchange is what role these outside influences have in adjudicating the dispute. This meeting of minds is between two Christians, an internal matter, as it were, in which a third party – apparently a coalition of secular voices – helps to shape the key components of the discourse. As the field of bioethics became more secularized, though, its participants from religious communities often adapted their vocabulary for the emerging audience. Philosophers and theologians were already discussing the implications of this secularization in the early 1970s.¹⁴⁷

By the end of the 1980s, Catholic theology's role in public bioethics seems to have been largely diminished. For their part, moralists pursued other pressing issues of the day, including nuclear disarmament, urban poverty, and environmental concerns. In fact, Cahill's own writing during this time emphasized family and gender concerns rather

¹⁴⁵ James Gustafson and Stanley Hauerwas, "Editorial," *Journal of Medicine and Philosophy* 4, no. 4 (December 1979): 346.

¹⁴⁶ Cahill, "Within Shouting Distance," 403.

¹⁴⁷ A polemical analysis of the trend at the time is found in Roy Branson, "The Secularization of American Medicine," *Hastings Center Report* 1, no. 2 (1973): 17-28.

than medical ethics.¹⁴⁸ Bioethical questions were resolved to the satisfaction of many through secular channels with the vocabulary of autonomy and “rights talk.”¹⁴⁹

Cahill’s Positive Argument for Participation

Beginning in 1990, though, Cahill begins to build an argument that theology still has much to offer bioethics. As noted in the opening section of this chapter, she draws frequently from the respective works of James Gustafson and Richard McCormick, both of whom influenced her early work. In order to demonstrate that theology can and should have a participatory role in public moral discourse about bioethics, Cahill develops the following argument. First, public discourse about bioethics draws participants from a wide range of intellectual and moral traditions. Second, participants with religious commitments likewise speak from an intellectual and moral tradition. Third, there exists no independent realm of philosophical discourse, privileged as more reasonable, neutral,

¹⁴⁸ Cahill, “Toward a Christian Theory of Human Rights,” *Journal of Religious Ethics* 8, no.2 (Fall 1980), 277-301; “Nonresistance, Defense, Violence, and the Kingdom in Christian Tradition,” *Interpretation* 38, no.4 (October 1984), 380-397; “Sexual Ethics, Marriage, and Divorce,” *Theological Studies* 47, no.1 (March 1986), 102-117; and “Catholic Sexual Ethics and the Dignity of the Person: A Double Message,” *Theological Studies* 50, no. 1 (March 1989): 120-150; 497-522. As Chapter Four of this dissertation bear out, though, Cahill’s understanding of justice develops considerably in her writings outside of bioethics, and cannot be considered apart from these other theological writings.

¹⁴⁹ For a concise account of this trend toward autonomy, see Daniel Callahan, “Religion and the Secularization of Bioethics,” *Hastings Center Report* 20, no. 4 (July-August 1990): 2-4. The term “rights talk” comes from Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: The Free Press, 1991), see especially 40-46, 171-173.

objective, or less tradition-bound, than religious ones. So, concludes Cahill, public discourse ought to include participation from theological voices.¹⁵⁰

Cahill's first premise is not controversial. Religious voices continue to exert considerable influence in public discourse, as evidenced in recent public discussions about federal funding for embryonic stem cell research or California's recognition of same-sex unions. In these cases, some religious groups influenced public perspectives over and above those from a broad coalition of clinical researchers and social scientists, Hollywood actors and political activists, as well as secular philosophers and even other religious voices.¹⁵¹

The argument's second premise is also uncontroversial in that religious traditions have strict, non-scholarly and even anti-intellectual interpretative movements within themselves. Several examples can be offered from the philosophical writers who are analyzed in Chapter Two. First, John Rawls simply excludes as "unreasonable" those who do not accept the political conception of justice.¹⁵² Next, Michael Walzer notes that groups like the Amish or Jehovah's Witnesses do not participate in many aspects of public life in the United States. He claims that such groups are tolerated because they accept a position at the margins of society.¹⁵³ Finally, Alasdair MacIntyre argues that a tradition in good order is always constituted by an ongoing argument about the ultimate

¹⁵⁰ Cahill, "Can Theology Have a Role in 'Public' Bioethical Discourse?" *Hastings Center Report* 20, no. 4 (July-August 1990), 10-14.

¹⁵¹ On the role that religion played in the contentious issue of same-sex marriage in California, and the generally negative reaction to religion against rejecting it, see Robert P. Jones and Daniel Cox, *Religion and Same-sex Marriage in California: A New Look at Attitudes and Values Two Years after Proposition 8* (Washington: Public Religion Research Institute, 2010).

¹⁵² John Rawls, *Political Liberalism*, 170.

¹⁵³ Michael Walzer, *On Toleration*, 67-68.

purpose of itself.¹⁵⁴ But Cahill is not making the case that every religious tradition is a monolith. Rather, her second premise is heuristic. In public discourse, religious voices speak from an intellectual and cultural tradition, just as all other participants speak from their respective and mottled traditions. Therefore, the second premise to Cahill's argument is founded on two prior sub-premises.

Theologians and religious groups can introduce the civil community to insights borne by their own traditions, *on the assumption that and provided that* these traditions are not sheerly insular nor the civil community a wholly foreign country in which values with originally religious sponsorship are entirely unintelligible.¹⁵⁵

Moreover, as David Tracy points out, the strictest religious interpretations and least-willing dialogue partners simply will refuse to enter public discussion. Instead, they will withdraw into the "safe" boundaries of their own communities.¹⁵⁶ The concluding part of this section will address the self-limiting aspect of public participation for the confessing community, but the present discussion about theology's possible contribution implies at least some degree of openness to dialogue from all parties – religious and secular.

But Cahill's third premise requires further qualification. On the one hand Jeffrey Stout has recommended to theologians to limit their language to "immanent criticism" in public discourse.¹⁵⁷ Because empirical data have become vital to contemporary accounts of reality, religion has been challenged to move the bulk of its enterprise away from the metaphysical realm. Thus, argues Stout, theologians can employ a vocabulary that rises

¹⁵⁴ Alasdair MacIntyre, *After Virtue*, 222.

¹⁵⁵ Cahill, "Can Theology Have a Role in 'Public' Bioethical Discourse?" 11.

¹⁵⁶ David Tracy, *Blessed Rage for Order: The New Pluralism in Theology* (New York: The Seabury Press, 1975), 24-25.

¹⁵⁷ Jeffrey Stout, *Ethics after Babel: The Language of Morals and Their Discontents* (Boston: Beacon Press, 1988), 281-282. Also cited in Cahill, "Can Theology Have a Role in 'Public' Bioethical Discourse," 11.

“above the fray,” that is, above the special religious commitment inherent in particular theologies.¹⁵⁸ However, because so many of Christianity’s claims, including moral ones, are founded upon metaphysical assumptions, it becomes difficult to assert *any* theological claim without moving, ultimately, away from the empirical realm. On the other hand, Cahill’s responds to Stout’s claim by rooting her third premise in the postmodern philosophical claim that all knowledge, even universal principles, is contextualized and perspectival. She reasons that all ethical discourse is tradition-bound, and this assertion is the crux of the third premise of her argument.¹⁵⁹ Empirical studies, Cahill points out in another work, help to shed light upon ethical issues, but empirical information remains descriptive.¹⁶⁰ In order to apply this knowledge in any meaningful way in Catholic bioethics, it is necessary to examine empirical evidence in light of Sacred Scripture, Sacred Tradition, as well as human reason and experience, all of which might engender *prescriptive* accounts of the human person.¹⁶¹

More importantly, public policy discourse is a meeting ground for diverse groups of people with a common, highly specific purpose.¹⁶² The *ad hoc* character of public discourse implies that discussion can proceed in spite of a lack of consensus on substantive questions about either the “good life” or other metaethical considerations. In deciding to enter into public discourse, all parties involved have (tacitly, at least) agreed

¹⁵⁸ Stout, 282.

¹⁵⁹ Cahill, *Theological Bioethics*, 19.

¹⁶⁰ Cahill, *Between the Sexes: Foundations for a Christian Ethics of Sexuality* (Philadelphia: Fortress Press, 1985), 145.

¹⁶¹ *Ibid.*, 148.

¹⁶² Cahill, "Can Theology Have a Role in 'Public' Bioethical Discourse?" 11.

that a particular issue transcends local or particular concerns. The resolution of that public issue lends itself toward something that can be called “the common good.”¹⁶³

Participatory Bioethical Discourse

Cahill reasons that while ethical discourse is tradition-bound, the plurality of traditions does not create an ideological impasse. Instead, it allows for discussion to commence from a common ground of shared assumptions and openness to dialogue. She cites William Placher’s pluralistic model of conversation: “Do not pretend that you can stop being a Christian and become the neutral and therefore authoritative moderator of the whole discussion. Do not let a representative of ‘modernity’ or anyone else assume that role either.”¹⁶⁴ The challenge, notes Cahill, is not to replace a “thin” tradition for a “thicker” one. In fact, there are already thick traditions embedded in the public sphere.

The real issue is *which* tradition has priority, precedence, and presumed authority within the patterns of social exchange about ethics and ethical behavior. The three main contenders in twenty-first-century postindustrial societies are science, economics, and liberalism. Theological bioethics should and can confront these thick traditions with persuasive counterstrategies, symbolic systems, and narratives, as well as with ethical “reasons.” The challenge before theologians is not to cast aside a thin discourse for a richer one, but to dislodge the thick discourses that are so widely entrenched that their constituting narratives and practices are no longer directly observed.¹⁶⁵

¹⁶³ Here the papal social encyclicals serve as an apt example of the church’s attempt to resolve social problems. The popes usually address these writings beyond the boundaries of the church, to “all people of good will.” Paul VI, *Populorum Progressio* (1967), John Paul II, *Centesimus Annus* (1991), and, most recently, Benedict XVI, *Caritas in Veritate* (2009).

¹⁶⁴ Cahill, “Theology and Bioethics: Should Religious Traditions Have a Public Voice?” *Journal of Medicine and Philosophy* 17, no. 3 (June 1992): 266.

¹⁶⁵ Cahill, *Theological Bioethics*, 27, emphasis added.

Catholicism displays an interplay of scriptural and narrative, sacramental and liturgical, as well as historical and social theological methods. Those who seek to participate in public moral discourse must appreciate these overlapping parts of the tradition.

Toward the goal of effective engagement, Cahill describes five modes of discourse.¹⁶⁶ The first four are taken from the work of James Gustafson: ethical, policy, prophetic, and narrative.¹⁶⁷ The criteria of their taxonomy are not rigid, and the various modes can work in concert with one another. Rather, to describe them as such is to name a species among general types of discourse by referring to the activities associated with its participants in the public sphere. For example, policy discourse builds consensus on a common ground of experience in the context of shared political and legal institutions. Issues are resolved through activities organic to those institutions, and their solutions are shaped by the values of that tradition. The challenge for theological bioethics is to resist being held in place exclusively by policy discourse, since the terrain of that public sphere is marked primarily with the values of liberal democratic capitalism.¹⁶⁸ Alternatively, to name practices of the body politic as “sinful” or “unjust” is to engage in prophetic discourse. At the same time, it calls for struggle against practices that are labeled as such, including revolutionary or subversive action against sinful practices and unjust institutions.¹⁶⁹ But prophetic discourse takes place at the margins of the larger conversation. It entails in some ways a refusal to participate, since the contemplated action will lead to further harm. Nonetheless, it can also serve not only to unite coalitions

¹⁶⁶ Ibid., 35-40.

¹⁶⁷ James M. Gustafson, *Varieties of Moral Discourse* (Grand Rapids: Calvin College, 1988).

¹⁶⁸ Cahill, *Theological Bioethics*, 39.

¹⁶⁹ Ibid., 39-40.

against deleterious actions by embedded economic and political forces, but also to call attention to them through public outcry and destabilizing activism.

To these four, Cahill adds a fifth category called “participatory discourse.” Gustafson’s modes already imply willingness to take part in dialectic engagement, but the fifth brings the public nature of the discourse to the surface. Participatory discourse is characterized by a strong affinity to assess realistically the moral and political contours in which the public debate situated. The current context can be described as a “deliberative democracy” or “civil society.”¹⁷⁰ Some of the tools for engaging in participatory discourse have already been considered in this chapter. For one thing, casuistry is a helpful method for solving a current hard case in light of past success in an analogous issue. For another, subsidiarity and solidarity can help to respond to the *ad hoc* nature of pressing public concerns, as they both seek equitable resolutions at the appropriate levels of society. However, while faith *commitment* gives rise to participation in public discourse, faith *language* is of limited value, Cahill argues, as its use will convince only members of that faith tradition. In the forthcoming analysis of collaborative justice as it relates to human germline enhancement (see Epilogue), legal restrictions play a significant role in regulating this technology. For example, Françoise Baylis and Jason Scott Robert argue that not all ethical objections to human engineering are persuasive for everyone, and some (like religious arguments) will persuade no one who does not share similar beliefs. Atheists will hardly find arguments against transgressing divine laws persuasive.¹⁷¹ By contrast, participatory discourse links faith commitment with the public

¹⁷⁰ *Ibid.*, 44.

¹⁷¹ Françoise Baylis and Jason Scott Robert, “The Inevitability of Genetic Enhancement Technologies,” *Bioethics* 18, no.1 (2004), 13.

context – its institutions, coalitions, and limitations. “Participation,” then, can have a variety of referents, from advancing current public values to transforming or even subverting them. Once again, prudence is necessary to discern the wisest course of action for religious participants in public discourse.¹⁷²

In conclusion, Cahill’s argument for participatory bioethical discourse is rooted in her commitment for inclusive participation of all, especially the marginalized of society. This influence comes from Catholic Social Teaching that is clearly expressed in her later writings, which was analyzed in the opening part of this chapter. Cahill’s argument is further informed by her critical cognizance of the values of the larger society to which she addresses her essays. She seeks to transform those values in the service of the common good. Moreover, theological voices are not beholden to a single mode of discourse, such as those described by Gustafson. Instead, participatory strategies allow them simultaneously to embrace and to critique their own traditions. Informed by Catholic Social Teaching, participatory discourse aims to move beyond “first world” issues (i.e., liberalism, technology, and the market) toward pressing global concerns, such as the poverty and sexism that were discussed in the previous section of this chapter.¹⁷³ Prudent action facilitates the best practices and strategies to resolve the issue at hand.

¹⁷² Jonsen and Toulmin, 130-131.

¹⁷³ “The social and ethical implications of genetic research cannot be understood apart from economic globalization, worldwide health inequities, and the absence of any one institution or well-coordinated set of institutions that can define and govern a ‘world order.’” Cahill, “Genetics, Theology, Common Good,” 117.

Cahill's Guiding Principles for Public Moral Discourse

This section synthesizes Cahill's principles to guide the application of participatory modes of bioethics. These guidelines facilitate engagement in the various kinds of public discourse without isolating themselves within one particular mode and its concomitant values. At the same time, they especially help Catholic voices to make a distinctive contribution within the plurality of other religious voices and ideological commitments. There are three major guiding principles which can be gleaned from the breadth of Cahill's writings on public moral discourse and participatory theological bioethics: the self-limiting and self-critical nature of theological ethics, the conjunctive worldview of Catholic theology, and the common language of natural law ethics.

The Self-Limiting Nature of Contemporary Theological Ethics

To begin, if Cahill's premise from the previous section is correct that there is no privileged standpoint, then it begs the question: What should be distinctive about Christian contributions to such discussions in the first place? Reacting to a series of papers written by theologians, one of whom was Cahill's, Alasdair MacIntyre responds caustically to what he understood as muddled thinking in their positions.

Theologians still owe it to the rest of us to explain why we should not treat their discipline as we do astrology or phrenology. The distinctiveness and importance of what they have to say, if it is true, make this an urgent responsibility.¹⁷⁴

Here, MacIntyre offers more than a choleric barb at a perceived weakness in certain theologians' methods.¹⁷⁵ He challenges Christian theological voices to remain both

¹⁷⁴ Alasdair MacIntyre, "Theology, Ethics, and the Ethics of Medicine and Health Care," *Journal of Medicine and Philosophy* 4, no. 4 (December 1979), 442.

distinctively Christian and eminently relevant. In his estimation, the theologians whom MacIntyre addresses lost their prophetic bite and countercultural edge in articulating their positions, or, worse still, they used no *theology* to back their claims.

Early in her call for participation in public discourse, Cahill expresses an awareness of this danger. Rather than accepting dichotomous propositions that force policy discourse into one of two camps – “rational scrutiny” or “religio-moral fanaticism” – she suggests that there is an “historical reasonableness” of the contextualized nature for *all* moral arguments, including those from religious voices.¹⁷⁶ So, Cahill offers three guiding principles for theological voices that participate in this discourse.

First, theological bioethics ought to be socially engaged. This principle may seem tautologous; theological bioethics *is* essentially dialogical. However, this principle is essential because there are two levels of dialogue. The self-evident part of this principle is found at level of the dialogical nature of discourse itself. But the other necessary element of dialogue is the critical self-reflection by a particular community. In turn, deliberation about bioethical matters via participatory discourse helps a believing community draw boundaries for *itself*, what it will do or not do when faced with difficult moral choices. Cahill describes this self-defining character as the primary role of Christian bioethics.¹⁷⁷ Toward this goal, paradigmatic narratives form and guide the faith community.

¹⁷⁵ MacIntyre is at times taken to task for appropriating the work of theologians – Thomas Aquinas in particular – without proper attentiveness to their theological contexts. See Thomas F. O'Meara, "Virtues in the Theology of Thomas Aquinas," *Theological Studies* 58, no. 2 (June 1997): 254-285. See also Chapter Two of this dissertation.

¹⁷⁶ Cahill, "Should Religious Traditions Have a Public Voice?" 265.

¹⁷⁷ Cahill, "Can Theology Have a Role in 'Public' Bioethical Discourse?" 13.

In turn, the self-critical community can enjoy robust participation in public discourse, since it is aware of its own boundaries. In the Catholic context, CST reappears as an essential agenda item for the values that its participants bring to public discourse. From her more recent work, Cahill argues that theological bioethics must take the option for the poor as its central theme in order to reassert a prominent place in public policy discourse about medical research and health care.¹⁷⁸ Making this case, Cahill prioritizes justice as the chief participatory criterion. She thereby envisions theological bioethics as a “self-conscious mediator” among ideological and institutional movements at the local and global levels.

A Conjunctive Stance in Contemporary Catholic Ethics

Second, Catholic theology often expresses a worldview that sees contrasts working in dynamic relationship rather than dividing in mutual exclusivity. For instance, the previous part described the vexing issue of distinguishing between faith language and faith commitment. MacIntyre’s frank commentary suggests that some scholars find such a distinction unsatisfactory. In another context from his earlier work, MacIntyre argues that for theologians to shuck off faith language is to accept *a priori* the modern claim that only secular language is privileged to describe and, presumably, prescribe moral norms.¹⁷⁹ Similarly, theologian Stanley Hauerwas notes that even if religious thinkers are the historically-recognized leader in bioethical discourse, it is not clear to what degree they remain in the discourse *qua* religious thinkers.

¹⁷⁸ Cahill, *Theological Bioethics*, 69.

¹⁷⁹ Alasdair MacIntyre, "Can Medicine Dispense with a Theological Perspective on Human Nature?" in *The Roots of Ethics*, ed. Daniel Callahan and H. Tristram Englehardt (New York: Plenum Press, 1981).

If the theologian attempts to underwrite the medical ethos drawing on the particular convictions of Christians, just to the extent those convictions are particular they will serve only to emphasize society's lack of a common morality. Thus theologians in the interest of cultural consensus, often try to downplay the distinctiveness of their theological convictions in the interest of societal harmony. But in the process we only reinforce the assumption on the part of many that theological claims make little difference for how medicine itself is understood or how various issues are approached.¹⁸⁰

The previous section also described Iris Young's critique of the ideal of impartiality.

However, as Hauerwas states in another work, much of secular society's moral attitudes are rooted in Judeo-Christian beliefs that are popularly thought to be false, or at least irrelevant. Thus, much of the disagreement stems from the difficulty and implications of developing a truly secular, or better yet, public morality.¹⁸¹

Historically, Christian theology and philosophy have at times experienced an uneasy relationship. For example, in the second century, Tertullian perceived Gnostic errors in his opponents' writings. Because he believed that these errors grew out of their study of the natural philosophies, he was inclined to condemn all philosophy that tried to intertwine itself with church teaching.

What indeed has Athens to do with Jerusalem? What concord is there between the Academy and the Church? Away with all attempts to produce a mottled Christianity of Stoic, Platonic, and dialectic composition!¹⁸²

Contemporary thinkers often quote Tertullian's famous statement regarding the relationship between religion and other modes of describing the world, like science and

¹⁸⁰ Stanley Hauerwas, *Suffering Presence: Theological Reflections on Medicine, the Mentally Handicapped, and the Church* (Notre Dame: University of Notre Dame Press, 1986), 76-77.

¹⁸¹ Cf. Stanley Hauerwas, "On Keeping Theological Ethics Theological (1983)," in *The Hauerwas Reader*, ed. John Berkman and Michael Cartwright (Durham: Duke University Press, 2001), 54-74.

¹⁸² Tertullian, *de Prescriptione haereticorum*, VII. See Gary Ferngren ed., *Science & Religion: A Historical Introduction* (Baltimore: Johns Hopkins, 2002), 48; Christopher Kaiser, *Creation and the History of Science* (Grand Rapids: Eerdmans, 1991), 4.

secular philosophy. But as Hauerwas notes, Tertullian's contemporaries developed effective apologetic strategies founded on natural observation. Even Tertullian admits that appealing to the scripture is of limited value to settle a controversy.¹⁸³ But there is at least one significant difference between the early Christian schema and the contemporary context. In the past, the apologist was ever-seeking ways to make the Christian faith intelligible to non-believers. Today's situation, according to Hauerwas, is that many theologians temper their language in order to be admitted to the discourse, trying to locate the "essence" of the religion free from its "embarrassing particularistic aspects."¹⁸⁴ Hauerwas advises Christian theologians to avoid policy discourse and the seduction of "relevance."¹⁸⁵

Moreover, the tandem metaphors of "pilgrim" and "home" help to describe the difficulty in maintaining particularity, especially in ethical discourse. In many cases the foundational claims of religion have had difficulty finding a home in the world. As Paul Tillich notes, theological ethics is often given shelter as a "poor relative" to ethics for its instrumentality, namely to help people to be good, but is evicted quickly when its anthropological claims exceed secular ethics' needs.¹⁸⁶ By contrast, Cahill uses the metaphor of a domicile both to describe the uncomfortable relationship among religious and other stances, and to encourage a more vibrant participation in the public realm to engage the issues that bring them together in public discourse.¹⁸⁷

¹⁸³ Tertullian, XVIII.

¹⁸⁴ Hauerwas, "On Keeping Theological Ethics Theological," 53.

¹⁸⁵ Cahill, "Religion and Theology," 60.

¹⁸⁶ Paul Tillich, *Theology of Culture* (London: Oxford University Press, 1959), 6.

¹⁸⁷ Cahill, *Theological Bioethics*, 20.

These cautions notwithstanding, by employing Gustafson's modes of discourse, coupled with her own fifth participatory mode, Cahill demonstrates the conjunctive rather than disjunctive relationship between faith language and faith commitment. Arguments (especially moral arguments) that are laden with faith language will be most convincing those who share similar beliefs. Specific Catholic claims often entail a certain field variance that gives considerable weight to the privileged sources of Sacred Scripture and Sacred Tradition. Simultaneously, though, many arguments in Catholic moral theology are grounded in the invariant sources of reason and experience, in that both are common to all persons. For instance, the Natural Law tradition employs reason and observation in arriving at an appreciation for both primary purposes and ultimate ends of material phenomena. Moreover, while it is claimed that natural law principles are universal, they do not require divine revelation in order to be known, in that they are accessible to all reasonable people. Likewise, the Catholic bioethical tradition frequently revises positions in light of refinements in healthcare delivery and availability of medical technology. For example, CST is grounded in the human experiences of suffering and oppression, and the compassion they engender. It prohibits the common good from being undermined by any one particular interest. In so doing, Catholic social ethicists might argue that maximizing health in a community will be undermined by pursuing the relief of suffering individuals with highly technological, relatively rare, and extremely expensive medical equipment or genetic intervention.¹⁸⁸

Looking ahead to public discourse regarding germline enhancement (See Epilogue) and procreative technologies in general, faith commitment can transcend faith language. On the one hand, firm commitment to ethical discourse encompasses critical

¹⁸⁸ Cahill, *Theological Bioethics*, 118-119.

self-reflection (via narrative discourse), significant engagement (via policy discourse) and policy-level critique (via prophetic discourse). Thus, CST can commit itself to public discourse on this topic in a way that emphasizes solidarity, even though the root metaphor of that commitment is the Catholic belief that humanity is created in God's image (Gen 1:27-28).

On the other hand, because all parties involved in this discourse seek resolution about enhancement of the human person, discussion might be best-informed by steering it along the natural law tradition insofar as it is conceived in pragmatic terms and informed by particular contexts. At least two reasons back this claim. First, the human person is generally understood as complex and relational. This fact is confirmed by psychology and anatomy, as well as theology. A holistic view of the person must be a primary focus of public discussion. Second, despite a lack of consensus on notions of the common good or other substantive issues, natural law, with its emphasis on reasoned observation, helps to locate shared experience and values within socio-historical contexts.¹⁸⁹ Cahill writes

A modest natural law moral claim requires an inductive judgment based on the consistent elements in humanity's *de facto* physical, psycho-spiritual, and social constitution – known experientially, refined critically and socially, and expressed in generalizations.¹⁹⁰

Thus, participants in public discourse do not need to agree on the “ultimate purpose” of humanity in order to agree on the primary good of “this” action, which requires immediate cooperation. As Jeffrey Stout notes, agreement on the immediate issue does

¹⁸⁹ Jeffrey Stout, *Ethics after Babel: The Languages of Morals and Their Discontents* (Boston: Beacon Press, 1988), 258.

¹⁹⁰ Cahill, "Moral Traditions, Ethical Language, and Reproductive Technologies," *The Journal of Medicine and Philosophy* 14, no. 5 (October 1989): 510.

not mean that all parties must agree for the same reason.¹⁹¹ Or, as John Rawls puts it, they do not necessarily have to agree “all the way down.”¹⁹² Similarly, Natural law ethics can respect these differences when building consensus on the issue. As the discussion surrounding human germline enhancement turns to the question of the “natural” character of these enhancements, natural law ethics might have a vital role in steering the conversation back to the person affected by the enhancement, and to the society engaged in this future practice.

Natural Law Ethics and Consensus

Third, according to Cahill, there should be, if participation is properly “catholic,” not only a countercultural edge to the contribution of religious ethics in the public sphere, but also “bridging language” to span the chasm between Christian and secular ethics.¹⁹³ This second-order language is helpful when there is no generalized notion of the common good. Stout describes the language of rights as one such “bridge dialect,” one that spans opposing or unconnected parties in public discourse. The language of rights maintains open channels for dialogue by providing a mediating vocabulary that is common to all parties and by establishing a framework that is operable in public spheres (i.e., government agencies, federal courts, and public education).¹⁹⁴ For example, in public discourse regarding human rights, Christian communities under Islamic rule, like those in

¹⁹¹ Ibid., 226.

¹⁹² Rawls, *Justice as Fairness: A Restatement* (Cambridge: The Belknap Press of Harvard University Press, 2003), 32.

¹⁹³ Cahill, “Can Theology Have a Role in ‘Public’ Discourse?” 14.

¹⁹⁴ Stout, cited in Cahill, “Moral Traditions, Ethical Language, and Reproductive Technologies,” 501.

Pakistan, have been employing a second-order discourse of human rights, what some call a “bridging language,” which assists the more confessional, “first-order” discourse of their respective traditions.¹⁹⁵

In the American context, though, the referent for “rights,” particularly in the case of procreative technologies, is individual rights. Couched in terms like “reproductive liberty” and “ethical individualism,” those contemplating parenthood are the ones for whom these “rights” are often generated.¹⁹⁶ In American bioethics, autonomy is often privileged as the primary ethical principle.¹⁹⁷ Even though she agrees with the usefulness of “rights talk,” Cahill envisions a more robust understanding of the relationship among autonomy and other moral considerations, particularly justice. This caution is especially warranted by CST, which seeks to counterbalance both extremes of individualism and collectivism.

Furthermore, this relationship is vital to public moral discourse about biotechnology in general, and human engineering in particular. For over a decade, Cahill has argued that in “principlism,” which for years dominated secular bioethics, the values

¹⁹⁵ R. Scott Appleby, “Serving Two Masters? Affirming Religious Beliefs and Human Rights in a Pluralistic World,” in *The Sacred and the Sovereign: Religion and International Politics*, ed. John D. Carlson and Erik C. Owens (Washington, DC: Georgetown University Press, 2003), 171.

¹⁹⁶ See John Robertson, *Children of Choice: Freedom and the New Reproductive Technologies* (Princeton: Princeton University Press, 1994); and Ronald M. Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge: Harvard University Press, 2000), 451-453.

¹⁹⁷ See Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics*, 6th ed. (New York: Oxford University Press, 2009), viii. In the Preface, the authors state that any interpretation of their work where autonomy overrides all other moral considerations is “profoundly mistaken.” Nonetheless, autonomy still appears first in their section on moral principles. The question might be raised: in maintaining the lexical order regarding, even if it descriptive rather than prescriptive, do they co-opt and thereby maintain the “American bias” toward autonomy that they deny in their preface?

implied in the principles of justice, autonomy, beneficence, and nonmaleficence are interdependent. Citing Linell Cady, public moral life is understood as a macrocosm of the atomistic individual. Alternatively, Cahill begins with the Catholic virtue tradition.¹⁹⁸ She reasons that justice, the Thomistic personal virtue of giving to each his or her due

implies a respect for the individual seen as part of a social whole within which benefits are to be shared and harms avoided. Thus autonomy and distributive justice should be treated together, as counterparts and neither can be isolated from a consideration of what counts as a good for persons or society in the first place.¹⁹⁹

In a later work, Cahill asserts that justice ought to be the comprehending principle.²⁰⁰ So, Cahill's conception and application of justice places individuals and the community in a proper relationship that is a hallmark of her later writings – "the common good."

The Catholic common-good tradition can bring to the public forum a viable and persuasive concept of the common good as entailing full social solidarity, participation, and empowerment, as well as the right to basic material and social goods. Moreover, it can embody a concept of an inclusive common good in specific narratives, image, and practices that capture the imagination and help create the political will to change social structures and institutions.²⁰¹

The vehicle for this change is participatory bioethical discourse. By applying the guiding principles outlined herein, Catholic voices can engage in public moral discourse. They can be fully self-aware of their position and defining the boundaries of their own actions in light of their particular privileged sources of moral knowledge. More importantly, outfitted with an integrative view of the human person, they can discern how to best

¹⁹⁸ Cahill, "The New Biotech World Order," *The Hastings Center Report* 29, no. 2 (March-April 1999), 46, quoting Linell E. Cady, *Religion, Theology, and American Public Life* (Albany: SUNY Press, 1993).

¹⁹⁹ *Ibid.*, 45-46.

²⁰⁰ Cahill, "Biotech and Justice: Catching Up with the Real World Order," *The Hastings Center Report* 33, no. 5 (September-October 2003), 44.

²⁰¹ Cahill, "Genetics, Theology, Common Good," in *Genetics, Theology, and Ethics: An Interdisciplinary Conversation*, ed. Lisa Sowle Cahill (New York: The Crossroad Publishing Company, 2005), 132.

deploy their arguments in a public setting. Finally, with the aid of natural law and its practical reasoning in light of human experience, Catholic ethicists can effectively utilize the primary language of the American political context, while simultaneously criticizing the values implied in them. They can partner with those already at work in evaluating the customary liberal emphasis on autonomy and “rights talk.”²⁰² Together, these three guiding principles offer Catholic voices and other religious participants a relevant, effective, and transforming participatory strategy.

Conclusion to Chapter One

Lisa Sowle Cahill’s arguments, as stated in the dissertation’s introduction, are formulated within the dual contexts of the Roman Catholic moral tradition and North American philosophical tradition. The first section of this chapter has attempted to sketch the contours of this complex by analyzing those aspects of both contexts that are most influential to her work. Theologically, she is rooted in the Roman Catholic tradition and often utilizes the sources and language of natural law ethics, which asserts that universal moral norms may be discovered in light of human reason and experience. However, the philosophical work of Mary Midgley, Albert Jonsen, and Stephen Toulmin have exerted a considerable impact on Cahill’s work throughout her career, and have helped her to remain ever attentive to the particular contexts in which the natural law is expressed. Moreover, the tradition of Catholic Social Teaching has also grounded her later theological work in a tireless pursuit of advancing the common good. While she tends to emphasize this feature of CST over and above the other affirmations of human dignity

²⁰² E.g., MacIntyre and Walzer, whose work will be considered in Chapter Two.

and relationality, both are fully present yet understated. Across the considerable topical span of her essays, the foundational principles of CST are elemental to her claims.

Also, because her scholarship is grounded in CST, it requires that Cahill engage the modern world in dialogue. Thus, the latter section has analyzed her positive argument in support of participatory theological bioethics. Her claim is rooted in the premise that all moral arguments are tradition-bound, and as such, religious traditions must not be excluded from the public forum. Cahill also notes that theologians have been somewhat marginalized as a function of the growing secularization in bioethics. As the field has considered nonreligious variants for its principles, Catholic theologians have struggled to articulate positions that are relevant while attempting to be faithful to their own moral tradition. To avoid the pitfalls of irrelevance in the discourse on the one side and departure from one's religious tradition on the other, she prescribes three guiding principles that serve to shape a responsible and effective participation.

Toward the end of this chapter, some of the direct quotes from Cahill contained reference both to public discourse and to justice. Their proximity to one another demonstrates the significant but understated importance of justice as a comprehending concern throughout her writings. To date she has written no substantive account of justice itself, and in various contexts she refers to justice as a value, a virtue, or a principle. Thus, the aim of this dissertation is to distill from her writings a more complete understanding of her conception of justice, the bulk of which will be accomplished in Chapter Four. In order to situate the analysis of justice in Cahill's work, the dissertation now turns to a study of justice in the complexity of both contexts from which she writes.

The following two chapters consider the work of diverse representative voices from both the secular philosophical and Roman Catholic traditions, respectively.

CHAPTER 2

JUSTICE IN THREE WESTERN PHILOSOPHICAL TRADITIONS

The next two chapters identify six accounts of justice that are significant to understanding Cahill's writings in Chapter Four and offer a general discussion of each. The dissertation's focus on Cahill's thought makes it neither feasible nor necessary to offer a comprehensive account of justice in either the Roman Catholic or Western philosophical traditions. Rather, it follows the example of scholars like Karen Lebacqz and Mary Elsbernd, who give detailed but representative philosophical and theological accounts of justice in their respective writings.¹ The purpose in taking this approach is to help to situate the forthcoming analysis of Cahill's writings on justice within their theological and philosophical contexts.

The present chapter opens with sketch of the Western philosophical terrain with respect to three secular accounts of "justice." While Cahill writes from within the Roman Catholic moral tradition, her work often addresses others writing outside of theological contexts. This representative survey helps to locate Cahill's writings within a contemporary philosophical frame of reference. The first comes from John Rawls and his

¹ Karen Lebacqz, *Six Theories of Justice* (Minneapolis: Augsburg Publishing House, 1986); and Mary Elsbernd and Reimund Bieringer, *When Love Is Not Enough: A Theo-Ethic of Justice* (Collegeville: The Liturgical Press, 2002). By contrast, I am not attempting to write a treatise on justice, as others have done recently. See Michael Sandel, *Justice: What's the Right Thing to Do?* (New York: Farrar, Straus, and Giroux, 2008); and Nicholas Wolterstorff, *Justice: Rights and Wrongs* (Princeton: Princeton University Press, 2008).

conception of justice as fairness, particularly with respect to distribution of goods. For Cahill, distributive justice is a hallmark of social justice; in turn, social justice is a vital component of her later bioethical writings.² Since Rawls deliberately sets out to write a theory of justice, his work is essential to the discussion of Cahill's work. Moreover, with the revision of his theory in *Political Liberalism*, Rawls' work is more closely connected to Cahill's, which is situated similarly within a religiously and ideologically diverse democratic society. The second account is offered by Alasdair MacIntyre, who laments the contemporary use of a moral vocabulary with no real connection to its historical roots, and seeks to retrieve a communal morality, with justice as a prominent and guiding virtue for that community. It should be noted that Cahill has not explicitly engaged MacIntyre's thought in some time. Nonetheless, she makes several arguments regarding justice and the communal context, sometimes similar to his claims and other times quite different.³ Thus, MacIntyre's contribution, critically considered, lends itself toward locating Cahill's writings on justice along this philosophical trajectory. The third account is put forth by Michael Walzer. His writings on justice in a pluralistic society apply directly to the contemporary American context. His commitment to public discourse likewise complements Cahill's work on public discourse, which was discussed in the previous chapter and will be reprised in Chapter Four.⁴

² Cahill, *Bioethics and the Common Good* (Milwaukee: Marquette University Press, 2004), 43-44. See also, "Genetics, Theology, Common Good," *Genetics, Theology, and Ethics: An Interdisciplinary Conversation*, ed. Lisa Sowle Cahill (New York: Crossroad, 2005), 123.

³ e.g., Cahill, *Bioethics and the Common Good*; see also *Theological Bioethics*, 43-69.

⁴ Michael Walzer, *Politics and Passion* (New Haven: Yale University Press, 2004), 128-130.

This chapter surveys the respective works of Rawls, MacIntyre, and Walzer as they relate to justice. Individually and collectively, each writer's positions are addressed in Cahill's work on justice, which will be analyzed in Chapter Four. Individually, each account contributes to the dissertation's goals because they either attempt to define justice (as demonstrated in Rawls' earlier work), or apply the term in a significant way (as in Walzer, MacIntyre, and the later work of Rawls). Collectively, their work is significant because Cahill's writings resonate well with these three accounts. She often cites their work, and occasionally employs the term "justice" in a manner similar to these three scholars.

The attempt to offer some account of justice within (or in spite of) the pluralist context is a hallmark of the writings of Rawls, MacIntyre, and Walzer. This section is divided into three parts in order to survey and analyze their work separately. Structurally, the three constitutive parts of this chapter are similar in that each begins with a survey of the scholar's seminal or foundational early project, followed by an analysis of their later writings, and finally a demonstration their explicit contribution to the analysis of Cahill's conception of justice in Chapter Four.

John Rawls: Justice as Fairness

No study of justice in contemporary liberal society could be complete without a consideration of the work of John Rawls. In fact, the sheer amount of analysis and criticism of Rawls' earlier work, *A Theory of Justice* (hereafter *Theory*), spurred him to

reconsider significant portions of his work.⁵ Therefore, this dissertation draws largely upon Rawls' claims in *Political Liberalism*, which represents his revision of *Theory*.⁶ While he maintains the basic principles of liberty and difference (described herein), which was the prominent feature of *Theory*, Rawls' later work attempts to place them within the disparate worldviews and particular commitments of the intellectually, religiously, and culturally diverse Western democratic societies, particularly North Atlantic nations, those to whom Cahill also addresses the overwhelming majority of her essays.

There are three parts to this discussion of Rawls' work. The first part offers a brief synopsis of Rawls' earlier *Theory*, and situates his later work within the context of the current study. The next portion summarizes two prominent features of Rawls' later work: his political conception of justice as "fairness" and its corresponding idea of "overlapping consensus." Following this summary, this consideration of Rawls concludes with a cursory examination of some significant yet understated features of Rawls' work as they relate to the forthcoming analysis of Cahill's work.

⁵ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971). Rawls' early work has a host of critics and supporters. For a concise summary of the major points of contention in *Theory*, see Karen Lebacqz, *Six Theories of Justice*, 40-49. For a libertarian response, see Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), 183-204. For a feminist critique, see Jane English, "Justice between Generations," *Philosophical Studies* 31 (1977): 91-104. For a communitarian critique, see Michael J. Sandel, *Liberalism and the Limits of Justice* (New York: Cambridge University Press, 1982). Later, Sandel revises his essay to include a response to Rawls' *Political Liberalism*.

⁶ Rawls, *Political Liberalism* (New York: Columbia University Press, 1996).

A Theory of Justice

Rooted in the social-contract tradition of Jean-Jacques Rousseau and deontological liberalism of Immanuel Kant, Rawls argues in *Theory* that a well-ordered society implies both cooperation and competition among its citizens. How does one draw a line between the two? Rawls constructs a thought experiment that helps to derive the society's principles of justice, which he calls the first virtue of its social institutions.⁷ For a proper and fair deliberative process, he begins by "calibrating" the scales of social justice through what he calls the "original position." In the original position, all citizens begin deliberation under a metaphorical veil of ignorance, so called because they will not know where they will be in the society when the veil is lifted.⁸ Even though they are cognizant of society's basic workings (e.g., with respect to commerce and politics), citizens will not know their age, race, gender, education level, family relationships, or other socioeconomic factors that they might be able to exploit for their own gain. In short, the power of privileged knowledge is subtracted from the original position.

In the context of an enlightened self-interest among citizens, coupled with each one's mutual disinterest in the affairs of others (i.e., each citizen is left alone to pursue her or his own life goals), their deliberation yields two principles which are necessarily just, because they are rooted in fairness to all.⁹ The first secures the equal right of all citizens to as much basic liberty as possible. It also assigns the basic duties of each citizen in a similarly equitable manner. The second principle accounts for the social and economic inequalities that a competitive society will generate over time. Such

⁷ Rawls, *A Theory of Justice*, Revised Ed. (Cambridge: The Belknap Press of Harvard University Press, 1999), 3.

⁸ *Ibid.*, 11.

⁹ *Ibid.*, 52-53.

inequalities are just, if they are arranged to be of advantage to all, especially the least well-off in the society. Additionally, all offices and occupations are open to those with the requisite talent with no regard to social class.¹⁰ The first principle is the Liberty Principle; the second is the Difference Principle. Taken together, these two principles will yield the social and economic arrangements that constitute a well-ordered society.

Furthermore, the two principles stand in serial or lexical relation to one another. In other words, the liberty principle may be constrained only for the purpose of garnering more liberty for all. One may not distribute social and economic goods according to the Difference Principle without first satisfying the Liberty Principle.¹¹ For example, one may not correct social or economic inequalities through utilitarian modes that allow misery for a few while increasing happiness in the aggregate.¹² In addition to overcoming this moral component of justice, Rawls asserts that the serial ordering is a practical method which avoids the thorny (perhaps insuperable) problem of having to balance the two principles when they seem to conflict with one another.¹³

In Rawls' theory of justice, the concept of right is prior to that of the good.¹⁴ The political conception of justice guides one's public life; comprehensive doctrines inform

¹⁰ Ibid., 63.

¹¹ Ibid., 220.

¹² Ibid., 13.

¹³ Ibid., 37-38.

¹⁴ "The priority of the right means that the principles of political justice impose limits on permissible ways of life, and hence the claims citizens make to pursue ends that transgress those limits have no weight," Ibid., 174. The distinction goodness/rightness distinction is also significant in recent Catholic moral theology. It is grounded in Thomistic natural law ethics; see *Summa Theologiae* I-II, q.9. On the one hand, Bernard Hoose maintains a similar distinction to Rawls throughout a lengthy portion of his text; see Chapter Three of *Proportionalism: The American Debate and Its European Roots*

one's private sphere. Consequently, a striking feature of *Theory* is Rawls' account of deliberative rationality.¹⁵ Rawls claims that deliberative rationality is the best method for individuals to form life plans. In a well-ordered society, an individual's account of the good conforms to publicly-recognized principles of rightness, and there are myriad ways to formulate a life plan that is consistent with this conception of justice. Moreover, rational deliberation is subject to the various constraints of knowledge and opportunity costs of planning. Thus, one can formulate a plan only to the point where he or she can benefit from such planning.¹⁶ Afterward, one must execute the plan and revise it as circumstances dictate.

This contingency on an individual level stands in stark contrast to the deliberative process that Rawls describes at the outset on a societal level when it comes to choosing the two principles of justice. The "back and forth" of describing the circumstances of the original position is accounted for in the phenomenon of reflective equilibrium.¹⁷ Rawls admits that the equilibrium itself might be unstable. Still, justification of the principles of justice it yields depends on its mutual support by all parties in the original position.¹⁸ It begs the question: why is an individual's life plan subject to revision, but not the

(Washington: Georgetown University Press, 1987). On the other, James Keenan (see Chapter Three) argues that rightness is neither a necessary nor sufficient condition for goodness. With the exception of charity, the intention, end, and even virtuous by the agent striving are located within rightness, not goodness. See Keenan, *Goodness and Rightness in Thomas Aquinas' "Summa Theologiae"* (Washington: Georgetown University Press, 1992), 174. It seems difficult to segregate one's public and private lives as radically as demanded by Rawls' political conception of justice.

¹⁵ Rawls, *A Theory of Justice*, Revised Ed. 365-372.

¹⁶ *Ibid.*, 367.

¹⁷ *Ibid.*, 18.

¹⁸ *Ibid.*, 507.

society's principles of justice? It is this question, among others, that Michael Walzer takes up within the context of a complex pluralism, and will be fleshed out in the concluding section of this chapter. For now, the dissertation departs from a direct discussion of Rawls' *Theory* to his later work in *Political Liberalism*, which attempts to revise a few major problems in the former while still maintaining its foundational conception of justice.

Political Liberalism

In *Political Liberalism*, Rawls states at the outset that his earlier project attempted to highlight both his endorsement of the social contract and its superiority to utilitarian senses of justice. The problem, Rawls notes, is that *Theory* made no adequate distinction between justice as moral virtue and justice as political conception. The distinction, he claims in *Political Liberalism*, is fundamental. As a result, it raises questions regarding the stability of the political community he envisions in *Theory*.¹⁹ Rawls' questions demonstrate a political rather than metaphysical grounding for his conception of justice.

In doing so, Rawls differentiates his project from Enlightenment and Modern thinkers, all of whom were seeking universal, rational alternatives to the claims of religious authorities. Those philosophers sought secular claims that were no less totalizing than the claims of religious doctrines. In fact, Rawls admits that a major

¹⁹ Rawls, *Political Liberalism*, xviii: "How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines? Put another way: How is it possible that deeply opposed though reasonable comprehensive doctrines may live together and all affirm the political conception of a constitutional regime? What is the structure and content of a political conception that can gain the support of such an overlapping consensus? These are among the questions that political liberalism tries to answer."

shortcoming in *Theory* was to presume a particular comprehensive doctrine (i.e., Kantian liberalism) as a prerequisite to the stability of the society which he envisioned.²⁰ Rawls defines a “comprehensive doctrine” as one which “includes conceptions of what is of value in human life, and ideals of personal character, as well of ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole.”²¹ In particular, “comprehensive doctrines” include cognitive and value claims of concrete religious traditions, particularly Judeo-Christian precepts that permeate the Western democratic regimes to which Rawls addresses his work.²² At the same time, major secular philosophical ideas, especially deontological and utilitarian liberalism, are likewise covered under the umbrella term of “comprehensive doctrine.”

To solve this problem from *Theory*, Rawls asserts that political liberalism is not a comprehensive doctrine itself.²³ Rather than taking a stand on the classic dichotomous

²⁰ Ibid., xl.

²¹ Ibid., 13.

²² There is a palpable tension in Rawls’ work between “liberal” and “fundamentalist” contexts for religion. In his treatment of reasonable comprehensive doctrines, he includes religious views that offer an account of “free faith.” “Here I shall suppose – perhaps too optimistically – that, except for certain kinds of fundamentalism, all the main historical religions admit of such an account and thus may be seen as reasonable comprehensive doctrines.” Ibid., 170. Happily, the religious claims described within this dissertation, with its encouragement of public discourse and its theological notion of the “common good,” seem to fall within Rawls’ spectrum of “reasonableness.”

²³ Rawls’ revised claim is still criticized especially by feminist and communitarian thinkers. For instance, Susan Moller Okin argues that *Political Liberalism* devotes even less attention to the family as basic subject of justice than *Theory*. Okin charges that Rawls equivocates with two contradictory claims: 1. That the family is the basic structure in society; and 2. That the family is nonpolitical. See Okin, “*Political Liberalism, Justice, and Gender*,” *Ethics* 105 (October 1994): 26-27; cf. Rawls, *Political Liberalism*, 137. Also, Michael Sandel contends that justice has an “unavoidable judgmental aspect.” He raises three objections to Rawls’ political liberalism: 1. It is not

questions of moral foundations (i.e., particular or universal epistemology, external or internal source, and external or internal motivation), as he did in *Theory*, Rawls states that his view accepts the second part of each question simply to construct a political conception of justice for a stable constitutional regime.²⁴ Toward this practical end, Rawls argues for a freestanding conception of justice as fairness, which is engendered by an “overlapping consensus.” This consensus is drawn from the disparate worldviews and divergent practices encouraged by various comprehensive doctrines, all of which work within a given social system.²⁵ Rawls attempts to make his aim clear in his later work by stating that political liberalism “offers no specific metaphysical or epistemological doctrine beyond what is implied by the political conception [of justice] itself.”²⁶ In doing so, Rawls’ revision of *Theory* is not so much an abandonment of its principles as it is a

always reasonable to forego one’s comprehensive doctrine for a political end; 2. If there is a “fact of reasonable pluralism,” as Rawls claims, then there is also reasonable variance with regard to conceptions of justice in society; and 3. Public reason, if bereft of comprehensive doctrines, actually diminishes effective public deliberation. See Sandel, *Liberalism and the Limits of Justice*, 2 ed. (New York: Cambridge University Press, 1998), 196-218.

²⁴ Rawls, *Political Liberalism*, xxvi-xxvii.

²⁵ *Ibid.*, 10-13. In another work, Rawls defines the word *practice* as “a sort of technical term meaning any form of activity specified by a system of rules which defines offices, roles, moves, penalties, defenses, and so on, and which gives the activity its structure. As examples one may think of games and rituals, trials and parliaments, markets and systems of property.” Rawls, “Justice as Fairness,” in *Collected Papers*, ed. Samuel Freeman (Cambridge: Harvard University Press, 2001), 47, n.1.

²⁶ Rawls, *Political Liberalism*, 10. Chapter One of the dissertation introduced several instances of this overlapping consensus. Cahill argues that consensus is possible, since public discourse is a meeting ground for diverse moral traditions; Cahill, “Can Theology Have a Role in ‘Public’ Bioethical Discourse?” 11. Jonsen and Toulmin call this consensus a “locus of certitude;” Jonsen and Toulmin, 16-19. Jeffrey Stout recommends *bricolage*, a synthesized construction of various rhetorical and ideological flotsams that leaves behind its foundational sources; Stout, 74-79. His consensus is more pragmatic than the former two examples. Regarding the implications of *bricolage* for theology, see Stout, 169-175.

reduction of its scope.²⁷ Instead of invoking a comprehensive doctrine to which all must agree in order to belong to this just society, the political conception of justice is a freestanding module. Hence, it can be held by all citizens, regardless of the individual comprehensive doctrine to which they subscribe.²⁸

As a result, Rawls' two-fold political conception of justice is very similar to the principles that he offers in *Theory*. First, "each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which schedule is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value."²⁹ Next, social and economic inequalities are acceptable only under two conditions: "first they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society."³⁰ Each principle applies to different parts of the basic structure of a just society.

[B]oth are concerned not only with basic rights, liberties, and opportunities, but also with the claims of equality; while the second part of the second principle underwrites the worth of these institutional guarantees.³¹

Thus, at the same time he outlines a political conception of justice, Rawls also argues for an egalitarian, democratic form of liberalism.

²⁷ "The distinction between political conceptions of justice and other moral conceptions is a matter of scope: that is, the range of subjects to which a conception applies, and the wider the content a wider range requires." Rawls, *Political Liberalism*, 175.

²⁸ *Ibid.*, 144-145.

²⁹ *Ibid.*, 5.

³⁰ *Ibid.*, 6.

³¹ Rawls, "Justice as Fairness: Political not Metaphysical," *Philosophy and Public Affairs* 14, no.3 (Summer 1985), 228.

How does this restatement of the principles of justice as fairness move from a comprehensive doctrine in *Theory* to a political conception in *Political Liberalism*? Rawls claims that they are justified by overlapping consensus between the freestanding political conception of justice and the various comprehensive doctrines. Rawls argues in another essay that in a well-ordered society, all citizens can agree on the same political conception of justice, even though they do not agree for the same reasons, “all the way down.”³² The overlapping consensus is further based upon what Rawls called “public reason.” This basis rests on a two-part claim. One, there are “very great values” demonstrated by the political conception of justice, which are not easily overridden. There is a congruence of, or at least no conflict among, these political values with regard to the variety of comprehensive doctrines.³³ Two, although Rawls’ conception of justice is political, strictly speaking, citizens still hold it as a moral conception.³⁴ This moral affirmation arises from the normative accounts of the good life and human action from the various comprehensive doctrines of each citizen; citizens must support the political conception for their own reasons.³⁵ Utilizing public reason shifts Rawls’ principles of justice from a comprehensive doctrine to a political conception. The overlapping consensus allows the political conception of justice as fairness to stand on no particular metaphysical grounds, or perhaps, on *all* reasonable metaphysical grounds.

However, even though Rawls argues against the validation of any comprehensive doctrine, he notes a problem with his position regarding the stability of a community

³² Rawls, *Justice as Fairness*, 32; cf. Nozick, 225.

³³ Rawls, *Political Liberalism*, 168-169.

³⁴ *Ibid.*, 168.

³⁵ *Ibid.*, 147-148.

constituted by this political conception of justice.³⁶ He raises a potential objection that the political community will not and cannot be stable if the parties come to the political arrangement for the sake of self-interest over cooperation, or what is referred to as a *modus vivendi*. The overlapping consensus as distinct from both a *modus vivendi* and a constitutional consensus will be addressed in the next paragraph, but it is helpful here to note that Rawls insists that the consensus is free of any comprehensive doctrine.

To this objection, we say that the hope of political community must indeed be abandoned, if by such a community we mean a political society united in affirming the same comprehensive doctrine. [But] This possibility is excluded by the fact of reasonable pluralism together with the rejection of the oppressive use of the state power to overcome it.³⁷

Due to reasonable pluralism, political liberalism can accommodate a wide range of conceptions of the good, even if those views are incommensurate with one another. Political liberalism does not delve into the foundational commitments and values that give rise to the differing accounts of the good, and is far more concerned with public commitment to a justice which is engendered by the individual accounts of the good.

While the political conception of justice is far more limited in scope than its comprehensive doctrinal counterpart in *Theory*, it is not to say that the overlapping consensus is superficial. In fact, Rawls makes two distinctions to demonstrate the great depth and binding capacity of the consensus. He argues that political liberalism is distinct from both a *modus vivendi* and constitutional consensus for two reasons. First, the overlapping consensus is distinct from what Rawls calls a *modus vivendi*.³⁸ Here, Rawls uses the case of a treaty between two nations with competing aims to illustrate the limited

³⁶ Ibid., 146-147.

³⁷ Rawls, *Political Liberalism*, 146.

³⁸ Ibid., 147-148.

function of a *modus vivendi*. Because a treaty -- and implicitly, any *modus vivendi* - is focused narrowly upon particular circumstances, its terms of agreement are limited to the issue of contention to allow for fair play between the parties. More importantly, the treaty is contingent upon the belief that the agreeing parties will comply with its term. Thus, a *modus vivendi* does not capture the depth of Rawls' principles. Only a deeply held conception of justice (political or otherwise) will be able to restrain such action.

Second, the overlapping consensus is also distinct from a constitutional consensus. It is important to note that Rawls claims that his conception of justice as fairness is worked out for political, social, and economic institutions of society. By "society," Rawls means the basic structure of the modern constitutional democracy.³⁹ On the one hand, a constitutional consensus is similar to the overlapping consensus in that both are political syntheses of comprehensive doctrines. On the other hand, the principles by which any constitutional consensus is derived must be of necessity deeper than the consensus itself.⁴⁰ Furthermore, the overlapping consensus "goes beyond political principles instituting democratic procedures to include principles covering the basic structure as a whole."⁴¹ Further still, even though the overlapping consensus is deeper and broader in scope than a constitutional accord, Rawls also claims that the overlapping consensus is also far more specific because of its core focus on society as a fair system of cooperation, coupled with the notion of a free and equal citizenry over generations.⁴²

³⁹ Rawls, "Justice as Fairness: Political not Metaphysical," 225-226.

⁴⁰ Rawls, *Political Liberalism*, 164.

⁴¹ *Ibid.*, 164.

⁴² *Ibid.*, 167; see also *Justice as Fairness: A Restatement*, 24.

It should be noted here that Rawls enumerates five “fundamental ideas” that lend themselves toward the political conception of justice. They are: society as a fair system of cooperation, the idea of a well-ordered society, the basic structure of such a society, the idea of the original position, and the idea of citizens as free and equal.⁴³ While the original position was analyzed deeply in *Theory*, and is still included as a fundamental idea, it does not play as central a role in *Political Liberalism* as these other four.⁴⁴

Related to the aims of this dissertation, it is interesting to point out two premises that Rawls notes but does not address during the course of his argument in *Political Liberalism*. First, he assumes a basic cooperation among members of the society, each of whom works toward what he calls “the common good,” even if they have different conceptions of that good (resulting from the incommensurability of their respective comprehensive doctrines).⁴⁵ He also presumes that a legal system must be in place to secure the common good and offers a few examples of what its content might resemble: “I assume a society has a conception of justice that meets this kind [of legal system that secures basic human rights] cohering with the common good. Otherwise, we may not have a society but something else.”⁴⁶ In light of his refusal to subscribe to a comprehensive doctrine, it is understandable that his conception of “the common good” is purposefully general in scope. Nonetheless, in order to select one of his concrete examples (or any example), a more greatly evolved notion of the common good might be required to make more than an arbitrary choice.

⁴³ Rawls, *Justice as Fairness*, 24-25.

⁴⁴ Cf. Rawls, *Political Liberalism*, 22-29, 304-310.

⁴⁵ *Ibid.*, 42, n.44.

⁴⁶ *Ibid.*, 109-110, n.15.

Second, Rawls alludes to a lexically prior principle that requires citizens' basic needs be met.⁴⁷ On the one hand, he does not refer to the content of these "basic needs." On the other hand, it seems that he is referring to a schema that generates within each citizen a set of positive rights that he or she can claim against the State.⁴⁸ If the latter is the case, then regardless of how limited these basic needs might be, Rawls' position seems to conflict with certain comprehensive doctrines (e.g., Nozick's entitlement theory) and legal systems that do not aim to meet those needs through government intervention. This point raises an important question that this dissertation attempts to answer in the final chapter. Given that Cahill's "faith language" gives rise to a "faith commitment" (as described in Chapter One) and it is commitment brings one into public discourse, at what point does one's participation in public discourse become an inappropriate public expression of his or her comprehensive doctrine?

Looking ahead, Rawls' work also figures prominently in Chapter Four. While Cahill occasionally cites Rawls in her work, she offers neither an endorsement nor a refutation of his entire project. But, as this dissertation argues in that chapter, her commitment to justice *and* public discourse might offer real content to Rawls' political claims and a satisfactory corrective for some critics of *Political Liberalism*. For now, the dissertation analyzes Alasdair MacIntyre's writings on justice and their contrast to Rawls' political liberalism.

⁴⁷ *Ibid.*, 7.

⁴⁸ The Second Vatican Council (see Chapter Three) argues for such positive rights. See *Gaudium et Spes*, 26.

Alasdair MacIntyre: Justice within a Community's Moral Tradition

This section analyzes the writings of the prominent British philosopher Alasdair MacIntyre. There are two purposes in addressing MacIntyre's work that relate to Cahill's context. The first is his critique of modern liberalism, which is found especially in his work from the 1980s, like *After Virtue* and *Whose Justice? Which Rationality?* (hereafter *Whose Justice*), where he challenges the liberal notion that "the good life" from a public standpoint is unresolvable.⁴⁹ He also disputes Rawls' reduction of the virtues to mere sentiment.⁵⁰ Many arguments in Cahill's essays are similar to MacIntyre's, though she makes them independently from or at least without direct reference to him. Not infrequently, she also reaches conclusions that contrast with MacIntyre, in spite of her own tradition-based point of departure. The second purpose considers the implications of MacIntyre's claim that tradition-dependent claims are not necessarily relativist in nature in light of Cahill's arguments in support of theological voices participating in public discourse from the previous chapter.⁵¹ Her argument's second premise – that all participants speak from a tradition – demonstrates her appreciation for the pluralist context of contemporary Western society without reducing it to relativism.⁵² At the same time, MacIntyre further analyzes various kinds of public discourse within a community.

⁴⁹ Alasdair MacIntyre, *After Virtue*, 3 Ed. (Notre Dame: University of Notre Dame Press, 2007), 118.

⁵⁰ *Ibid.*, 119; cf. Rawls, *Theory of Justice*, 192. While this dissertation has focused on Rawls' work thus far, MacIntyre applies this critique more broadly to liberalism starting in Modernity (in Hume and Mill) and persisting through today (through Rawls, Robert Nozick, and Ronald Dworkin).

⁵¹ MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame: University of Notre Dame Press, 1988), 349-388.

⁵² Cahill, "Can Theology Have a Role in 'Public' Bioethical Discourse?" 11.

He distinguishes them in a way that is fruitful for the dissertation's later chapters.⁵³

Chapter Four also summarizes Cahill's criticism of liberalism, and its relevance to her understanding of justice.

This section of the chapter has two major parts. The first summarizes MacIntyre's project in *After Virtue* and *Whose Justice*, especially his claims regarding ethics within the living tradition of a politically-robust community. The second analyzes his account of the virtues, particularly his conception of justice, in these two works. These essays offer both a critique and an alternative to Rawls' political liberalism.

After Virtue and Whose Justice?

What follows here is a selective reading of MacIntyre's two most influential texts. They are selective because at no point does Cahill ever engage MacIntyre's entire corpus, but she does probe his claims in *After Virtue*. Hence, no effort is made here to detail the evolution of MacIntyre's thought from his early analytical writings on Marxism toward these later texts, since they do not relate to Cahill's work. As with the preceding section on Rawls' political liberalism, this analysis of MacIntyre is designed to locate Cahill's notion of justice within the currents of contemporary philosophical and theological streams. As such, the following paragraphs outline three concepts distilled from this reading of MacIntyre: the "grave state of disorder" in moral discourse today, the "invention" of the moral individual by Enlightenment thinkers, and the "transformation" of liberal ideas into a liberal tradition.

⁵³ Specifically, that section will address MacIntyre's claims in "Toleration and the Goods of Conflict," in *Ethics and Politics, Selected Essays 2* (Cambridge: Cambridge University Press, 2006), 205-223.

The opening chapters of *After Virtue* attempt to name the root problem that MacIntyre describes as a state of “grave disorder” with regard to public moral discourse.⁵⁴ For example, in his analysis of two contrasting moral methods – deontology and utilitarianism – he calls attention to two key features of the problem.⁵⁵ The first is the conceptual incommensurability of competing moral arguments. On the one hand, there is no basis for rational discernment between the notion of equality of persons and that of liberty for them. The former treats persons with obligatory respect, while the latter weighs consequences of proposed actions. On the other hand, each representative of these methods has in fact reached a conclusion in his or her mind regarding the right course of action. In spite of their corresponding personal convictions, neither can, in turn, convince the other of the grounds for his or her claim. One argues that if the moral rules are rational, then they must be uniformly binding upon for all rational beings.⁵⁶ But another objects that if the rules do not attend to consequences, then they can undermine competing values that the rules seek to uphold. Even if they were to agree upon an action’s moral rightness (or wrongness), the participants would still disagree on their reasons for calling it such. In cases of conflict, the disagreement is interminable. This conundrum arises because both root their claims within the authority of an impersonal rationality.

Consequently, MacIntyre makes a startling argument: emotivism, not rationality, is the basis for moral decision-making from the Enlightenment period into contemporary society. MacIntyre demonstrates that the prevailing liberal conception of the “good” is

⁵⁴ MacIntyre, *After Virtue*, 2.

⁵⁵ *Ibid.*, 8.

⁵⁶ *Ibid.*, 33-34.

simply the appellation of a simple, indefinable property. It is also a major premise of Rawls' argument for reasonable pluralism. "Right," then, simply means the best course of action (a conclusion to which Rawls would not subscribe), and include personal and aesthetic enjoyments as the highest imaginable goods.⁵⁷ Because of the incommensurability of rival traditions, each side must account for these different social and moral views. In contemporary moral debates, the contrasting representative voices tend to be interpreted in terms of pluralism.⁵⁸ Lacking a rational discriminant for a definitive truth claim, MacIntyre argues that this gives rise to a kind of "academic dualism."⁵⁹ Moreover, the bifurcation of truth and value is a product of the catastrophic failure of the Enlightenment project. Thus, academic, purportedly "value-free" methods fail to identify this dualism as a shortcoming.⁶⁰ In other words, truth has been displaced by psychological effectiveness.⁶¹ Perhaps efficacy can be located in an experience of satisfaction that comes from achieving consensus on a particular moral issue. Nonetheless, overall satisfaction must be measured aggregately among all individual

⁵⁷ Here, MacIntyre cites G.E. Moore as an early twentieth-century proponent of this view. See George E. Moore, *Principia Ethica* (New York: Cambridge at the University Press, 1968), 9-10; cf. MacIntyre, *After Virtue*, 14-16.

⁵⁸ "All too easily" interpreted – and misinterpreted – in MacIntyre's estimation, see *After Virtue*, 226.

⁵⁹ *Ibid.*, 61. In a different context, John Paul II also complains about this kind of "double status" of moral truth in *Veritatis Splendor*, 56.

⁶⁰ Thomas D. D'Andrea points out this problem. See *Tradition, Rationality, and Virtue: The Thought of Alasdair MacIntyre* (Burlington: Ashgate Publishing Company, 2006), 227-228.

⁶¹ MacIntyre, *After Virtue*, 30-31.

experiences, divorced from the potential human good that was achieved by consensus in the first place.⁶²

After sketching the contours of moral thinking from the Enlightenment through the Modern period, MacIntyre devotes the bulk of *After Virtue*'s middle chapters to describing the complexities of divorcing the moral agent from his or her inherited modes of thought and praxis. MacIntyre notes that the task of the Enlightenment since Kant has consisted primarily in a human striving to think for oneself, rather than in conformity with the prescriptions and proscriptions of some seemingly external authority.⁶³ Enlightenment thinkers gave rise to the Modern "invention of the self."⁶⁴ This detachment has come at the cost of authoritative content for the autonomous agent's moral claims. The meaning and use of traditional moral language, now divorced from the cultures and societies which first uttered them, are separated by an unbridgeable chasm.⁶⁵ Thus, moral incommensurability is itself the product of a new historic conjunction: the point at which individuals attempted to achieve moral thought without reference to its moral legacy.

⁶² Recently, theologian Miroslav Volf has described the experience of "unsatisfying satisfaction," a hollowness and melancholy that result from striving for things that are less than transcendent or infinite. Even good things (like sex or wealth) can be deprived of their enjoyment if pursued for their own sake. See Volf, *A Public Faith: How Followers of Christ Should Serve the Common Good* (Grand Rapids: Brazos Press, 2011), 61-62.

⁶³ MacIntyre, "Some Enlightenment Projects Reconsidered," in *Ethics and Politics, Selected Essays 2*, 172.

⁶⁴ MacIntyre, *After Virtue* 61. For example, MacIntyre notes that in heroic societies, like those of the ancient Greeks or medieval Celts, morality is identified with social structure. While identity in heroic society in fact affords some measure of particularity for individuals, it also demands accountability in light of the role that one plays in that same milieu. See *Ibid.*, 123.

⁶⁵ MacIntyre, *After Virtue*, 68.

As a result, new vocabulary soon emerged in the moral lexicon to describe the Enlightenment's landscape. MacIntyre outlines three nascent concepts: human rights, political protest, and psychological unmasking. With respect to rights, he strongly claims that they simply cannot exist in this new framework, except in some utilitarian mode of thinking.

The truth is plain: there are no such rights, and belief in them is one with belief in witches and in unicorns...By "rights" I do not mean those rights conferred by positive law or custom on specified classes of person; I mean those rights which are alleged to belong to human beings as such and which are cited as a reason for holding that people ought not to be interfered with in their pursuit of life, liberty, and happiness.⁶⁶

MacIntyre's allusion to the "unalienable rights" explicitly enumerated in the Declaration of Independence seems to place him in opposition to the entire liberal tradition. Despite many critics on this very point, his subsequent work expresses no effort to placate them.⁶⁷

One example is found in a 1991 article, where he refers to the "inadequacy and the

⁶⁶ Ibid., 68-69.

⁶⁷ On the issue of human rights, see (alphabetically) Upendra Baxi, *The Future of Human Rights* (London: Oxford University Press, 2002), who is also a critic of rights talk, but ascribes MacIntyre's position as expressive of "human rights weariness" (pp.51-52); Marie-Bénédicte Dembour, *Who Believes in Human Rights? Reflections on the European Convention* (London: Cambridge, 2006), where she dubiously identifies with MacIntyre as a fellow "human rights nihilist or discourse scholar" (p.258); Michael Freeman, *Human Rights: An Interdisciplinary Approach* (London: Cambridge University Press, 2002), who claims that MacIntyre's error is located in his conception of human rights as "things" that can be had as "arms or legs" (pp.5-6); Kristin Shrader-Frechette, "Natural Rights and Human Vulnerability: Aquinas, MacIntyre, and Rawls," *Public Affairs Quarterly* 16, no.2 (April 2002), 99-124, who offers the provocative argument that if MacIntyre is correct that current moral discourse masks power, and if all current moral philosophy fails to provide coherent grounds for rights, then MacIntyre's position is less able to protect vulnerable people, short of a strong (an potentially equally oppressive) moral *theology* (p.114); and Jeffrey Stout, *Ethics after Babel*, who agrees with MacIntyre's claims about the arbitrariness of rights, but carefully warrants his claim that rights are "pragmatically justified" by circumstances (p.243). An insightful rejoinder to MacIntyre's critics is found in Bill Bowring, "Misunderstanding MacIntyre on Human Rights," *Analyse und Kritik* 30 (2008), 205-214.

sterility of the modern idiom and rhetoric of rights.”⁶⁸ Another is his 1999 biological account of the virtues, where there is a conspicuous absence of rights talk.⁶⁹ It is important to note, though, that his rejection of human rights is a necessary conclusion of his thesis that discourse has lost its grounding in the Aristotelian-Thomistic morality of the past.⁷⁰ Only a society so ordered could ground such human rights, since they had an internally coherent account of the good.

Regarding protest, the interminable nature of contemporary moral debate implies (MacIntyre employs a stronger word: “ensures”) that protestors rarely have anyone else to talk to but themselves. This is not to say that protest cannot be effective, just that it cannot be rationally so.⁷¹ Unmasking, which is a later, Freudian term, describes the superego as an inherited morality from which the agent must be freed. Nonetheless, theory is required to support observation, and vice versa, just as John Stuart Mill’s “experiments in living” give content to his utilitarian theory to which many contemporary thinkers now subscribe.⁷²

⁶⁸ MacIntyre, “Community, Law and the Idiom and Rhetoric of Rights,” *Listening: Journal of Religion and Culture* 5 (1991), 96-110.

⁶⁹ MacIntyre, *Dependent Rational Animals: Why Human Beings Need the Virtues* (Chicago: Open Court, 1999).

⁷⁰ MacIntyre, *After Virtue*, 11: “The language of morality passed from a state of order to a state of disorder.”

⁷¹ *Ibid.*, 71. Michael Walzer disagrees with this point. While protest *alone* might be ineffective, it is often undertaken as part of a host of non-deliberative strategies designed to achieve some desirable end. These methods are described in the next section. See Walzer, *Politics and Passion: Toward a More Egalitarian Liberalism* (New Haven: Yale University Press, 2004), 92-102.

⁷² *Ibid.*, 81. cf. John Stuart Mill, “On Liberty,” in *The Basic Writings of John Stuart Mill* (New York: Modern Library, 2002), 58-59.

Moreover, MacIntyre points out that the “mock rationality” of debate masks the arbitrary nature of will and power as its participants seek consensus.⁷³ This insight leads him to a dichotomy, which is the eponymous title of *After Virtue*’s ninth chapter: Nietzsche *or* Aristotle? He begins the chapter with a description of the “vulgarized” nature of the moral culture in which Friedrich Nietzsche wrote; morality has become generally available to all in society, but as ghosts of their defunct ancestors.⁷⁴ In MacIntyre’s analysis, Nietzsche’s central thesis is that all rational defense of morality fails. Thus, morality must be explained in terms of the non-rational will.⁷⁵ He positively appraises Nietzsche’s project, insofar as the latter was the first to remove the mask of rationality from Modern moral discourse.⁷⁶ Modern moral terms like “good,” or “right,” or even “obligation” have become as arbitrary as an ancient one like “taboo.”⁷⁷ Nietzsche provides MacIntyre a starting point to explain what he perceives to be the incoherence of contemporary moral utterances. From the standpoint of moral individualism, the self is simply what the self chooses to be.⁷⁸ Somehow, he or she can detach himself or herself from social and historical roles. In the realm of choice, there is at the same time a

⁷³ MacIntyre, *After Virtue*, 71.

⁷⁴ *Ibid.*, 110. Deontology is the ghost of pre-Modern notions of divine law, while teleological utilitarianism is the ghost of past conceptions of human nature.

⁷⁵ *Ibid.*, 117.

⁷⁶ *Ibid.*, 256.

⁷⁷ *Ibid.*, 113. MacIntyre calls Nietzsche the European philosophical counterpart to Polynesian King Kamehameha I, who abolished the practices of taboo in 1819.

⁷⁸ *Ibid.*, 220.

presumption that the agent has the means (i.e., the will and power) to see the chosen action through and to enjoy the satisfaction of its successful completion.⁷⁹

MacIntyre's initial defense of Nietzsche turns on the question: was it right that the Enlightenment project should have been undertaken in the first place? By accepting the cognitive claims of the Enlightenment, many thinkers (including and especially Nietzsche) have rejected the teleological and communal traditions of its predecessors.⁸⁰ What once seemed to be appeals to rational objectivity turned out in the final analysis to be expressions of volitional subjectivity. Thus, MacIntyre takes Nietzsche to task for what the former takes to be an unwarranted, illegitimate leap from a descriptive statement about moral judgments in his day to the prescriptive nature of morality as such.⁸¹

MacIntyre concludes this chapter by claiming that the problem is not a choice between two contrasting ethical theories, but a question about two mutually-exclusive ways of life. Either one must follow the Enlightenment project through, with its terminus in Nietzsche, or one must admit that the project should have never been undertaken. Clearly, MacIntyre accepts the latter part of the proposition. In the second part of this section, the dissertation's analysis of MacIntyre's will turn once again to *After Virtue's*

⁷⁹ Interestingly, this stream of thought is also present in classical forms of moral deliberation. For example, three important steps in Thomas Aquinas' account of the procession of human action include *imperium* (the ability to command the choices made upon deliberation), *usus* (carrying out the deed), and *frui* (the enjoyment of the completed act). See Aquinas, *ST, I-II*, qq.6-17. What distinguishes his understanding of human action from a Nietzschean one is that Aquinas insists upon the prior *rational* goodness of a proposed action, while Nietzsche requires no such justification. For a contemporary application of Aquinas' procession of human action, see Christopher Kaczor, "Distinguishing Intention from Foresight: What is Included in a Means to an End?" *International Philosophical Quarterly* 41, no.1 (March 2001), 77-89.

⁸⁰ MacIntyre, *After Virtue*, 117.

⁸¹ *Ibid.*, 113.

account of the virtues, especially justice. Before doing so, it is necessary to follow his enquiry regarding the translation of these liberal streams of thought into the living tradition of liberalism today.

In *Whose Justice*, MacIntyre continues upon a theme that began in *After Virtue*. A well-ordered tradition is partially constituted by conflict regarding the goods which give to that tradition its purpose.⁸² In this later work, MacIntyre reiterates this claim.

The conclusion to which the argument has so far led is not only that it is out of the debates, conflicts and enquiry of socially embodied, historically contingent traditions that contentions regarding practical rationality and justice are advanced, modified, abandoned or replaced, but that there is no other way to engage in the formulation, elaboration, rational justification, and criticism of accounts of practical rationality and justice *except from within some one particular tradition in conversation, cooperation, and conflict with those who inhabit the same tradition.*⁸³

MacIntyre understands that traditions are not monolithic in thought or practice. Instead, they embody continuities of conflict, responding to rival claims, but always from within the tradition.

If MacIntyre's claims from *After Virtue* are true, and liberal society has devolved into a mélange of emotivist and freely-associating individuals, then the question can be asked, how did liberalism become a lasting (if unviable) tradition?⁸⁴ In the late chapters of *Whose Justice*, MacIntyre attempts to answer this question. He offers three elements which seem to correspond to the principles enumerated by John Rawls in *Political Liberalism*. The three elements are: a pluralist notion of the good life, an individualist practice of practical reasoning, and a just procedure for adjudicating conflict.

⁸² *Ibid.*, 222.

⁸³ MacIntyre, *Whose Justice*, 350, emphasis added.

⁸⁴ In a different context, Michael Walzer also raises this question of stability in liberal societies, see *On Toleration*, 71.

Initially, MacIntyre points out that the liberal project was designed to provide a three-fold framework (political, legal, and economic) in which all could assent to rationally justifiable principles for the purpose of living together in society.⁸⁵ This daunting task, if it succeeds, allows individuals who embrace varying and even competing notions about the good to participate peaceably in all spheres of public life. “Reasonable pluralism,” as Rawls describes it, is part and parcel of contemporary society; all can agree that there is no agreement, at least with respect to the good life which is to be pursued.⁸⁶

At the same time, participation in liberal pluralism entails a proscription: all must refrain from attempting to transform the community toward illiberal ends. In fact, any attempt to conform society toward something *other* than pluralism is, strictly speaking, unreasonable. On this point, Rawls insists that “human good is heterogeneous because the aims of the self are heterogeneous.”⁸⁷ Moreover, a comprehensive doctrine like MacIntyre’s Thomist-Aristotelianism, with its singleness of purpose, must be regulated within the society, precisely because its aims move far afield of reasonable pluralism.

Although to subordinate all our aims to one end does not strictly speaking violate the principles of rationality..., it still strikes us as *unnatural*, or more likely as mad.⁸⁸

So, a corollary to the primary principle of pluralist notion of the good is the mercantilization of goods and compartmentalization of dispositions with respect to public participation.⁸⁹ Goods -- and values, apparently - must be bargained for in liberal society.

⁸⁵ MacIntyre, *Whose Justice*, 335.

⁸⁶ Rawls, *Political Liberalism*, 146.

⁸⁷ Rawls, *Theory*, 554.

⁸⁸ *Ibid.*, 554, emphasis added; cf. MacIntyre, *Whose Justice*, 164-165.

Another concept of the liberal tradition is the practical rationality of the newly-constituted individual described in the previous paragraphs. MacIntyre begins this discussion by comparing liberal rationality with some of its cultural predecessors.⁹⁰ In Aristotelian practical reasoning, it is the individual *qua* citizen of the *polis* who reasons. In the Thomist tradition, it is the individual *qua* enquirer into her or his own good and that of her or his community. In the Humean tradition, it is the individual *qua* propertied (or unpropertied) participant in a society of a kind of mutuality or reciprocity. With regard to liberalism, it is the individual *qua* individual who reasons. The strict, unmodified predication of the individual infers an immediate problem in practical reasoning. Lacking a context in which to reason, the reasoning individual must supply some motivation for action, which MacIntyre locates in the individual's preference or desire.⁹¹

From this point of departure, liberal practical reasoning proceeds in the public realm through three stages. First, preferences are ordered by each individual and enunciated in the public realm. Next, these individual desires are translated into practical decisions, based upon the soundness of each individual's argument. Finally, the public acts in order to maximize the satisfaction of those preferences in accordance with the prior ordering. Preferences can and often do conflict, and it is necessary to devise a way to adjudicate competing claims. It is in this third stage that utilitarian methods are indispensable in public moral discourse.⁹²

⁸⁹ MacIntyre, *Whose Justice*, 337.

⁹⁰ *Ibid.*, 339-342.

⁹¹ *Ibid.*, 340: "I want it to be the case that such and such."

⁹² *Ibid.*, 342.

What, then, is the function of justice in contemporary society? MacIntyre begins by claiming that justice might be a rational consideration, but it is by no means necessary in liberal society.⁹³ It is in the first stage that individual preferences can be expressed in one's own terms. Religious, non-religious, and rights language, rooted in the comprehensive doctrines of each participant, supply the premises from which they argue. Because of the incommensurability of those doctrines, however, there will be no substantive agreement on their stated preferences. In tallying the preferences in order to rank them, liberalism (as a tradition) must engage in debate about the principles of justice. And even at this second stage, the full outcome remains inconclusive. Nonetheless, consensus can be achieved with respect to the principles of justice. Thus, the procedure justifies any inequalities in the eventual conclusion.

Liberalism thus provides a distinctive conception of a just order which is closely integrated with the conception of practical reasoning required by public transactions conducted within the terms set by a liberal polity. The principles which inform such practical reasoning and the theory and practice of justice within such a polity are not neutral with respect to rival and conflicting theories of the human good. Where they are in force they impose a particular conception of the good life, of practical reasoning, and of justice upon those who willingly or unwillingly accept the liberal procedures and the liberal terms of the debate. The overriding good of liberalism is no more and no less than the continued sustenance of the liberal social and political order.⁹⁴

In short, there is power at work in the liberal notions of public moral discourse, no less so than in *any* other notion. And, like all other traditions, it cannot know in advance how and in what condition it will emerge from its encounters with rival traditions.⁹⁵

⁹³ Ibid.: "Compliance with the norms of justice may indeed on occasion be necessary for someone to satisfy his or her preferences effectively, and efficiency and rationality may therefore dictate such compliance. But no disposition to care for justice as such will be first required in order to be rational."

⁹⁴ Ibid., 344-345.

⁹⁵ Ibid., 327.

Consequently, MacIntyre abandons any hope that a tradition, even one that has attempted to divorce itself from all of its predecessors, can be found that is rationally defensible and superior to ancient forms of moral and political thinking.⁹⁶

Before moving to MacIntyre's detailed account of the virtues, it should be noted that his critique of liberalism is not unproblematic. The final section of this chapter explores Michael Walzer's thoughts on justice, and includes his response to MacIntyre and other critics of liberalism. Nevertheless, MacIntyre's conception of justice is useful both as a comparison for analysis of Cahill's tradition-dependent notions of justice and as a contrast to Rawls' two-fold political conception of justice. MacIntyre also offers a glimpse at what contemporary public discourse might look like within his context, and this vision will be discussed in the following section as well.

MacIntyre's Account of the Virtues

In the conclusion to his chapter on Nietzsche, MacIntyre argues that, on the modern view, the justification of virtue depends upon some prior scheme of rationally justifiable rules and/or principles. If they become radically problematic, as MacIntyre has argued they have, then so must the virtues which depend upon them. Instead of looking to rules to justify the virtues, he asserts that the evaluative order should be reversed.⁹⁷ Throughout the bulk of *After Virtue's* later chapters, MacIntyre analyzes the virtue tradition from the ancient Greeks into the contemporary period. He demonstrates that morality is embedded within the evolving social milieu of each living tradition. Despite

⁹⁶ MacIntyre, "Précis of *Whose Justice? Which Rationality?*" *Philosophy and Phenomenological Research* 51, no.1 (March 1991), 152.

⁹⁷ MacIntyre, *After Virtue*, 119: "Suppose we need to attend to virtues in the first place in order to understand the function and authority of rules."

the pessimism with which MacIntyre describes contemporary moral discourse and practice, he offers a feasible solution by way of recovery of an Aristotelian virtue tradition. “If a premodern view of morals and politics is to be vindicated against Modernity, it will be in something like Aristotelian terms or not at all.”⁹⁸ This section explores MacIntyre’s account of virtue with respect to his understanding of the Aristotelian conception of virtue, the nature of the virtues as such, and, most especially, the virtue of justice. With respect to the former two, MacIntyre’s work stands in stark contrast with the liberalism he critiques. With regard to the latter, MacIntyre provides a strong criticism not only of Rawls’ *Theory*, but also of its critics, many of whom share the same moral and political presuppositions as Rawls.

Turning back momentarily to Friedrich Nietzsche, his ideal person was the *Overman*, whom he envisioned as one who lived by pure will.⁹⁹ Curiously, MacIntyre devotes very little space to discuss the *Overman* in *After Virtue*. Initially, it may be because Nietzsche provides an inconvenient foil to MacIntyre’s argument against Modernity, to the degree that Nietzsche argues that humans in fact have a *telos*.¹⁰⁰ His “will to power” is tied to his claim that Western morality does not describe human beings

⁹⁸ *Ibid.*, 118.

⁹⁹ Friedrich Nietzsche, *Thus Spoke Zarathustra*, ed. Adrian Del Caro and Robert Pippin (Cambridge: Cambridge University Press, 2006), 5-8. See the editors’ discussion of the translation for *Ich lehre euch den Übermenschen*, in *ibid.*, 5, n.3.

¹⁰⁰ I say “initially” here, because I believe MacIntyre has demonstrated the deeper shortcoming in Nietzsche’s larger argument, while bypassing this argument altogether. Nietzsche has *already moved beyond the bounds of rational debate*; he perceives no need to offer reasons for his claims. He would be at home neither in MacIntyre’s world, nor in Rawls’. Moreover, his argument flies in the face of over a century (in his day) of writings on the importance of social contract. Thinkers like Thomas Hobbes and Jean-Jacques Rousseau both described the human condition largely in Nietzschean terms (i.e., humans are at root selfish beings) only to reject it in favor of a “higher,” more civilized humanity in society.

as they really are. Therefore, they could never reach their “highest potential power and splendor.”¹⁰¹ The will encompasses far more than a survival instinct; it calls human beings to flourish by expansion, even at the expense of others.¹⁰² The *Overman* rules over these others, and they glorify him over and above humanity, to a new relationship even with nature. Nietzsche’s thought contrasts with MacIntyre’s interpretation of Aristotle not only in its understanding of human nature, but also in its application of the virtues. Whereas on Nietzsche’s account, honor is the highest goal, for Aristotle it can be no more than a secondary goal. Moreover, honor in Nietzsche’s world can be afforded to only one – the *Overman*. In Aristotle’s reality, which is an honor culture, honor is due to all persons by reason of their place in the social order.¹⁰³

In an Aristotelian account of the virtues, being a good person means being a good citizen. Every human activity aims at some perceived good, a *telos*. The “good” here is defined in terms of specific human characteristics. At the same time, human beings have a nature which is peculiar to the species, and this nature likewise has a specific *telos*. Aristotle calls this human *telos* “happiness” (*eudaimonia*). Thus, all action is aimed not only toward the good to be drawn from the act itself, but also toward human happiness in the pursuit of a complete human life. The virtues are those qualities necessary to enable an individual to achieve happiness, and the lack of which to frustrate movement toward the *telos*.¹⁰⁴

¹⁰¹ Nietzsche, *On the Genealogy of Morality*, ed. Keith Ansell-Pearson, trans. Carol Diethe (Cambridge: Cambridge University Press, 1994), 8.

¹⁰² Volf, *A Public Faith*, 67-68.

¹⁰³ MacIntyre, *After Virtue*, 116.

¹⁰⁴ *Ibid.*, 148-149.

This initial description of Aristotle contrasts with contemporary liberal morality in two ways. First, the political nature of these Aristotelian goods means that all action is expressive of more than just individual preferences or choices. They are tied to communal life. Second, there is an overriding account of the human good, which cannot be the case if one envisions a political structure free of comprehensive doctrines. These are the positive contrasts that MacIntyre wishes to convey in his argument. But there are negative contrasts as well. For example, Aristotle's system of virtues is elitist.¹⁰⁵ For instance, the wealthy possess certain virtues that the poor cannot. Moreover, Aristotelian teleology presupposes a metaphysical biology that allows slavery, misogyny, and other practices that are rightly abhorred in contemporary society.

MacIntyre also deals with these issues by way of historical analysis of the subsequent virtue tradition found in Thomas Aquinas. Prior to doing so, he rejects modern Aristotelian arguments that attempt to "thin out" or generalize a notion of the good and name it "human flourishing." Such notions ignore the deep conflicts and rival traditions that give rise to these necessary tools of human flourishing on the Aristotelian account and, more importantly, betray the relationship between the structure of the *ethos* and that of the *polis*.¹⁰⁶ Instead, he turns to the New Testament, Augustinian and Thomistic traditions to demonstrate the correction to the Aristotelian tradition that arose from its encounter with the Christian tradition over time. The Christian view of human nature is no less teleological, though. The "happiness" of Christianity is eternal communion with a Trinitarian God. This shifting of the *telos* gives rise to new "theological" virtues that are required for achievement toward that end (like faith, hope,

¹⁰⁵ Ibid., 182.

¹⁰⁶ Ibid., 162-163.

and love). Therefore, while the New Testament differs from Aristotle with regard to content, the logical and conceptual structure of the virtues remains largely intact.¹⁰⁷

MacIntyre goes on to describe the nature of the virtues, which are such that they can be at home in two vastly different social and moral traditions.¹⁰⁸ First, he insists that virtues are secondary; no single virtue stands upon itself, for its own sake.¹⁰⁹ These virtues are required not only by the individuals who act within society, but also by the community itself, if it is to remain a viable institution. In other words, the virtues are functional. Next, MacIntyre describes three stages in the logical development of Aristotelian virtue that can be sustained today. The initial stage requires a background account of what MacIntyre calls a “practice.”¹¹⁰ It must be qualified here that, first of all, MacIntyre does not mean to imply that the virtues are *only* exercised in the course of practices, and, second of all, that practice is – like Rawls’ use of it – a technical term to contrast with its mundane usage (as in “rehearsal”). As such, MacIntyre’s definition of practice has three criteria: it must be complex, it must have internal goods, and it must

¹⁰⁷ Ibid., 184.

¹⁰⁸ Ibid., 186: “Can we distill a unitary core concept of the virtues of which we can give a more compelling account of them than have thus far been considered?”

¹⁰⁹ Ibid., 185-186. For instance, in the Homeric tales, the virtues facilitate the fulfillment of one’s social role (especially the warrior role). In Aristotle, they are secondary to the human good as conceived in the *telos* of action. In Benjamin Franklin’s account, the virtues are utilitarian; they are useful to gaining earthly (and heavenly) success.

¹¹⁰ Ibid., 187: “By practice, I am going to mean any coherent and complex form of socially established cooperative human activity through which goods internal to that form of activity are realized in the course of trying to achieve those standards of excellence which are appropriate to, and partially definitive of, that form of activity, with the result that human powers to achieve excellence, and human conceptions of the ends and goods involved, are systematically extended.” cf. with Rawls’ definition of practice, n.25, *supra*.

have standards of excellence. For instance, his scheme includes farming and football as practices, but he distinguishes them from acts like planting a vegetable or kicking a football, even though both can be part of its corresponding practice.¹¹¹ Internal goods are those achieved from engagement in the specific practice, and only that practice. For example, being a football player (or farmer, for that matter) might bring money, fame or power to that person. Nonetheless, these goods are external to the practices so defined – money and fame can be gained in manifold ways. Being consistently called upon at critical moments in games to make a crucial play is both an internal good and a sign of excellence. To call players or farmers as good or bad must have a clear standard for calling them so and thereby removes emotivist tendencies of preference.¹¹²

At this point, MacIntyre offers a definition of virtue that belongs to his prior concept of *practice*.

A virtue is an acquired human quality the possession and exercise of which tends to enable us to achieve those goods which are internal to practices and the lack of which prevents us from achieving any such good.¹¹³

While he distinguishes external *goods* from internal ones in certain practice, MacIntyre takes care to note that some *virtues* are internal to all practices. Justice, courage and honesty must be exercised in any practice.¹¹⁴ Justice relates to playing (or farming) fairly with other practitioners in giving them their due. Honesty is required to face one's own deficiencies in his or her practice, so that one can become more excellent at it. Finally, courage is necessary to face one's critics, and submit to their constructive advice.

¹¹¹ Ibid., 188.

¹¹² Ibid., 190.

¹¹³ Ibid., 191.

¹¹⁴ Ibid., 191-193.

The second concept central to MacIntyre's account involves a narrative order that unifies the virtues for a single human person. In each life, there is no adequate means of choosing among which practices to pursue. MacIntyre's use of narrative here is helpful for unifying rather than bifurcating one's actions in light of conflicting claims. Striving for excellence in the practices of an academic life, for example, can easily conflict with those of being a good parent or worthy spouse. At times, there seems to be mutual exclusivity among them. Using a narrative mode of explanation, MacIntyre claims that one can understand human action in terms of rationally-grounded intention, rather than emotivist preference.¹¹⁵

Adapting MacIntyre's analogy of gardening, one might ask the question: What is Dennis doing?¹¹⁶ A variety of plausible answers can be given: he is writing a paper; he is exercising his mind; he is earning a doctoral degree; or he is paradiddling on the computer keyboard. Each answer implies a history that can be derived from them, and all of them are true to a degree. But the answer is none of them. Dennis is in fact preparing for career that offers myriad opportunities and benefits for himself and his family.

We identify a particular action only by invoking two kinds of context, implicitly if not explicitly. We place the agent's intentions, I have suggested, in causal and temporal order with reference to their role in his or her history; and we also place them with reference to their role in the history of the setting or settings to which they belong. In doing this, in determining what causal efficacy the agent's intentions had in one or more directions, and how his short-term intentions succeeded or failed to be constitutive of long-term intentions, we ourselves write a further part of these histories. Narrative history of a certain kind turns out to be the basic and essential genre for the characterization of human actions.¹¹⁷

¹¹⁵ Ibid., 205-208.

¹¹⁶ Ibid, 206: A particular behavior might be characterized with "equal truth and appropriateness" as digging, gardening, taking exercise, or pleasing one's wife.

¹¹⁷ Ibid., 208.

In order to understand the intentions of Dennis' actions, one must situate the perceived action within the stream of intersecting narrative histories: of his academic and work life and of academic life generally, in the history of Dennis' marriage and of the institution of marriage (and even perhaps the Catholic sacrament of Marriage). MacIntyre claims that actions become intelligible only in this way.

MacIntyre describes the "narrative self," who is constituted by a set of social roles within various communities, vis-à-vis the "emotivist self," who is abstracted by liberal notions of autonomy, reason.¹¹⁸ Earlier in his text, MacIntyre described the medieval view of the person as essentially *in via*, embarked upon a quest or sojourn. The hero seeks to achieve a goal or end, not just for its own sake, but in doing so can redeem all that was wrong with his or her life up to that point.¹¹⁹ Here, he returns to that theme: human life consists in a quest for the good. In turn, the conception of the good life is identified as a quest for the good life.

Some conception of the good for man is required. Whence is such a conception drawn? Precisely from those questions which led us to attempt to transcend that limited conception of the virtues which is available in and through practices. It is in looking for a conception of the good which will enable us to order other goods. It is in the course of the quest and only through encountering and coping with the various particular harms, dangers, temptations and distractions which provide any quest with its episodes and incidents that the goal of the quest is finally to be understood. A quest is always an education both as to the character of that which is sought and in self-knowledge.¹²⁰

¹¹⁸ Ibid., 220: "I am someone's son or daughter, someone else's cousin or uncle; I am a citizen of this or that city, a member of this or that guild or profession; I belong to this clan, that tribe, this nation. Hence what is good for me has to be the good for one who inhabits these roles."

¹¹⁹ Ibid., 174-175.

¹²⁰ Ibid., 219.

Not only do the virtues allow the sojourner to realize the internal goods of the quest and its practices, but also they enable him or her to take the first step. Lacking the virtues, he or she can be corrupted along the way, or easily distracted from the goal.

While the logic of MacIntyre's narrative account is patently circular, it is likely so by design in light of MacIntyre's development of the virtues as it reaches the final stage: a moral tradition. As stated before, he envisions traditions as embodied and partially constituted by arguments about the goods which constitute themselves. Practices and individual lives immerse themselves in these historical streams, which have been the setting for these conflicts over generations at times.¹²¹ For instance, Rawls writes with a stream of liberal thought that is often called "social contract," which could well be considered a "tradition." Since in its early expressions, each writer (e.g., Hobbes, Locke, and Rousseau) disclosed a clear conception of the human good beyond the political structure of society. While human beings are essentially selfish, there are ways in which they can tolerate one another in pursuit of their own goals.¹²² Rawls enters this stream of tradition because he found that the social contract often falls prey to utilitarianism; justice is at the mercy of instrumental political expediency.¹²³ In *Theory*, he attempts to ameliorate this shortcoming by integrating Kantian respect for persons into the social contract. Put another way, Rawls is entering the ongoing argument of the social contract

¹²¹ Ibid., 222.

¹²² For Hobbes, this way is found in the absolute power of a monarch or parliament. For Locke, the power is diffused in a tripartite governmental structure that represents the will of the people. Rousseau is especially organic to Rawls' work, since Rousseau claims that by entering the social contract, human beings become *morally* better people. They are now ruled by a sense civic duty rather than selfish nature.

¹²³ Cahill concurs with this assessment. See Cahill, "Teleology, Utilitarianism, and Christian Ethics," *Theological Studies* 46, no.4 (December 1981), 605-609.

tradition. As a comprehensive doctrine, however, this Kantian addition limited the scope of the society Rawls envisioned. In *Political Liberalism*, he attempts to overcome this problem by reducing the scope of the principles of justice to political considerations. As such, they do not entail a particular moral demand upon individuals to respect others. Or, at least Rawls does not impose that reason.

Here is where the overlapping consensus and reflective equilibrium become vital to this “tradition.” The freestanding conception is held by those individuals for their own reasons. The process by which this occurs is the overlapping consensus. But the mechanism required in order to accomplish the consensus is the reflective equilibrium.¹²⁴ In determining the principles of justice, there is interplay between the conditions of the original position and one’s judgments about them. Either can be revised. As described in the previous section, Rawls places this equilibrium prior to the selection of principles. In other words, the “ongoing argument” about the original position must eventually become “institutionalized” by the political conception of justice. At this moment, it seems that Rawls no longer has a tradition in MacIntyre’s sense of the term. Contra Rawls’ claim that justice is the first virtue of institutions, MacIntyre insists that practices should not be confused with institutions. Each person, each practice is a part of the tradition, and tradition can afford unity to individuals. The stream of tradition enters the person as much as the person enters the stream. Hence, the circularity of MacIntyre’s second stage.

Moving now to MacIntyre’s conception of justice, it can be stated simply that he subscribes to an Aristotelian-Thomistic notion of justice as rendering to others what is

¹²⁴ Rawls, *Theory*, 43: “As we have seen, this state is one reached after a person has weighed various proposed conceptions and he has either revised his judgments to accord with one of them or held fast to his initial convictions (and the corresponding conception).”

due to them. The simplicity betrays the complexity undergirding his argument. To demonstrate this intricacy, MacIntyre turns to the classic exchange between John Rawls and fellow American political philosopher Robert Nozick on justice. Their two positions, borne out of their shared presuppositions of a liberal, capitalist society, are diametrically opposed.¹²⁵ On the one hand, Nozick claims that just entitlement (in acquisition or in transfer) sets limits to the possibility of redistribution. On the other hand Rawls argues that just distribution sets limits to legitimate entitlements. In both cases, the price of one person's justice is paid by another.¹²⁶

MacIntyre employs a three-fold argument against both positions. One, the incompatibility of the arguments mirrors one another. Both offer reasonable arguments, which are founded upon sound premises from their conclusions flow. Because of the incommensurability of the rival positions, there is no way to decide between them on the merits of argumentation alone. Two, there is an element, namely the concept of desert, that neither party fully captures, but survives in classical traditions where the virtues were central. In both schemes, individuals are prior to and independent of any social bonds between them. By contrast, desert is intelligible only within the context of community.¹²⁷ In Nozick's thought, desert is further ruled out, since entitlement can be traced to original acquisition.¹²⁸ Rawls allows for a "common sense" view of desert, but argues that what is deserved cannot be known prior to the principles of justice being generated. Once

¹²⁵ Ibid., 245.

¹²⁶ Ibid., 246.

¹²⁷ Ibid., 250.

¹²⁸ Robert Nozick, *Anarchy, Utopia, and State*, 150-151.

formulated, though, desert has been ruled out by Rawls' principles.¹²⁹ Three, both share some social presuppositions, which allows each to generate a general principle of equality. Rawls makes need the primary principle; Nozick describes it as entitlement. The former gives no attention to history; how the need arose is irrelevant. However, for the latter, history is eminently germane with regard to establishing ownership.

MacIntyre's critiques of both positions help to develop the positive features of his own claims about justice. Each seems to be complaining that the other's method is *unjust*. Thus, they are arguing about injustice rather than justice, with no way to discern between them. MacIntyre paints liberal society as individuals shipwrecked upon an uninhabited island with other individuals.¹³⁰ At length, he denies the concept of a neutral, tradition-free rationality that can give rise to an adequate account of justice.¹³¹ Furthermore, MacIntyre's appeal to desert exhibits his allegiance to the Aristotelian-Christian view of justice, which he calls a "tribute to the residual power and influence" of that older tradition.¹³²

Finally, in *After Virtue*, MacIntyre opens up a further discussion regarding the participation of religious voices in public discourse. They hail from tradition-laden communities, which have both a deep sense of its own purpose and an ongoing conversation about that purpose. A major issue from Chapter One of the dissertation was the problem of translating the foundational religious concepts into vocabulary for use in the public sphere. Here, MacIntyre makes a similar point. To enter into public debate

¹²⁹ MacIntyre, *After Virtue*, 249; cf. Rawls, *Theory*, 310.

¹³⁰ *Ibid.*, 250.

¹³¹ This point is a major argument of *Whose Justice*, see 334.

¹³² MacIntyre, *After Virtue*, 251.

enforces participation in a culture *mélange*, and requires the search for a “common stock” of concepts and norms to which all may employ or appeal.¹³³ He sees a clear and constant danger of erosion of these communities. If his argument is correct that contemporary society cannot hope to achieve any moral consensus, except by marginalizing such voices, then it also entails a rejection of participation in the political order.¹³⁴

However, in a later work, he offers a glimmer of hope by analyzing the limits of toleration in public discourse.¹³⁵ The essay attempts to answer two questions. The first attempts to draw a line between justifiable intolerance and unjustified suppression. The second seeks to describe the kinds of utterance, if any, that ought to be found intolerable.¹³⁶ MacIntyre begins with a classic liberal view of tolerance from John Locke. Agents of the state promote general security and social order, but do not regulate beliefs, except for the sake of security and order. Locke grounds this claim on premise that since an individual cannot command his or her own opinions beyond the present, “one cannot give another power over that which he has no power himself.”¹³⁷ However, religious beliefs seem to be distinguished from other types of belief. On the ground that they are indefinitely contestable, religious beliefs may be justifiably restricted in ways that other personal beliefs are not.

¹³³ *Ibid.*, 252.

¹³⁴ *Ibid.*, 255.

¹³⁵ MacIntyre, “Toleration and the Goods of Conflict,” in *Ethics and Politics, Selected Essays 2* (Cambridge: Cambridge University Press, 2006), 205-223 (hereafter “Toleration”).

¹³⁶ *Ibid.*, 207.

¹³⁷ John Locke, in *Ibid.*, 208.

MacIntyre turns to a discussion of the contemporary state, arguing that the state not only is not neutral in matters of public conflict, but also is radically different from its Enlightenment counterparts in at least three ways. First, Western politics has been largely secularized. While this point is contestable, in light of the role that religion has played in the American presidential elections since at least 2000, MacIntyre prefers to focus only upon rival *political* conceptions of the good, which in fact are largely secularized. Second, the scope of state activity has grown exponentially. It has become a vast network of institutions, each with their own political values and internal goods. Third, the activities of the state have global significance with regard to commerce and security. A brief review of the current news headlines warrants his third claim.¹³⁸

As a result of this secularized, magnified, transnationally-significant state activity, MacIntyre states that particular cases are adjudicated by employing the concepts of utility and rights. These procedures are justified by the three stages already described from *Whose Justice* in the previous section.¹³⁹ There is also a further tension between the demands of the state and the market and those of the “rational local community.” Because the state cannot be neutral with regard to these conflicting claims, local communities must treat the agencies of the state with an “unremitting suspicion.” For that reason, the state must remain tolerant of all forms of local public discourse.

So by a very different route we have arrived at very much the same conclusion as that reached both by classical liberals and by modern liberals: the state must not be allowed to impose any one particular conception of the human good or identify

¹³⁸ e.g., an economic crisis in Greece is causing radical fluctuation in U.S. stock markets; a threat from the Iranian military is spurring gasoline prices to spike.

¹³⁹ MacIntyre, “Toleration,” 211-212: 1. Analysis of costs and benefits; 2. Identification of individuals or groups who can claim certain rights; and 3. Maximizing utility by weighing and balancing the competing claims in a decision to act. See also *Whose Justice*, 342-343.

one such conception with its own interests and causes. It must afford tolerance to a diversity of standpoints.¹⁴⁰

While MacIntyre reaches the same conclusion as liberals regarding public discourse, but for a very different reason. Classical liberals like John Stuart Mill envisioned the institutional tolerance of contrasting viewpoints as a sign of its inherent neutrality.¹⁴¹ But in contemporary society, as MacIntyre has shown, the government holds no such neutrality to decide among competing claims. Further still, the government's power to enforce those decisions endangers the stability of local communities. Therefore, agencies of the state should not be the ones to exclude participation in public discourse.¹⁴²

Nonetheless, MacIntyre's essay claims that certain kinds of utterances may be justifiably excluded – just not through government power. He lists five conditions, rooted in his understanding of virtue, that promote and maintain rational dialogue. The starting condition concerns the participants. Those who wield power should be excluded from discussion until after a decision has been made. Here, MacIntyre uses the example of public discourse about health care. Participants should include health care practitioners and community stakeholders, but not insurance executives.¹⁴³ Another necessary condition is the cultivation of those virtues necessary to exercise prudent judgment regarding the modes of expression in the debate. Those with racist, sexist, or overtly irrelevant ideas ought to be excluded from the discourse. The virtues are necessary here because negative modes of speech like lampooning and insults often play a large part in political debate. The participants must distinguish among them on a case-by-case basis. A

¹⁴⁰ Ibid., 213.

¹⁴¹ Mill, *On Liberty*, 17-23.

¹⁴² MacIntyre, "Toleration," 214.

¹⁴³ Ibid., 215.

third condition is that certain questions must be settled conclusively prior to engaging in the discussion at hand. Such issues include the values at stake, the purpose of the community's participation, and other substantive issues. As a corollary to the third condition, a fourth situation involves the exclusion of certain *classes* of opinions. For example, a Holocaust denier is not simply wrong on a question of historical fact.¹⁴⁴

Because to deny the Holocaust also entails an unreasonable conception of human good and likely involves an underlying anti-Semitism, the very holding of such an opinion is grounds for excluding a participant in *any* public discourse. Finally, just as the state cannot decide *who* should participate, it must likewise refrain from enforcing conditions of tolerance against the reasonable will of the community. Local autonomy must be respected. On the flip side of this political coin, the local participants are also liable to "argumentative accountability."¹⁴⁵ In the end, MacIntyre's account of the virtues comes into play at every level of the discourse. Justice, honesty, and courage are all required, as they lend themselves to deciding the list of participants, setting the agenda of discussion, and submitting themselves to their opponents' scrutiny.

The necessity of the virtues notwithstanding, MacIntyre also insists that tolerance is not *in se* a virtue. In fact, too much tolerance is a vice.¹⁴⁶

Toleration is an exercise of virtue just in so far as it serves the purpose of a certain kind of rational enquiry and discussion, in which the expression of conflicting points of view enables us through constructive conflict to achieve certain

¹⁴⁴ MacIntyre uses this case as a clear example of warranted exclusion, *ibid.*, 219-220.

¹⁴⁵ *Ibid.*, 222: "We show ourselves as deserving of a hearing only insofar as we have made ourselves accountable in this way."

¹⁴⁶ *Ibid.*, 222-223.

individual and communal goods. And intolerance is also an exercise of virtue when and in so far as it enables us to achieve those same goods.¹⁴⁷

Virtue here is taken to mean “virtue of the local community,” which is constituted by ongoing conflict about its purpose and values. In contemporary political and moral debate, the community is inundated with external messages given to them by the media. The local community thereby can be hamstrung by national political slogans, short attention span, or even slick commercial advertising. Another nagging complication arises. Even if a community has generated a set of compatible and coherent arguments, it can still be weakened by the incompatibility between its rhetorical modes of rational enquiry and those of the dominant and external political culture.¹⁴⁸

In closing, MacIntyre’s work, like Rawls’ *Theory*, is dense and complex. Unlike Rawls, MacIntyre eschews any hope of finding a rationally superior method to resolving public moral issues beyond those which met their demise in the medieval period. The fragmentation of public discourse mirrors the bits that have survived from that bygone period. It is MacIntyre’s firm opinion that the grave disorder contemporary society’s moral utterances can be ameliorated only through a return to a tradition-based sense of Aristotelian *telos*. But he is pessimistic that an entire nation can achieve such a recovery. Instead, he looks to local communities, especially religious ones, which at least stand a chance of withstanding the Dark Ages he claims that society has entered. Though he offers a way for local communities to participate in public discourse, he offers a strong caveat against too much commitment to toleration.

¹⁴⁷ Ibid., 223.

¹⁴⁸ Ibid., 223. MacIntyre offers no solution to the problem in this essay.

Looking back to Chapter One of the dissertation, it is clear that Cahill does not share MacIntyre's pessimism regarding the state of moral discourse. In fact, as Chapter Four will demonstrate, she is counting on the cooperation of diverse communities to achieve a higher standard of justice. Moreover, while MacIntyre's critique of Rawls' political liberalism has been devastating, other liberals have noticed the same problems with Rawls' position. They attempt to correct some of the thorny issues that MacIntyre raises against him *from within the* tradition of liberalism. They also do not let MacIntyre's negative appraisal of liberalism go without a response. One such response comes from American political thinker Michael Walzer, toward whose work this chapter now turns to explore.

Michael Walzer: Complex Equality and Passionate Liberalism

This third section surveys and analyzes the writings of Michael Walzer for two purposes. First, while Walzer writes from within a similar liberal context as Rawls, he distinguishes his project in several ways which will be considered here. Second, Walzer describes a "down-to-earth" worldview that is more accessible than Rawls' original position.¹⁴⁹ In presenting the basic research of his writings, this part surveys three major works: *Spheres of Justice* (hereafter *Spheres*), *On Toleration*, and *Politics and Passion*, respectively. This chronological survey also notes important concepts which contrast with Rawls' project, especially Walzer's notions of complex equality and non-deliberative political strategies. Walzer's principles of justice, derived from these works that span his writing career, might thereby have a closer affinity than those of Rawls with

¹⁴⁹ Walzer uses this term to contrast his own realistic starting point with the highly and purposefully contrived points of departure of Rawls and others. See, for instance, *Politics and Passion*, 91-92.

regard to the complex public discourse about human genetic engineering described in this dissertation's last two chapters. Walzer also offers a rejoinder to MacIntyre's communitarian critique of liberalism, which comprises the final part of this section. Furthermore, Cahill's later writings reflect a deep awareness of the intricate coalitions and passionate engagement that Walzer claims are necessary to resolve difficult political issues.

Spheres of Justice

To begin, Walzer's first criticism in *Spheres* is very broad in scope. He asserts that since the time of Plato, political thinkers have assumed that there is one and only one distributive system that philosophy can rightly encompass.¹⁵⁰ In essence, Rawls' claims in *Theory* are simply the latest trend of this political fashion. On the one hand, Walzer's starting point is similar to Rawls' in the idea that justice is a human construction. On the other hand, Walzer's approach to distributive justice in *Spheres* sharply contrasts with Rawls'. Given the plurality of human interests, it doubtful that the principles of justice can be as monolithic as Rawls' account makes them to be. As such, Walzer starts with a society where distributive justice is not the *first virtue* of social institutions of free and equal members (as in Rawls' *Theory*), but instead is the source and context for the art of differentiation, of which "equality is the *end product*."¹⁵¹ In other words, it is not simply

¹⁵⁰ Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), 5.

¹⁵¹ *Ibid.*, xv (emphasis added).

that there is pluralism in justice as a philosophical concept, but that the principles of justice are themselves pluriform.¹⁵²

Next, Walzer's idea of equality also contrasts with Rawls' account of it in *Theory and Political Liberalism*. Walzer defines the aim of political equality as a society free from domination, that is, one which is mediated through a set of social goods.¹⁵³ At root, equality has a negative meaning, one aimed at eliminating not every difference, but a particular set of them. His purpose, then, in *Spheres* is to describe a liberal society where no social good serves (or can serve) as a means of domination.¹⁵⁴ Rawls' idea of equality presupposes a particular kind of dominance: government power. Because Rawls begins with a society of free and equal persons, he requires a mechanism to return periodically or continually to a situation as close to the original position as possible. The Difference Principle serves this purpose. On the one hand, it breaks the monopoly of wealth (the dominant good in contemporary liberal society), and emphasizes the cooperative nature of individuals and groups in society. On the other, in order to break the cycle of supremacy, constant government intervention is necessary in order to constrain the talents of the dominant group that possesses the wealth (e.g., by way of taxation or other equitable policies). Unfortunately, the practical outcome proves Walzer's point. Because government intervention is required to maintain or recover the original position, Rawls has simply replaced one dominant good (i.e., wealth) with another dominant good

¹⁵² *Ibid.*, 6; cf. Rawls, *A Theory of Justice*, 6-7.

¹⁵³ *Ibid.*, xiii.

¹⁵⁴ *Ibid.*, xiv. Walzer defines a good as dominant if the individuals who have it, by virtue of their possessing it, can command a wide range of other goods. A good is monopolized whenever a single person or group successfully holds this dominant good against all rivals. See *ibid.*, 10.

(namely, government power). In the end, government authority generally and political power particularly become the object of competitive struggles, rather than wealth.¹⁵⁵

To be clear, Walzer is not saying that the dominance of political power itself is necessarily an unfortunate situation. On the contrary, political power is a special sort of social good. Instead, the problem is a simple equality that is presumed by liberal society.

As a constant overriding factor of other spheres, political power is always dominant – at the boundaries *but not within them*. The central problem of political life is to maintain that crucial distinction between “at” and “in.” But this is a problem that cannot be solved given the imperatives of simple equality.¹⁵⁶

As a corrective, Walzer argues that a general reduction of dominance is needed in a just society, and that an understanding of complex equality is the vehicle to overcoming the tendency of tyranny.¹⁵⁷ Complex equality is the opposite of tyranny. It resembles Rawls’ overlapping consensus in that both account for the wide range of worldviews (or, per Rawls, comprehensive doctrines) that actually are represented within a political community. The political community is the setting for this distributive scheme, and its

¹⁵⁵ Ibid., 14. As I write this section, the current news cycle is reporting extensively on the recall election of Wisconsin’s Governor Scott Walker. With the help of a Republican-dominated state legislature’s, he seems to have taken away the right of state employees to bargain collectively. This situation seems to demonstrate Walzer’s claims about the problem of a dominant good and its relationship to simple equality. If the monopoly of wealth as the primary good is broken, it is a matter of those in power to reassert their dominance by gaining the upper hand in the new (or alternative) dominant good – political power. Since those parties with wealth coincidentally possess political power, they can re-establish dominance through yet another mechanism. Perhaps Rawls would call this situation indicative of neither a just nor a well-ordered society, or would say that the legislature’s actions are unreasonable. Nonetheless, it is difficult to argue against them, since the political majority was elected (and Walker himself withstood the recall) by supposedly free and equal citizens. In Walzer’s estimation, the wide distribution of political power may not work due to “majority tyranny” (p.15).

¹⁵⁶ Ibid., 15, note (emphasis added).

¹⁵⁷ Ibid., 18. Citing Blaise Pascal, he defines tyranny as “the wish to obtain by one means what can only be had by another.” Personal qualities and social goods have their own spheres of operation, and to disregard this principle is tantamount to tyranny.

world of common meanings. However, membership in this body itself is a good, in that its distribution happens by accepting others into it.¹⁵⁸

For example, the right to religious freedom, guaranteed in the First Amendment of the United States Constitution, is a fundamental rule of complex equality.¹⁵⁹ It constructs a dividing line between the spheres of religious community and the larger body politic. It allows each ecclesial community to determine its membership, while at the same time allowing individuals to join such groups that will have them as members; “politics is not dominant over grace nor grace over politics.”¹⁶⁰ Walzer illustrates this point by using the case of conscientious objection. The political community does not nourish souls, but still is not willing to allow a person’s eternal salvation to be placed in jeopardy by forcing him or her to take up arms against a national enemy. This situation respects boundaries of religious belief, without acknowledging the truthfulness of the individual’s religious belief.

Still, this respect for boundaries is tenable only as long as those with such beliefs remain at the margins of the political community. Following this strategy, the Amish or Jehovah’s Witness communities are tolerated only because they embrace their lifestyles at the margins of society with respect to accommodations that must be made to their eccentric beliefs regarding involvement in political and military life. What, then, are the limits of toleration in a just society? Walzer attempts to answer this question in *On Toleration*, the second book analyzed in this section.

¹⁵⁸ Ibid., 28. His later work also deals with the issue of membership, particularly within the context of immigrant societies like the United States. See Walzer, *On Toleration* (New Haven: Yale University Press, 1997), 30-31.

¹⁵⁹ Walzer, *Spheres*, 245.

¹⁶⁰ Ibid., 246.

On Toleration

Following his claim in *Spheres* that membership is the first social good to be distributed, he further argues that toleration is often underestimated as the most minimal of entitlements in a just society.¹⁶¹ In this work, he describes precisely what societies do when they tolerate difference within their political community. While his work takes a broad historical approach with regard to various regimes of toleration, the following paragraphs focus on those aspects of Walzer's argument there that describe contemporary democratic society, which is the social context for this dissertation.¹⁶²

In contemporary nation-states and immigrant societies, citizens have equal rights and responsibilities. In other words, citizens of these regimes are considered as individuals rather than groups. The difference between these two regimes is that in nation-states, the majority (political, ethnic, religious, etc.) is permanent.¹⁶³ In practice, this means that the minority is treated first as citizens with respect to rights, privileges, and responsibilities, and secondarily as members of a religious or ethnic minority with particular communal practices. While members may form voluntary associations (like religious identity), they may not exercise legal jurisdiction (i.e., Sharia or Canon Law) apart from the institutional law of the land. More precisely, Sharia or Canon Law cannot be applied beyond the principles of constitutional law. For example, while divorced

¹⁶¹ Walzer, *On Toleration*, xi.

¹⁶² In *On Toleration*, Walzer describes five regimes of toleration: The Multinational Empire, International Society, Consociations, Nation-States, and Immigrant Societies. At present, the United States is most like an immigrant society, though, as Walzer notes, it also has a lot of characteristics similar to the nation-state that he describes. Thus, this dissertation focuses on his accounts of toleration in the latter two types of regimes.

¹⁶³ *Ibid.*, 30.

Catholics might be barred from the sacraments of the Catholic Church if they remarry, and are even forbidden from remarrying in a Catholic church building, they are still free to wed according to the law of the land.

By contrast, immigrant societies are constituted by individuals who arrive in waves, but not as organized groups. The sustainability of immigrant societies is based on purely voluntary association with regard to identification as part of ethnic or religious groups. Therefore, tolerance is far more personalized in immigrant societies, as opposed to the stereotypical tolerance of an identifiable minority in the nation-state.¹⁶⁴

In his later chapters, Walzer argues that toleration is always a relationship of inequality, and he applies the practical consequences of that claim to several social issues.¹⁶⁵ With regard to power, the nation-state recognizes all individuals as citizens before the law, and immigrant societies have a “neutral state” that stands above particular ethnic interests.¹⁶⁶ With respect to class, Walzer claims that intolerance is worse when differences of culture, ethnicity, or race coincide with socioeconomic status. Here, the minority in nation-states serve the same function as the newest immigrants from poorer countries. They are tolerated to the degree that they serve economically useful ends. They do hard labor for low wages, and they are essentially invisible in society.¹⁶⁷ Furthermore, toleration is most compatible with inequality when the class systems are reiterated among the different ethnic or racial groups. Walzer claims that government interventions aimed

¹⁶⁴ Ibid., 31.

¹⁶⁵ Ibid., 52-82. They are Power, Class, Gender, Religion, Education, Civil Religion, and Tolerating the Intolerant. In this dissertation, I address only the first four, as they bear most directly on the later chapters of the dissertation, especially gender and religion.

¹⁶⁶ Ibid., 55-56.

¹⁶⁷ Ibid., 58-59.

at equality (e.g., affirmative action) are not designed to help individuals, but instead to achieve class stratification throughout a previously disenfranchised group.¹⁶⁸ Hence, such corrective actions aim at simple equality, and do not achieve the egalitarian liberalism envisioned by Walzer.

In terms of gender issues, Walzer makes a few points that are applicable to the later chapters of this dissertation. In nation-states and immigrant societies alike, regimes are intolerant of particular practices that transgress the rights of individuals, even when those practices are wholly internal, community matters. For example, in the United States the banning of polygamy, at one time practiced among Mormons, was aimed at bringing all citizens under a single law.¹⁶⁹ It is significant to note here that the issue of gender also frequently crosses into that of religion -- e.g., Mormon polygamy in America, Muslim *hijab* in France, or Hindu *suttee* in British-ruled India. This hybridization is partly due to the public nature of these intersecting expressions of gender and religion. In the case of polygamy, a particular religious group seeks State recognition (and presumably, approval) of a particular kind of conjugal arrangement.¹⁷⁰ In France, the *hijab* is very controversial, but there would likely be little complaint about it if Muslim women did not attend public school. In other words, polygamy and *hijab* might be tolerated by society were they “purely” internal matters of their respective communities. However, the right

¹⁶⁸ Ibid., 59.

¹⁶⁹ Ibid., 61. Walzer contrasts the insistence of the U.S. government to outlaw this rather “internal” situation with the reluctance of the British Imperial government to ban the *suttee* – the immolation of Hindu widows on their husbands’ funeral pyres. The British did not outlaw the practice until 1829, nearly a century into their rule in India.

¹⁷⁰ Walzer’s previous work describes the spheres of marriage and recognition in two different chapters. In the present work under consideration, he describes these three cases as “gender” issues, with hardly a word about their religious contexts. cf. *Spheres*, 234-239.

of “communal reproduction,” implied in the phenomenon of toleration, often conflicts with individual citizen’s rights or the nation’s legal codes.¹⁷¹ More importantly, the common denominator in all three cases is that women from these particular religious communities are joining increasingly the public sphere, and as they do, questions of the limits of toleration arise.¹⁷²

What of the toleration of religion itself? Walzer’s earlier work describes constitutional religious freedom as an illustration of his concept of complex equality. In *On Toleration*, he makes two further points that are pertinent to the goals of this dissertation. One, equality is guaranteed through the First Amendment by denying political power to all religious authorities. This freedom is not neutral, though, because it arises from the “realistic assumption” that all religious communities are potentially intolerant.¹⁷³ With fresh memories of the Puritan Commonwealth of England in the minds of the Constitution’s authors, the original position of the United States was designed to maintain a separation between the spheres of political power and religious communities.¹⁷⁴ This separation also makes the State dominant over particular religious communities, as evidenced by the aforementioned banning of polygamy. Two, the tolerance is maintained at the level of the community, not of individuals. In practice,

¹⁷¹ See the recent Supreme Court decision of *Hosanna-Tabor Church v. The Equal Employment Opportunity Commission, et al.*, 10-553 (argued October 5, 2011 – decided January 11, 2012). The petitioner fired one of its school teachers in flagrant violation of the Americans with Disabilities Act of 1990. In oral arguments, the church does not question the constitutionality of the ADA. Instead, they claim that the respondent is classified as a “commissioned minister” of the Missouri Synod Lutheran Church, and thereby falls under a longstanding “ministerial exception” to federal regulation. The Court sided with the church in a unanimous decision.

¹⁷² Walzer, *On Toleration*, 65.

¹⁷³ Walzer, *On Toleration*, 81.

¹⁷⁴ Walzer, *Spheres of Justice*, 246-248.

some communities are allowed to use narcotics and alcohol as part of their religious ceremonies in excess of the law, but individuals are not permitted such use of those substances. For instance, a Catholic grade-school child may partake of the chalice during the celebration of the Eucharist, but he or she may not drink a glass of wine with lunch in the classroom. In reality, the state tolerates the Catholic doctrine that wine is no longer substantially present in the sacramental cup, but they do not extend the practice beyond the boundary of the liturgy in which that belief is expressed.

However, this communal paradigm is shifting toward emphasis on individual rights because of the privileging of voluntary assembly. Walzer locates this compatibility in the entirely free and voluntary nature of association in any religious community. Is there a contradiction here? Walzer answers in the negative. All religions, even tolerated ones, aim to restrict various actions that are concomitant with individual freedom. Even if religions are intolerant as communities, their goals are entirely compatible with the idea of religious toleration. In this sense, Walzer's answer is closely related to Rawls' idea of reasonable comprehensive doctrines. Rawls argues that such comprehensive doctrines are neither fixed nor unchanging. Even so, being reasonable also limits the scope of what can be justified to others.¹⁷⁵ This recognition leads to forms of toleration and supports the idea of public reason. In Rawls' thought, this "public reason" takes shape in the liberty of conscience and freedom of thought.¹⁷⁶ But this toleration only includes comprehensive doctrines that are not unreasonable. Walzer's schema of toleration seems to include unreasonable comprehensive doctrines, with the caveat that religious communities, no matter how intolerant *ad intra*, still must accept religious freedom for all as a prior

¹⁷⁵ Rawls, *Political Liberalism*, 59.

¹⁷⁶ *Ibid.*, 61.

principle. Thus, the community itself might be intolerant of certain practices (like homosexuality or drinking alcohol), but it also must be committed simultaneously to the idea of religious freedom, even of other local communities that do not find homosexuality or alcohol consumption objectionable.¹⁷⁷

In his concluding chapter, he attributes this conflict to what he calls “postmodern life.”¹⁷⁸ He argues that the postmodern project undermines every sort of common identity. “Us” and “them” have no fixed point of reference.¹⁷⁹ This situation means that all are strangers, and makes each individual responsible for his or her own identity, a life without clear boundaries. Citing French scholar Julia Kristeva, the community (such as it is) is founded upon “lucidity rather than fate,” the latter being a reference to the regimes of toleration in both nation-states and immigrant societies, where the minority casts its fortunes.¹⁸⁰ Kristeva claims that individual choice should create the social group, rather than common origin. Without such choice, citizens (women especially) are reduced to “boundary-subjects,” with socially-prescribed roles readymade for them.¹⁸¹ Walzer disagrees with her contention. If everyone is a stranger, then no one is.¹⁸² Nevertheless, the postmodern context encourages a “politics of difference,” one that requires the ongoing negotiation of group relations and individual rights. This negotiation requires a

¹⁷⁷ Walzer, *On Toleration*, 70-71.

¹⁷⁸ *Ibid.*, 87-92.

¹⁷⁹ *Ibid.*, 88.

¹⁸⁰ *Ibid.*, 90.

¹⁸¹ Julia Kristeva, *Nations without Nationalism*, trans. Leon S. Roudiez (New York: Columbia University Press, 1993), 35.

¹⁸² “For unless we experience sameness in some strong form, we cannot even recognize otherness,” Walzer, *On Toleration*, 89.

double protection of persons as differentiated citizens of both state and groups, who live simultaneously as strangers to both.

The problem, Walzer notes, is that over generations, the “divided self” will weaken the undivided groups out of which they arose. From within what he calls “the first generation” (i.e., the current one), he concludes with cautious optimism.

There may be good reasons, then, to live permanently with the problems of what I have called the first generation. We should value the extraordinary personal liberty that we enjoy as strangers and possible strangers in contemporary “transitional” societies. But we need at the same time to shape the regimes of toleration in ways that fortify the different groups and perhaps even encourage individuals to identify strongly with one or more of them.¹⁸³

In the end, Walzer argues that these centrifugal forces of selfhood and culture will correct one another only if there is some planning. In contrast to Rawls, a balance between the two is required, but that balance is not fixed. Consequently, one does not need to defend either communitarianism or liberalism, but both can be held as the situation dictates.¹⁸⁴ It is unfortunate, though, that he names this method “social democracy.”¹⁸⁵

In this context of voluntary association, the dissertation returns to an important question raised by Walzer in his previous chapter. “What will be the staying power and organizational strength of a purely voluntary faith?”¹⁸⁶ This question is relevant for the aims of this dissertation because it is also related to public discourse. Public moral discourse brings many people with various comprehensive doctrines together to reach a consensus on a pressing issue with broad social consequences. Public reason will admit a

¹⁸³ Ibid., 90-91.

¹⁸⁴ Ibid., 112.

¹⁸⁵ Communists of the 18th and early 19th centuries called themselves “social democrats.” Walzer’s argument bears little resemblance to communist thought.

¹⁸⁶ Walzer, *On Toleration*, 71.

large number of voices into the discourse, but Rawls' notion of the term implies that some will not have a place there. Apparently, religious communities that are constituted by those with a "purely" voluntary comprehensive doctrine will be deemed reasonable. But what will be the role of emotional engagement as the various parties come together to debate the issue? Does such public "reasoning" rule out "repugnance" as an argument against human genetic engineering because its major premise is at root an appeal to an emotion? Furthermore, what is the form of discourse that will allow the public to reach a consensus? Will it be deliberative, arbitratative, or representative in scope? Walzer provides a few ways to answer these questions in *Politics and Passion*, the final work considered in this section.

Politics and Passion

In *Politics and Passion*, Walzer explains in greater detail these last points that he made in *On Toleration*. He argues that a more egalitarian and strongly multicultural politics is required to bring about a society of truly free citizens. In doing so, he alludes to what he calls the "deficiencies" of standard liberalism.

[Standard liberalism] is inadequate because the social structures and political orders that sustain inequality cannot be actively opposed without a passionate intensity that liberals do not (for good reasons) want to acknowledge or accommodate. Accommodation is especially difficult when passion is, as it commonly is, the product of our attachments and belongings.¹⁸⁷

For this reason, he concludes that there must be a better doctrine than standard liberalism. His argument rests on several premises, all of which are significant for the goals of this dissertation. First, "freedom" and "equality" can still exist within the context of several

¹⁸⁷ Walzer, *Politics and Passion*, xii.

important involuntary associations. Second, the United States political community is a deliberative democracy, and deliberative politics is itself problematic. Finally, passionate engagement with the hard cases of contemporary society is necessary in order *to win* the arguments that will bring about a free and equal society. This part elaborates upon these assumptions, which Walzer fleshes out in certain chapters of *Politics and Passion*.

First, Walzer describes four kinds of involuntary associations, which make for what he calls “intellectual servitude.”¹⁸⁸ He divides them into two categories: sociological and philosophical. In the sociological category, there is a radical givenness to family/social contexts and cultural determination. In the familial and social realm, parental instruction and family dynamics reify notions of kin groups, national identity, social class, and gender roles. Of these four notions, the only development that seems to be encouraged is an upward mobility in the social hierarchy.¹⁸⁹ In addition to these considerations, there is also a cultural determination within our associational life. For example, Walzer addresses the institution of marriage. Even a prenuptial agreement only speaks to details of the arrangement; the conditions which make for a marriage are dictated by law.¹⁹⁰ While marriage is freely contracted, the range and style of choices is already determined.

The next set of involuntary associations is political and moral. As citizens, our membership is “given” to us as the primary distributive good: a point that Walzer makes in *Spheres*.¹⁹¹ Membership allows access to all of the opportunities and other goods that

¹⁸⁸ *Ibid.*, 12.

¹⁸⁹ *Ibid.*, 5.

¹⁹⁰ *Ibid.*, 6-7.

¹⁹¹ Walzer, *Spheres*, 31.

the society has to offer. “If you are here in the political community, you are caught up in a set of arrangements that you had no part in designing.”¹⁹² This claim contrasts sharply with standard liberal assumption that all associations are free and voluntary. In the moral realm, it is not just the social mores or legal codes that constitute morality. Following Rousseau, there is also an imperative to remain within a society, especially during times of national or organizational crisis. This obligation stems from the benefits that were reaped during the better days of the republic, or in local matters (say a labor union or civic group), from the vanguard work of its activists and early leaders. In this context, Marxist arguments about “class consciousness” are really claims about the moral epistemology of the nature of involuntary associations.¹⁹³ Solidarity, then, is more about a moral identification with the plight of others rather than a social or political idea.

In practice, even the abolition of these forms of association requires the grounding of individuals in a less-than-voluntary association. Again citing Julia Kristeva, Walzer claims that it is not possible (in fact, not even desirable) to have a community free of involuntary associations.¹⁹⁴ To form such “entrepreneurs of the self” is not a matter of simply commanding schoolchildren to choose freely, but necessitates the formation guiding narratives that disclose the requisite values and paradigmatic rituals that reenact the struggle for individuality.¹⁹⁵ To bring about this situation, a community would first

¹⁹² Walzer, *Politics and Passion*, 8.

¹⁹³ Ibid., 10. Here, Walzer illustrates his point by way of the *kahal*, a local autonomous Jewish community. One may leave the group, but only after publicly airing one’s grievances. This case implies that there is an obligation not to leave the community bereft of its contributing member without the opportunity for its own self-improvement.

¹⁹⁴ Ibid., 15.

¹⁹⁵ Ibid., 15-16.

need to find this goal valuable, and then construct a social program through public education and civic religion in order to instill these values within its members.

Next, while deliberative democracy is a standard contemporary political practice, Walzer claims that it represents a shift in American liberalism. This shift is found in a movement from a discourse of rights to one of decision.¹⁹⁶ However, the process of the second still looks toward the goals of the first, as evidenced by the litigious nature of American politics. Deliberative democracy is akin to Rawls' public reason. In the face of a pressing social issue, there is great value in "reasoning together" in order to reach a resolution. In fact, Rawls cites the Supreme Court as the "institutional exemplar" of public reason.¹⁹⁷ There, deliberation takes place within the limits of "reason alone," removed from the political process. It is not to say that their function is not political. However, it does mean that their personal morality is irrelevant and their political values are limited within the scope of the constitutional question before the justices. In deliberation, the Supreme Court must appeal only to the public conception of justice and the political values of public reason.¹⁹⁸

By contrast, Walzer expresses dissatisfaction with deliberative strategies by way of his criticism of the work of Amy Gutmann and Dennis Thompson.¹⁹⁹ Public reasoning,

¹⁹⁶ Ibid., 90-91.

¹⁹⁷ Rawls, *Political Liberalism*, 235-237.

¹⁹⁸ This is not to say that citizens would be satisfied by the Court's decisions, let alone find them reasonable. In its March 2011 decision regarding the Westboro Baptist Church, the Court decided overwhelmingly (8-1) that the group's hateful demonstrations and hurtful speech are politically protected, even at the expense of the proper decorum reasonably expected at a military funeral. Perhaps Rawls might object that the group's assertions constitute an unreasonable comprehensive doctrine, but that is a cold comfort to the mourning families that might be subjected to their future demonstrations.

¹⁹⁹ Walzer, *Politics and Passion*, 92.

according to Gutmann and Thompson, is qualified by reciprocity, publicity, and accountability, none of which are morally neutral.²⁰⁰ Walzer's critique here is about the incompleteness of the strategy, and he amplifies the constitutive elements of deliberation. Politics has many other values beyond qualified reason: passion, commitment, solidarity, courage, and competitiveness, among others. In reality, American political discourse has little to do with deliberation. In turn, he offers fourteen political strategies that are non-deliberative in form.²⁰¹ Here, only two – debate and bargaining - are briefly considered.

In debate, the chief goal is to persuade the audience to agree with the speaker. The parties involved in a debate are contestants; the point is not to agree but to win.²⁰² In *Politics and Passion*, Walzer seems to have in mind a structured debate between two representatives from two conflicting intellectual positions. In public discourse, though, a debate might appear much like a battle royal, if there are multiple positions. However, as this dissertation pointed out in the first chapter, one goal of engaging in public discourse, especially if minds cannot be changed, is to steer or slow down the process toward its inevitable outcome. In this sense, winning a debate means to succeed through integration of the party's values into the final resolution in some significant way.

Furthermore, it is not likely to be accomplished through debate alone, since there will be multiple competing interests in this future public discourse. In moving toward resolution, bargaining might be a viable option. In contemporary democracy, Walzer

²⁰⁰ Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge: Harvard University Press, 1996), 349-350.

²⁰¹ Walzer, *Politics and Passion*, 92-102. I list them in order: political education, organization, mobilization, demonstration, statement, debate, bargaining, lobbying, campaigning, voting, fundraising, corruption (his only negative example), scut work, and ruling.

²⁰² *Ibid.*, 96.

contrasts bargaining with deliberation by way of an example using the example of a jury or panel of judges. In a criminal case, it will not do to engage in bargaining; all parties involved want a true statement about a defendant's guilt. Politicians, on the other hand, have options and method available to them from which juries are barred. Consequently, political decisions are rarely deliberative in the literal sense of the word. Rearranging the metaphor slightly for yet another comparison, while a criminal is constitutionally protected from double jeopardy for the same crime, politicians must stand for reelection at regular intervals. Politicians thereby can face adversity from opponents time and again for all of their decisions. Thus, it is in the politician's interests to seek an equitable solution to the issue the first time.²⁰³

Here, the dissertation turns again to the idea of a *modus vivendi*. Walzer's critique of Gutmann's and Thompson's claims focus on their tolerance of negotiation in a deliberative democracy. As long as a moral principle is not involved, a bargain can be made when the parties "consider the merits of the collective results of their individual deals."²⁰⁴ This claim presumes the necessity of making good arguments as a moral requirement, since parties recognize one another as free and rational men and women. A political victory is more legitimized by a wide, bipartisan majority decision. As an egalitarian theory, though, deliberative democracy must remove power from the process.²⁰⁵ In Rawls' *Theory*, this end is accomplished by placing a veil of ignorance over the participants as they deliberate. However, as Walzer argues in *Spheres*, equality is the

²⁰³ Ibid., 97. "Indeed, a bargain is often the better part of political wisdom."

²⁰⁴ Gutmann and Thompson, 69-73.

²⁰⁵ Walzer, *Politics and Passion*, 105; cf. Gutmann and Thompson, 349.

end product of the process.²⁰⁶ As a result, it is not necessary to recognize others as rational in the same way

But also as members of groups with beliefs and interests that mean as much to them as our beliefs mean to us. If deliberation follows from the first of these recognitions, bargaining and compromise flow from the second. In political life it is the second that is more often appropriate, even morally appropriate: the better we understand that differences exist, and respect the people on the other side, the more we will see that what we need is not a rational agreement but a *modus vivendi*.²⁰⁷

In other words, a *modus vivendi* implies the regular presence of conflicting interests, but Walzer contends that good argumentation alone rarely will prevail in such conflicts. This culture of argument cannot be isolated from other political activities. In practice, the “back and forth” of debate and the push toward resolution of a particular issue eventually will involve a negotiation of its solution. Therefore, deliberation has an important place in political discourse, but not an independent one.²⁰⁸

Third, Walzer concludes this line of argument by returning to the problem of passionate engagement. This passion stems from a strong commitment to a particular set of beliefs, which Walzer describes in the context of his critique of deliberation.²⁰⁹ As Rawls notes, reasonable comprehensive doctrines limit the scope of what can be demonstrated to others.²¹⁰ Walzer concurs with this argument, as the social range of such convictions derived from exclusive comprehensive doctrines is limited.²¹¹ However, to

²⁰⁶ Walzer, *Spheres of Justice*, xv.

²⁰⁷ Walzer, *Politics and Passion*, 104.

²⁰⁸ *Ibid.*, 106.

²⁰⁹ Walzer, *Spheres*, xv.

²¹⁰ Rawls, *Political Liberalism*, 59.

²¹¹ Walzer, *Politics and Passion*, 123.

join a group is more than a rational decision. Group membership entails affective ties, and implies a commitment to the emotional, moral and material demands of the group.²¹²

As this group engages in public discourse, it is imperative to recognize the interests of others in the discussion. Quoting Karl Marx, Walzer argues that egalitarian participation strategies stand vis-à-vis “the ideas of the ruling class are the ruling ideas.”²¹³ In combating these ideas, Walzer claims that no party can succeed against established hierarchies of power and wealth unless it can arouse the passions of those on the lower end of that hierarchy.²¹⁴ Unfortunately, these emotions regularly take the form of envy, hatred, and resentment. By recognizing the others and their particular interests, and appreciating the strength of their commitments, enlightened participation can accommodate itself to the passions while excluding these “fiercer forms” of struggle.²¹⁵ Coupled with non-deliberative strategies, enthusiastic participation can resolve society’s complicated issues in a way far superior to a standard liberalism that privileges deliberation.

Finally, two relevant points can be made which relate Walzer’s notion of justice to Chapter Four. To the first point, it can be argued that his understanding of justice is not fixed, at least when compared to Rawls’ arguments in *Theory and Political Liberalism*. In *Spheres*, Walzer claims that justice is relative to social meanings.²¹⁶ He still holds this idea. In December 2009, he writes:

²¹² Ibid., 129-130.

²¹³ Ibid., 105.

²¹⁴ Ibid., 130.

²¹⁵ Ibid., 123.

²¹⁶ Walzer, *Spheres*, 312.

What is most distinctive about humanity is its creative power—to think, imagine, speculate, argue, and disagree. So men and women will imagine different good societies, argue about their political and economic arrangements, and disagree about which one is best.²¹⁷

In cases of disagreement, such as the one envisioned in this dissertation’s Epilogue, justice requires that society remain faithful to the disagreements by providing outlets for their resolution.²¹⁸ To elaborate, his argument in *Politics and Passion* relies heavily on recognizing that others can have strongly-held beliefs (i.e., a comprehensive doctrine, to use Rawls’ phrase). Disagreement can be resolved within a reasonable yet passionate setting.²¹⁹ Walzer’s further claims that it is through negotiation that an equitable solution can be found rather than deliberation. Similarly, the “back and forth” of Rawls’ reflective equilibrium implies the importance of discourse when choosing principles. At times, this equilibrium requires the revision of one’s principles even if the theory does not conform precisely to his or her judgments.²²⁰ Other times, it requires a radical shift of one’s moral vision. Nevertheless, Rawls insists that the two-fold political conception of justice would be chosen. But in doing so, he also notes that the conception which meets this criterion of reflective equilibrium is the one that is most reasonable. In Rawls’ work, this conception is singular; in Walzer, it seems to be manifold and situational.

To the second point, because justice is determined by context, Walzer claims that substantive accounts of justice are necessarily local in scope.²²¹ In addition to the relativity of social meanings, one’s methodology need not be fixed either. He argues at

²¹⁷ Walzer, “What is ‘The Good Society?’” *Dissent* 56, no.1 (Winter 2009), 74.

²¹⁸ Walzer, *Spheres*, 313.

²¹⁹ Walzer, *Politics and Passion*, 104.

²²⁰ Rawls, *Political Liberalism*, 8; cf. *Theory of Justice*, 42-43.

²²¹ Walzer, *Spheres*, 314.

the conclusion of *On Toleration* that there is a need for a balanced rather than exclusive method of resolving such cases.²²² One consequence of a highly contextualized method seems to indicate that there is no readymade principle (Rawlsian or otherwise) that covers every imaginable case. Another consequence, given the willingness for debate and negotiation, is that all complicated issues are potentially resolvable. This claim is the reason why “standard” liberalism is inadequate, according to Walzer’s argument in *Politics and Passion*.²²³ In political liberalism, this negotiation can only take place in the original position, and then only to describe its conditions. In practice, deliberation takes place within the down-to-earth context where structures of power are already firmly rooted in place. As a result, deliberation fails to resolve an issue unless a party can mobilize its members to engage these sedimented structures of political power, to form coalitions with likeminded groups, or to negotiate solutions with those in power. In other words, successful resolution to public dilemmas can be achieved only through something other than deliberation.

Walzer’s self-critical understanding of liberalism also affords him the opportunity to respond to liberalism’s detractors. MacIntyre is one such writer. He and others who offer this strand of criticism are often labeled “communitarians,” though few of them are comfortable with that term. In fact, MacIntyre has explicitly refused the attribution.²²⁴

²²² Walzer, *On Toleration*, 112.

²²³ Walzer, *Politics and Passion*, xi-xii.

²²⁴ Alasdair MacIntyre, *Dependent Rational Animals: Why Human Beings Need the Virtues* (Chicago: Open Court, 1999), 142: “It is a mistake, the communitarian mistake, to attempt to infuse the politics of the state with the values and modes of participation in local community. It is a further mistake to suppose that there is anything good about local community as such... [without] the virtues of just generosity and of shared deliberation, local communities are always open to corruption by narrowness, by

The dissertation briefly analyzes Walzer's response to MacIntyre and other critics of liberalism.

A Response to the Communitarian Critique of Liberalism

Walzer describes communitarianism as a useful contrast with social democracy. In this essay he highlights two arguments against liberalism, one related to practice and the other to theory, which he claims are “deeply contradictory” and therefore mutually exclusive.²²⁵ The first argument holds that liberal political theory accurately reflects liberal social practices. In this account, humans exist as radically isolated individuals. There are no necessarily shared values among them. The concrete absence of value exhorts one to disintegration of any social fabric through exit, utility (understood as personal utility), and especially choice.²²⁶ Moreover, choice and utility are not governed by any rational criteria; society is fragmented not only in values but also in practice. The second argument claims, contra the first, that liberal theory radically *misrepresents* real life. In reality, as Walzer has already noted in *Politics and Passion*, human beings are caught up in entire networks of relationships, power, and communities. If this claim is true, then all societies, even liberal ones, are deeply communitarian in structure. Here, the communitarian argument further asserts that liberal theory distorts this reality, blinding its members to the social ties that bind them. Thus, on the communitarian critique, an

complacency, by prejudice against outsiders and by a whole range of other deformities, including those that arise from a cult of local community.”

²²⁵ Walzer, *Politics and Passion*, 143.

²²⁶ *Ibid.*, 144.

explanation can be offered for the liberal inability to form “cohesive solidarities” and “stable movements,” and also accounts for the dependence on a central state.²²⁷

To these arguments, Walzer responds first by stating that

Liberal theory now seems to have a power over and against real life that has been granted to few theories in human history. Plainly, it has not been granted to communitarian theory, which cannot, on the first argument, overcome the reality of liberal separatism and cannot, on the second argument, evoke the existing structures of social connection. In any case, the two critical arguments are mutually inconsistent; they cannot both be true.²²⁸

Based on Walzer’s own critique of “standard liberalism,” he claims that both arguments are partially true. In recovering the positive aspects of the communitarian critique, he admits that Americans live in an “unsettled society.” He grounds this argument on four types of mobility: geographic, social, marital, and political. A sense of place is weakened by the voluntary migrations of individual members. Movement is usually a logical necessity as a result of upward social mobility, as individuals move to make a better life for themselves and their families. Insofar as home is the first community, the relative ease of contracting and dissolving marriage disintegrates the “first school of ethnic identity and religious conviction” represented by the home. Lastly, with its emphasis on autonomous choice, liberal citizens make for a volatile independent electorate, and local politics is as liable to upheaval as federal elections.²²⁹ Taken together, these four mobilities can weaken a sense of community and its vitality.

²²⁷ Ibid., 147.

²²⁸ Ibid., 147-148.

²²⁹ Ibid., 149-150.

These several points of agreement notwithstanding, there is simply nothing else besides liberal society, according to Walzer.²³⁰ As such, he offers three ways to offset communitarian arguments against liberalism. The first is the insistence on a fuller conception of voluntary association. As demonstrated in earlier discussion, patterns of association are not the product of the will alone. Liberalism is more concerned with exit from the group, and disrobing oneself from its social identity than with the freedom to form groups.²³¹ The second is the liberal possibility of what he calls “cooperative coping.”²³² Pluralism allows communities to deal with its various crises through a variety of means. By contrast, the imposition of a unitary way of life offers no escape for those who would find such a scheme oppressive. While there is a danger of erosion, Walzer argues that the local community must always be at risk.²³³ But communitarian tendencies are no help here. Tradition requires the risk of traditionalism or fundamentalism. Thus, if the first communitarian argument were true, then there would be no communities or traditions to place at risk in the first place. The third way involves the constitution of the liberal self. Walzer claims that contemporary liberals do not have a presocial notion of the self. Instead, liberalism “is best understood as a theory of relationship, which has voluntary association at its center and which understands voluntariness as the right of rupture or withdrawal.” With regard to the four types of mobility, liberal citizens are in a state of perpetual motion. For instance, if marriage is truly voluntary, there must be a permanent possibility of divorce. Seen in this light, liberal selves are not *pre-social*, but

²³⁰ *Ibid.*, 154.

²³¹ *Ibid.*, 155.

²³² *Ibid.*, 159.

²³³ *Ibid.*, 161.

post-social, insofar as they can choose to depart only after coming to an opinion about the current set of relationships to which they are bound.²³⁴

By contrast, an illiberal amelioration of these risks would deny the very possibility of rupture, withdrawal, or divorce. There could only be shunning, excommunication, and disfellowship. And few communitarians, especially MacIntyre, would advocate such measures. Nonetheless, the communitarian critique is prophetic, insofar as liberalism tends toward dissociation. A communitarian critique enjoins liberal society to reflect on and reinforce its internal binding capacity, but cannot overcome these risks entirely.

Before leaving this discussion of Walzer's work, it is helpful to conclude with a few words about its relevance for Cahill's writings. Chapter Four analyzes Cahill's participatory bioethics, which includes strategies consistent with Walzer's principles described in this section.²³⁵ In fact, these pages of her book also include an analysis and subtle critique of the argument from Gutmann and Thompson, whose argument Walzer rejects in *Politics and Passion*. Furthermore, Cahill's later work also makes a strong connection to the complex of social relationships, from which a free choice is no mere abstraction.²³⁶ Finally, Cahill argues similarly with Walzer that justice itself is contextualized.²³⁷ This is not to say that she has abandoned an attempt at a universal

²³⁴ Ibid., 162.

²³⁵ E.g., Cahill, *Theological Bioethics* (Washington: Georgetown University Press, 2005) 49-51; cf. Walzer, *Politics and Passion*, 92-102.

²³⁶ E.g., Cahill, *Bioethics and the Common Good* (Milwaukee: Marquette University Press, 2004), 76.

²³⁷ Cahill, "Germline Genetics, Human Nature, and Social Ethics," in *Design and Destiny: Jewish and Christian Perspectives on Human Germline Modification*, ed. Ronald Cole-Turner (Cambridge: The MIT Press, 2008), 150.

principle. For now, perhaps it is more precise to say that she seeks an understanding of justice that is universally but differentially applicable in any context. Cahill argues that the bioethical application of Rawlsian principles are laudable to the degree that they attempt to promote the common good, but that they fall short in the end as they tend to embrace the status quo of market-based approaches to medicine.²³⁸ Political liberalism is not radical enough in its pursuit of an equitable solution to these issues. As technology drives on, absent a moral or even political compass, it becomes imperative to find a method of engagement that slows its relentless march, or at least steers it toward its least harmful conclusion. As Walzer notes in *Politics and Passion*, activism frequently arouses the negative passions of envy and resentment. However, if the theological voices engaged in this future public discourse are successful, then the technological achievement of human engineering (to be discussed in the dissertation's Epilogue) can be conducted in a manner that leaves open the way to forgiveness and reconciliation, should the end result prove to be harmful. Finally, Walzer also provides a response to the critique of liberalism by MacIntyre and others who are commonly labeled "communitarians."

Summary and Conclusion to Chapter Two

This chapter has attempted to relate three recent philosophical accounts of justice that are most relevant to understanding Cahill's context, which will be analyzed in the Chapter Four. Because of her emphasis on participatory moral discourse, Cahill often addresses thinkers outside of her Roman Catholic tradition particularly and apart from religious communities generally. This theoretical exploration opened with the work of John Rawls, who offers a contemporary liberal account of justice as fairness which is

²³⁸ Cahill, *Theological Bioethics*, 32-33.

derived from freely-chosen principles. These principles maximize liberty while restraining unjust socioeconomic differences. Rawls' theory is clearly reasonable and internally coherent. At the same time, this chapter raised two problems about its applications to current and future bioethical dilemmas. One is his rather "thin" notion of the common good, which seems to refer mostly to legal and political systems that secure the rights of the people. Lacking a compelling reason to do otherwise, competition overrides mutual disinterest. Given the market-based ethos of medicine, Rawlsian principles are not strong enough to constrain the differences that might arise from biotechnologies. The other is his requirement to meet "basic needs." Without a thicker notion of the common good, it seems difficult to determine what constitutes the meaning of "basic." Cahill's later work, informed by Catholic Social Teaching, already provides such a notion of human rights, but the fourth chapter will explore her claim that they can rarely be absolute.

Next, Alasdair MacIntyre criticizes Rawls' *Theory* and other liberal views (like Robert Nozick), claiming that justice might be rational but not necessary in liberal society. He argues that Rawls and other liberals have no rational way to adjudicate their opposing claims because they have no overriding sense of the good. Rooted in the classical traditions of Aristotle and Aquinas, MacIntyre insists that the political nature of goods in ancient societies means that actions are expressive far more than autonomous choice, but are tethered to communal life, which is not possible in a political structure free of a singular comprehensive doctrine. MacIntyre calls for a return to a tradition-based sense of Aristotelian *telos*, even though he is pessimistic about the possibility of such a recovery. Nonetheless, he offers a way for local communities to participate in

public discourse, with a strong caveat against an overzealous commitment to toleration. Similarly, Cahill insists that all intellectual and religious voices speak from a tradition. By contrast, it is through toleration of all voices that public discourse can be endeavored. Cahill grounds this call in a collaborative effort to increase justice in society.

The third account comes from Michael Walzer, who claims to remain firmly within the liberal tradition even while critiquing what he calls “standard liberalism,” which is represented in this dissertation by Rawls. Walzer’s “complex equality” overcomes the necessity for constant government intervention to achieve the equity envisioned by Rawls. At the same time, it demonstrates that justice is relative to social meanings and is necessarily local in scope. Like Rawls, he is concerned about the stability of the political community over time. For Walzer, freedom and equality are still possible within the context of select involuntary associations. More importantly, Walzer allows room for social action beyond “public reason.” Disagreements can be negotiated within a reasonable yet passionate setting. Cahill’s later work resonates with Walzer’s analysis insofar as both address the complex of social relationships, from which a free choice is no mere abstraction.

Now, the dissertation returns to some of Cahill’s more familiar dialogue partners in the Roman Catholic moral tradition. It is better to begin with the philosophical movements because, while these philosophers have generally not addressed the theologians in the next chapter, the opposite cannot be said. The Catholic social tradition looks especially toward the common good and social justice, which are especially addressed by Rawls and Walzer. As Chapter Three demonstrates, both James Keenan and Jean Porter rely – heavily at times – on MacIntyre. Similarly, Catholic Social Teaching

leans heavily up a communal understanding of human dignity in a manner not inconsistent with MacIntyre. Catholic bioethicists also navigate the complexities of meeting individual needs with balancing social realities.

CHAPTER 3

JUSTICE IN THE CONTEMPORARY ROMAN CATHOLIC MORAL TRADITION

Toward the task of specifying what is meant by the Catholic tradition, toward which Cahill often refers, this chapter focuses on influential scholars and church documents written since the Second Vatican Council (hereafter Vatican II). There is both a clear development in the theological language and also an evolving understanding of justice expressed in the Council's documents. To cite one salient example, the council reflects upon human createdness in God's image, which grounds the essential equality of persons.¹ Equality is rooted in a human "dignity," which transcends racial, socioeconomic, and even religious differences.² In taking this position, which is based on human dignity over social or ecclesial identity, the council expressed the church's desire to enter into public conversation as a dialogue partner, rather than a dictatorial voice. This willingness to engage the world is a clear departure from the polemical writings from the church's hierarchy during the Modern period.³ Furthermore, it demonstrates a general acceptance of religious and political plurality that may have been understated in the past. Moreover, this position is emblematic of Cahill's primary task of participation in public

¹ Second Vatican Council, *Gaudium et Spes* (1965), 29.

² See *Gaudium et Spes*, 12-22 and *Dignitatis Humanae*, 1.

³ See the "anti-Modernist" papal writings, such as Pius IX, *Syllabus Errorum* (1864), which condemns a variety of theological positions like pantheism and rationalism, and political positions like socialism and liberalism; Leo XIII, *Providentissimus Deus* (1893), which prohibits scientific and historical-critical biblical methods; and Pius X, *Lamentabili Sane Exitu* (1907), which also denounces "modernist" exegesis.

moral discourse – a critical self-understanding of one voice’s own collective context, as discussed in Chapter One.

Since Cahill writes from within a Roman Catholic context, the first section focuses exclusively on scholarship from within that tradition. This approach does not in any way intend to denigrate the weighty contributions of Protestant writers, or scholars writing from Jewish and other non-Christian religious traditions. In fact, as demonstrated in Chapter One, Cahill often mentions the influence of Protestant writers like James Gustafson and Stanley Hauerwas in her own writings. To reiterate what was introduced in the first chapter, and what will resonate throughout this chapter, public discourse brings together disparate intellectual positions that represent particular contexts. But contexts themselves are rarely monolithic, either. Thus, this chapter analyzes diverse writings from Catholic scholars and church documents that clarify what is meant by this Catholic context, and how Cahill significantly engages each representative part of the tradition.

This chapter is divided under three major headings, which analyze three post-conciliar accounts of justice in the Roman Catholic tradition. The first part surveys three modes of the church’s hierarchical teachings in the wake of the Second Vatican Council, to include the *Pastoral Constitution on the Church*, various social encyclicals of the post-conciliar popes, and a pastoral letter from the United States’ National Conference of Catholic Bishops. The second account analyzes the recent recovery of virtue ethics in Catholic moral tradition, including some interesting proposed developments. The final part discusses justice within the particular context of Catholic bioethics.

Recent Statements from the Catholic Hierarchy Related to Justice

In analyzing these statements, the research is presented in three segments. Starting with *Gaudium et Spes*, the first segment examines the aforementioned development of the church's voice: one as dialogue partner with the modern world. This trend continues in the social encyclicals of Paul VI and John Paul II. The second considers the 1985 statement from the United States Catholic Bishops, *Economic Justice for All*. This document is significant to the present study for several reasons: its explicit definition of "basic justice," its principles of participation, and its balanced approach toward justice for individuals and the community. Economic concerns give rise to questions of distributive justice, which, in Cahill's later bioethical writings, is often identified with social justice, but at times is at odds with the papal social encyclicals.⁴ The third segment studies Benedict XVI's 2009 encyclical *Caritas in Veritate*, which is the most recent papal statement that addresses Catholic Social Teaching. It focuses on his conception of justice as prior to charity, as well as his attempt to define a spirituality of technology as a vehicle for human development.

Justice in the Documents of Vatican II and Subsequent Papal Social Encyclicals

The first chapter summarized at length the influence of Catholic Social Teaching on Cahill's later work. Now this section analyzes the understanding of justice that developed in the documents of the Second Vatican Council (hereafter Vatican II) and the papal encyclicals in its wake. This section has two parts. The first analyzes Vatican II's Pastoral Constitution on the Church, *Gaudium et Spes*, which derive the anthropological

⁴ Cahill, *Theological Bioethics*, 250-251.

principles from which the council's conception of justice is formed. It begins with a brief analysis of Leo XIII's seminal encyclical *Rerum Novarum* in order to demonstrate the development of Catholic Social Teaching in the intervening years between this document and the council. The second studies three papal social encyclicals were written in the two decades after Vatican II. These are Paul VI's *Populorum Progressio* and John Paul II's *Laborem Exercens* and *Centesimus Annus*. Drawing from these sources, and especially from its commitment to dialogue with the modern world, Vatican II's conception is most precisely called "social justice." Later papal social encyclicals demonstrate continuity with the conciliar understanding of social justice.

Leo XIII's Rerum Novarum and the Roots of Distributive Justice

The Catholic Church already expressed a vibrant social teaching tradition for nearly seven decades prior to Vatican II. Modern Catholic Social Teaching is said to have germinated from Leo XIII's *Rerum Novarum*, a groundbreaking encyclical on the rights of workers. There, he urges employers to pay a living wage within the context not of justice but of *charity* – "a duty not enforced by human law."⁵ Compensation should support the survival of the employee's family, which is the first natural society.⁶ In other words, commutative justice, that is, the obligations between persons in the context of contractual duties, is not at stake here. Or, more precisely, commutative justice is not sufficient to meet the needs of working class families, according to Leo.

⁵ Leo XIII, *Rerum Novarum* (1891 – hereafter RN), 22.

⁶ RN, 12-13.

While commutative justice is not an issue in Leo's encyclical, distributive justice initially seems to be vital in the context of the "natural right" of private ownership.⁷ Ownership and labor both serve the good of all.⁸ However, Leo does not mean the "common good," as it is used in later magisterial writings. Instead, he locates the common good squarely within the *government* of civil society.⁹ That is, Leo understands the common good to be served only by persons and not by material goods.

Furthermore, Leo's notion of justice as a virtue seems to be utilitarian in scope. Against the extreme collectivism of socialist governments, Leo writes that leaders must allow their citizens free reign. The upper limit to that liberty is the conflicting claims of others and the needs of the state, which is identified as the common good. He writes, "We have said that the State must not absorb the individual or the family; both should be allowed free and untrammelled action so far as is consistent with the common good and the interest of others."¹⁰ It is incumbent upon every citizen to contribute to the common good. Thus, the common good, as Leo understands it, is a matter of *contributory* justice.

Moreover, it is a grave offense *against* the common good for individuals to seize the property of others. To take forcibly what belongs to another "under the futile and shallow pretext of equality" serves neither justice nor the common good.¹¹ It is significant here that Leo bifurcates these two terms, because they converge in the later social tradition. He insists that fair wages should go beyond commutative justice to

⁷ RN, 6.

⁸ "The earth, even though apportioned among private owners, ceases not thereby to minister to the needs of all." RN, 8.

⁹ RN, 51.

¹⁰ RN, 34.

¹¹ RN, 38.

charity.¹² More importantly, this charity is a virtue found in *individuals*, and never in a state bureaucracy. He equates government-run relief agencies with paganism.¹³ Taken together, the common good, in Leo's estimation, is separate from distributive justice.

Vatican II's Pastoral Constitution on the Church

With the exception of contributory justice, Vatican II categorically rejected Leo's claims about justice in *Rerum Novarum*.¹⁴ Instead, they insist that justice is determined by its impact on the well-being especially of the poor.¹⁵ They ground this idea of justice on a two-fold premise. First, they argue that human beings are the "center and summit" of creation. This claim implies a fundamental dignity that discloses both a special relationship with God and the essential equality of all persons.¹⁶ Next, in light of human dignity, the council insists that human beings are social by nature.¹⁷ Thus, the person is in relationship not only with God, but also with each another. The evidence of human

¹² RN, 22.

¹³ RN, 30.

¹⁴ It must be stated that this development is in no way a quantum leap. In the intervening years between *Rerum Novarum* and Vatican II, the encyclicals of Pius XI and John XXIII departed from Leo with regard to the common good and to justice. In fact, they begin to conflate the two. For instance, Pius claims that social justice demands that "each must be given his own share of goods, and the distribution of created goods... is laboring today under the gravest evils due to the huge disparity between the few exceedingly rich and the unnumbered propertyless, must be effectively called back into conformity with the norms of the common good, that is, *social justice*." Pius XI, *Quadragesimo Anno* (1931), 58. Later, John XXIII argues (over Leo's claims to the contrary) that both private and public institutions must be directed toward the common good. See *Mater et Magistra* (1961), 40.

¹⁵ Second Vatican Council, *Gaudium et Spes* (1965 – Hereafter GS), 27.

¹⁶ GS, 12, 14.

¹⁷ GS, 24.

sociality is borne out in the interdependence that is expressed in family life and the political community.¹⁸

It must be noted that the lexical order here is significant to the Council's argument. Sociality is dependent upon human dignity. Initially, it can be said that the council follows Leo, insofar as they claim that every individual has a duty to contribute to the social order.¹⁹ However, the council's vision of the common good in *Gaudium et Spes* is also at odds with Leo's perception of it in *Rerum Novarum*.²⁰ According to Vatican II, the common good serves both individuals and groups within society.²¹ Because participation presupposes dignity, the council asserts a series of necessary positive rights in order to effect this contribution from individuals.²² Consequently, the common good not only requires contributory justice *from* its members, but also demands distributive justice *toward* them. Thus, Vatican II has some continuity with respect to contributory

¹⁸ GS, 25.

¹⁹ Here, the council does not cite Leo directly. Instead, they cite John XXIII, *Mater et Magistra* (1961). However, John opens his encyclical with an exposition of Leo's *Rerum Novarum* and of Pius' *Quadragesimo Anno*, both of which relativize individual work to the aggregate needs of the state.

²⁰ Cf. RN, 51.

²¹ The council defines the common good as "the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfillment more fully and more easily." GS, 26.

²² "There is a growing awareness of the exalted dignity proper to the human person, since he stands above all things, and his rights and duties are universal and inviolable. Therefore, there must be made available to all men everything necessary for leading a life truly human, such as *food, clothing, and shelter; the right to choose a state of life freely and to found a family, the right to education, to employment, to a good reputation, to respect, to appropriate information, to activity in accord with the upright norm of one's own conscience, to protection of privacy and rightful freedom even in matters religious*. Hence, the social order and its development must invariably work to the benefit of the human person if the disposition of affairs is to be subordinate to the personal realm and not contrariwise, as the Lord indicated when He said that the Sabbath was made for man, and not man for the Sabbath." GS, 26, emphasis added.

justice, but the council radically departs from Leo with its understanding of the common good.

Furthermore, the council describes the ideal conditions of the common good as “social justice.”²³ While there are tolerable inequalities among persons, equal dignity demands that society strive to ameliorate social conditions. To fail to address vast social and economic disparities constitutes an offence against social justice. In contrast to Leo, who insists that government is incapable of providing charity, Vatican II calls upon public and private organizations to avail themselves in service of human dignity. The pursuit of equality and justice also requires advancement beyond individualistic morality to participatory ethics that strive for the common good.²⁴

Finally, *Gaudium et Spes* expresses tension between universal and particular concerns.²⁵ After laying out these principles of dignity, equality, and the common good, the Council turns to the role of the Catholic Church in applying them.

All we have said up to now about the dignity of the human person, the community of men and women, and the deep significance of human activity, provides a basis for discussing the relationship between the church and the world and the dialogue between them.²⁶

In this dialogue, the church summarizes its service to individuals and to society. On the one hand, the church helps to protect human dignity from shifting opinions by upholding consistently the primacy of conscience and the importance of charity. The church also

²³ GS, 29.

²⁴ GS, 30-31.

²⁵ David Hollenbach points out this tension in the context of the universally knowable principles in the document and the particular religious beliefs of the Catholic Church in applying them. See “Commentary on *Gaudium et Spes*,” in Kenneth R. Himes ed. *Modern Catholic Social Teaching: Commentaries and Interpretations* (Washington: Georgetown University Press, 2005), 277-279.

²⁶ GS, 40.

proclaims human rights, which regulate all social and activity in light of the Gospel.²⁷ On the other hand, the church does not provide clear answers in the political, economic, or social order. As a universal body, the church is not beholden to a single cultural mode of existence. Instead, it insists on a universal dialogue in support of the basic rights of persons and of the family, which are the requirements of the common good.²⁸ Similar to Rawls' position, *Gaudium et Spes* envisions the church's participation in public discourse not only as a demand of Christian faith to be involved in the world, but also as a requirement of reasonableness in light of these universal principles.²⁹ The church thereby can engage in public discourse while remaining faithful to the Gospel.³⁰

In summary, there is a clear development in the Catholic social tradition at Vatican II. Rooted in the notion of the equal human dignity of persons, coupled with its understanding of human sociality, the council enjoins all individuals to contribute toward the common good. While this call is consistent with the origins of the church's social tradition, it is not unidirectional. The common good also requires that the individual's needs be met in order to facilitate participation. Radically departing from Leo's teachings, Vatican II claims that these needs fall under the auspices of justice, not charity. Further still, they describe the common good in terms of social justice. These anthropological tenets, upon which their notion of justice is based, are universal in scope and general in principle. As such, they require a fuller account of how they are applied at

²⁷ GS, 41.

²⁸ GS, 42.

²⁹ I refer here to Rawls' discussion of the "very great values" expressed in comprehensive doctrines which do not necessarily conflict with his political conception of justice. Rawls, *Political Liberalism*, 168-169.

³⁰ Hollenbach, in Kenneth R. Himes ed. *Modern Catholic Social Teaching*, 179.

the local level. One such account, offered by the United States bishops, will be analyzed later in the chapter. But now, further warrants for this particular application are provided in some papal encyclicals that followed Vatican II. The dissertation turns now to them.

Paul VI's Populorum Progressio

Paul VI's 1967 encyclical on economic and social development is significant to this dissertation for two reasons. One, it affirms and extends Vatican II's teachings on social justice while implying a greater need for subsidiarity, which, curiously, was understated at the council. The most important aspect to this first point is the "option for the poor," which was taken up zealously by Catholic bishops in the local contexts of Medellín and, later, of Washington, D.C. Two, and conversely, while focusing on the local situation with respect to direct assistance, Paul VI amplifies Leo's principles regarding wages to cover agreements among nations. This section briefly summarizes these two points because they factor into the oscillation between universal and particular concerns in Cahill's writings on justice, which will be addressed in the next chapter.

First, Paul VI calls for greater attention to be paid in the Catholic Church to listening in addition to teaching, which he also affirms in his subsequent writings.³¹ On the one hand, this attending to the "signs of the times" is wrought by increasing industrial, economic, and political developments throughout the world at the time of the

³¹ "It is up to these Christian communities, with the help of the Holy Spirit in communion with the bishops who hold responsibility and in dialogue with other Christian brethren and all men of goodwill, to discern the options and commitments which are called for in order to bring about the social, political, and economic changes seen in many cases to be urgently needed." Paul VI, *Octogesima Adveniens* (1971), 4.

encyclical.³² These developments were signified by rapid communications, increased travel, and widespread decolonization, which together resulted in unprecedented global awareness.³³ On the other hand, there were two kinds of polarization that threatened both peace and justice in the 1960s. One was the Cold War, which pitted the United States and other North Atlantic countries (often called NATO countries) in an arms race against the Soviet Union and other nations of the Communist Bloc, which was formed by the Warsaw Pact Treaty in 1955. The Cold War often spilled over into proxy wars, which were usually staged in “third world” nations, i.e., those poor countries that were not part of NATO or the Warsaw Pact.³⁴ The other was the unrivaled post-war prosperity in the West that occurred through vast economic expansion, thanks in large part to the aforementioned increase in industrialization, communications, and travel. However, this prosperity encouraged a widening gap not only between rich and poor individuals within particular countries, but also between the nations themselves. Thus, the 1960s might be characterized as a time of both hope and crisis. While the documents of Vatican II remain firmly optimistic in this context, *Populorum Progressio* takes a somewhat more somber tone.

³² In fact, the United Nations calls this period as “the decade of development.” See United Nations Children’s Fund, “The 1960s: Decade of Development,” *The State of the World’s Children 1996*. n.d. Online Document, <http://www.unicef.org/sowc96/1960s.htm>, retrieved August 4, 2011.

³³ The political and ecclesial context of *Populorum Progressio* is summarized in Allan Figueroa Deck, “Commentary on *Populorum Progressio* (*On the Development of Peoples*),” in Kenneth R. Himes ed., *Modern Catholic Social Teaching: Commentaries and Interpretations*, 293-296.

³⁴ For a concise analysis of this polarity at the end of the twentieth century, see Robert J. Schreiter, *The New Catholicity: Theology between the Global and the Local* (Maryknoll: Orbis Books, 1997).

Next, Paul VI describes the interplay between the global and the local situations, and the church's role in both. The church's mission is universal in proclaiming the Gospel. The principles of Catholic Social Teaching are also universal insofar as they are accessible to all reasonable persons. Consistent with social encyclical tradition, though, he argues that both are concerned especially for the poor.³⁵ In continuity with the teachings of *Gaudium et Spes*, the church can offer guiding narratives regarding human persons and their relationships with one another.³⁶ While this mission and vision remain global in scope, the encyclical points to specific, local ways that the church has fostered human progress, like the construction of schools and hospitals.³⁷

Later in the document, Paul affirms the teachings of Vatican II as they pertain to advancement of the common good.³⁸ He lauds industrial and technological innovations that gave rise to prosperity, but he also cautions against “unbridled liberalism” that paradoxically leads to tyranny. This political system is rooted in an equally unfettered capitalism, and results in the “international imperialism of money.”³⁹ In contrast, Paul turns to Vatican II's principles on the judicious use of private property.

Now if the earth truly was created to provide man with the necessities of life and the tools for his own progress, it follows that every man has the right to glean what he needs from the earth. The recent Council reiterated this truth: "God destined the earth and all it contains for all people and nations so that all created

³⁵ Paul VI, *Populorum Progressio* (1967 – Hereafter, PP), 12.

³⁶ PP, 13; cf. GS, 41.

³⁷ PP, 12.

³⁸ PP, 23-24.

³⁹ PP, 26. Here, Paul alludes to Pius XI, “And as to international relations, two different streams have issued from the one fountain-head: On the one hand, economic nationalism or even economic imperialism; on the other, a no less deadly and accursed internationalism of finance or international imperialism whose country is where profit is.” *Quadragesimo Anno*, 109.

things would be shared fairly by all humankind under the guidance of justice tempered by charity."⁴⁰

Free trade and property rights are thereby subordinated to the council's principles of social justice. Since there is a common right to a sufficient amount of the earth's goods for each family, the state should justly delineate the terms of their transfer.

Moving to international trade, Paul VI returns to Leo's principles outlined in *Rerum Novarum*, and augments their application to include obligations between nations. Paul conceives of wealthier nations as analogous to Leo's employers and landowners. Prosperous nations have a great deal of bargaining power over nations who are less well off. As such, the sole criterion of mutual consent (i.e., the liberal notion of contract) does not ensure fair conditions when applied to international trade agreements. Instead, Paul insists that the demands of natural law are superior to those of the contract's provisions.

In *Rerum Novarum* this principle was set down with regard to a just wage for the individual worker; but it should be applied with equal force to contracts made between nations: trade relations can no longer be based solely on the principle of free, unchecked competition, for it very often creates an economic dictatorship. Free trade can be called just only when it conforms to the demands of social justice.⁴¹

Thus, wealthier nations are subject to the needs of poorer nations when they come to terms on trade and other economic endeavors with one another. The open market does not need to be eliminated, but it must be constrained by demands of social justice.⁴² The dictates of natural law regarding human dignity, sociality, and the common good generate

⁴⁰ PP, 22. Paul cites GS, 69.

⁴¹ PP, 59.

⁴² PP, 61. Cahill makes a similar case in the context of biotechnology. A social ethos of generosity does not require that the biotech market be eliminated, only limited by a sense of the common good. See Cahill, "Stem Cells and Social Ethics: Some Catholic Contributions," in Nancy E. Snow ed., *Stem Cell Research: New Frontiers in Science and Ethics* (Notre Dame: University of Notre Dame Press, 2003), 137-138.

within more affluent countries a three-fold obligation: mutual solidarity, social justice, and universal charity.⁴³ They work synergistically to promote peace for the future.

Finally, Paul VI calls for collaboration about the best course of action to take in cultivating the common good through social justice. He challenges individual families, professional organizations, and cultural institutions to “friendly rivalry” with one another to implement the best ideas.⁴⁴ Implied throughout the encyclical’s middle paragraphs is the principle of subsidiarity, a consistent focus on and respect for local schemes that build particular communities. Paul also hints at the need for public discourse in resolving this urgent social concern of development. Collaboration includes not just other Christians, but all groups who are likewise committed to the cause of human development. Pressing social needs can sublimate ideological differences.⁴⁵ As Chapter One and earlier discussion in this chapter point out, parties can come to terms on immediate issues without accord on comprehensive notions that ground commitment to public discourse.

In conclusion, Paul VI’s *Populorum Progressio* takes a realistic perspective on social justice in the wake of the Second Vatican Council. In the context of increasing global economic development, he notes the widening gap between wealthier and poorer nations. Using the seminal social principles of Leo XIII and coupling them with the

⁴³ Paul defines each in its turn. “1) mutual solidarity—the aid that the richer nations must give to developing nations; 2) social justice—the rectification of trade relations between strong and weak nations; 3) universal charity—the effort to build a more humane world community, where all can give and receive, and where the progress of some is not bought at the expense of others.” PP, 44.

⁴⁴ PP, 39.

⁴⁵ In his later apostolic exhortation to commemorate the eightieth anniversary of the promulgation of *Rerum Novarum*, Paul is less optimistic about how well Christians can work with atheistic ideologies like Marxism. Paul VI, *Octogesima Adveniens* (1971), 33-34.

global vision of Vatican II, Paul transforms the obligations of wealthy individuals into the duties of affluent nations. Guided by the virtues of solidarity, justice, and charity, nations can cooperate as well as compete with each other. Peace becomes the fruit of this synthesis. Like the documents of Vatican II, *Populorum Progressio* subtly describes the need for subsidiarity by enjoining the smaller units of society to attend appropriately to the common good. He also makes an explicit case for collaborative strategies, the kinds of which are envisioned in the later chapters of this dissertation.

John Paul II's Laborem Exercens and Centesimus Annus

Traditionally, a papal encyclical or apostolic exhortation has commemorated the significant anniversaries of Leo XIII's groundbreaking promulgation: *Rerum Novarum*. In them, the pontiffs rehearse Leo's principles in *Rerum Novarum*, and then apply their remarks to the current situation in which they write. One such encyclical is Pius XI's *Quadragesimo Anno* in 1931. This eponymous letter addresses the world on the fortieth anniversary of *Rerum Novarum* as it suffered through a global economic depression. In 1961, John XXIII's *Mater et Magistra* addressed the impact of Leo's document to address the timely concerns of health care, education, and housing. A decade later, Paul VI marked the eightieth anniversary of *Rerum Novarum* with an apostolic exhortation to Maurice Cardinal Roy, serving at the time as president for the Pontifical Council for Justice and Peace. In addition to summarizing the foundational precepts laid out in Leo's encyclical, and recapitulating reflections on social justice from both the Second Vatican

Council and his recent letter, *Populorum Progressio*, Paul addresses environmental concerns for the first time in the history of papal encyclicals.⁴⁶

During John Paul II's long reign, he had the opportunity to write two commemorative encyclicals, both of which are briefly addressed in this section. The first is *Laborem Exercens*, which discusses the meaning of human work and the role of labor unions (a major element in *Rerum Novarum*) vis-à-vis the struggle against Communism in his native Poland. The second is *Centesimus Annus*, which notes that class struggles have persisted in the age of industrialization and addresses the recent fall of Communism in the Soviet Union and Eastern Europe. This section focuses on *Laborem Exercens*' conception of justice in light of the received Catholic social tradition, and briefly discusses the continuity of its teaching on the subjectivity of workers in *Centesimus Annus*. In addition to their significance for the analysis of justice in the next chapter, John Paul's spirituality of work in *Laborem Exercens* has further relevance with regard to the meaning of human achievement in a genetically-enhanced world, which will be discussed in the dissertation's conclusion.

In many ways, *Laborem Exercens* is consistent with the received tradition of Catholic Social Teaching. For example, the third section reiterates Leo's teachings on the struggle between labor and capital, emphasizing the need to place the rights of ownership in relation to the common good.⁴⁷ The fourth section outlines the rights of workers. Proceeding from the premise that labor takes priority over capital, John Paul argues that workers' rights have their basis within the larger context of human rights.⁴⁸ As such, they

⁴⁶ Paul VI, *Octogesima Adveniens*, 21.

⁴⁷ John Paul II, *Laborem Exercens* (September 14, 1981 – Hereafter LE), 14.

⁴⁸ LE, 16.

have the right to demand living wages and to bargain collectively. As noted in previous sections, while Leo perceived the wage issue as a matter of charity, subsequent magisterial writings see them as constitutive of social justice. John Paul's teaching in *Laborem Exercens* is consistent with the latter part of the tradition. There are also two noteworthy features in the document that will bear upon the later chapters of the dissertation. The first is John Paul's exposition on the meaning of work. The second is his implicit identification of social justice with the common good, which Catholic Social Teaching has usually treated separately.

First, John Paul's theological reflection on the meaning of human work offers a few insights that make explicit what was only implied in Leo's seminal encyclical. *Rerum Novarum* claims that social teaching is grounded in the meaning of work. As previous discussion demonstrates, Leo located its significance in terms of sustainable wages, warranted by the theological virtue of charity.⁴⁹ There is an implicit notion of human dignity, which is filled out in later social encyclicals and at Vatican II. In fact, church documents locate the right to employment under the aegis of dignity.⁵⁰ John Paul takes this analysis further by grounding work and human dignity in the opening chapter of Genesis.⁵¹ This analysis is juxtaposed sharply against the punitive toil of accursed humanity (Genesis 3:17-19 – *NRSV*), and from the meaninglessness of human work, for which only grief and anxiety are its fruits (Ecclesiastes 2:17-26). Instead, John Paul insists that work is part of a prelapsarian schema. It is located in stewardship, a gloss of which is found in God's blessing upon humans in Genesis 1:27-28.

⁴⁹ RN, 22.

⁵⁰ E.g., GS, 26.

⁵¹ LE, 4.

This claim is warranted by prioritizing the subjective dimension of work (the worker– the human agent) over its objective counterpart (the type of work).⁵² Humans work in myriad ways, and often they are labeled by the nature of their work: blacksmith, economist, farmer, physician, etc. In the past, technology has been a key ally to workers, and provides tools with which they produce more efficiently, but in recent decades, machines have replaced human workers. This trend does not obviate the essential subjectivity of the worker. It simply raises different ethical questions and, less simply, presents other employment opportunities for displaced workers.

Turning to the subjective dimension, the encyclical discusses the ancient world, which divided its kinds of labor according to social class.⁵³ Christianity brought about some social change in this regard. For example, the previous chapter described Cahill's analysis of the New Testament community as transforming social roles within larger society.⁵⁴ Using Jesus' occupation as a carpenter as his prime illustration, John Paul argues similarly that the value of work is not found in its type, but in the one doing it.

This leads immediately to a very important conclusion of an ethical nature: however true it may be that man is destined for work and called to it, in the first place work is "for man" and not man "for work". Through this conclusion one rightly comes to recognize the pre-eminence of the subjective meaning of work over the objective one. Given this way of understanding things, and presupposing

⁵² LE, 4-5. Seen in this light, the negative connotations of human labor in Gen 3 and Eccl 2 can be understood more clearly against the objective dimensions of work. In Genesis, the man and woman are no longer stewards of a bountiful land. Their social role has changed; they must now be sharecroppers. In this light, Qoheleth's lament can also be explained. The toil of labor is meaningless if it only remains under the objective dimension. He hates the work, ultimately, because he must pass on his *role* to someone else. In many ways, the objective dimension mirrors the Marxist metaphor of laborers as replaceable cogs in a machine. John Paul describes that danger in these paragraphs, too.

⁵³ LE, 6.

⁵⁴ Cahill, *Between the Sexes: Foundations for a Christian Ethics of Sexuality* (Philadelphia: Fortress Press, 1986), 62-65.

that different sorts of work that people do can have greater or lesser objective value, let us try nevertheless to show that each sort is judged above all by *the measure of the dignity* of the subject of work, that is to say the person, *the individual who carries it out*.⁵⁵

This dignity is brought out further in his closing remarks, which express three elements of a spirituality of work. The first is drawn from *Gaudium et Spes*, which roots human dignity in creation.⁵⁶ In light of this teaching, all human work participates in God's creative activity. The second turns to Jesus as exemplar for a "man of work." Human labor contributes not only to earthly progress, but when it is engaged in vocational activity, it also builds the reign of God.⁵⁷ Finally, all work has an element of toil. As such, it links to the redemptive value of suffering and the virtue of commitment to excellence in one's efforts. Christian discipleship can transform the simplest or harshest labor into a wide contribution of saving activity.⁵⁸

Furthermore, questions on the meaning of work will be raised again at the dissertation's conclusion in the context of human germline enhancement. Bioengineering, when aimed at enhancing human function, has the power to "transform the moral landscape."⁵⁹ Current appreciation for human achievement and personal struggle might erode into the pure fulfillment of a (humanly) ordained purpose. There is broad disagreement on the extent to which this future technology might affect these elements of human work, and they will be discussed in the coming chapters. For now, the meaning of

⁵⁵ LE, 6, emphasis his.

⁵⁶ LE, 25.

⁵⁷ LE, 26.

⁵⁸ LE, 27; cf. Luke 9:23-26.

⁵⁹ Michael Sandel, "The Case against Perfection," *The Atlantic Monthly* 293, no.3 (April 2004), 51-62.

work should be tied to the common good that is sought in resolving the matter. When they participate in future debate about enhancement, John Paul's spirituality of work is one resource from which Catholic voices can draw.

Next, John Paul begins implicitly to identify social justice *as* the common good. In his discourse on labor unions, he calls organized labor a mouthpiece in the struggle for social justice.⁶⁰ It is significant that this struggle is not "against" others; he conceives a unifying relationship between labor and management. This vision of solidarity is two-fold. On the one hand, there is solidarity *among* workers as they bargain collectively and work together. On the other hand there is solidarity *with* workers, as owners strive to outfit their employees with the necessary tools in order to build their own businesses.

It is characteristic of work that it first and foremost unites people. In this consists its social power: the power to build a community. In the final analysis, both those who work and those who manage the means of production or who own them must in some way be united in this community. *In the light of this fundamental structure* of all work-in the light of the fact that, in the final analysis, labour and capital are indispensable components of the process of production in any social system-it is clear that, even if it is because of their work needs that people unite to secure their rights, their union remains a constructive factor of *social order* and *solidarity*, and it is impossible to ignore it.⁶¹

John Paul sees this unity as necessary to endeavor toward what he calls the "just good." He defines it in the present case, as "the good which corresponds to the needs and merits of working people associated by profession."⁶² On closer examination, this "just good" seems to be a "local version" of the *common* good. More generally, if "profession" were taken to mean "vocation," as *Gaudium et Spes* describes the singular calling of humanity toward divine unity, then social justice and common good can well be considered one and

⁶⁰ LE, 20.

⁶¹ LE, 20.

⁶² LE, 20.

the same.⁶³ This potential identification between the common good and social justice has implications for the analysis of justice in Cahill's later writings, which often privileges the common good over the other two affirmations in Catholic Social Teaching.

Finally, John Paul takes yet another turn to the subjective in *Centesimus Annus*. As stated in previous sections of this dissertation, Catholic social thought attempts to plot a moral course between the extremes of libertarian individualism and socialist collectivism. On the one hand, John Paul reflects upon the class struggles that persist in spite of the fall of Communism in the late 1980s and early 1990s. Taking aim at socialism's objectifying tendencies, he claims that its most egregious error is anthropological in scope; socialism insists that the good of the individual can be achieved independently of autonomy.⁶⁴ On the other hand, John Paul makes his strongest criticisms against unrestrained capitalism. Regarding the use of private property, he employs Leo XIII's precepts in *Rerum Novarum* and Vatican II's teaching in *Gaudium et Spes* as his foundation, claiming that there is a natural but not inalienable right to property. God offers the earth's riches for all.⁶⁵ John Paul calls this reality the "law of the common purpose of goods."⁶⁶ Later, he identifies this law as the foundation for the universal destination of the earth's good.⁶⁷

⁶³ "For, since Christ died for everyone, and since *all are in fact called to one and the same destiny (vocatio hominis ultima)*, which is divine, we must hold that the Holy Spirit offers to all the possibility of being made partners, in a way known to God, in the paschal mystery." GS, 22, emphasis added.

⁶⁴ John Paul II, *Centesimus Annus* (1991 – Hereafter CA), 13.

⁶⁵ RN, 8.

⁶⁶ CA, 30; cf. GS, 69.

⁶⁷ CA, 31.

However, John Paul's universal destination of goods is inconsistent with Leo's understanding of private property, which is described as an inviolable right in *Rerum Novarum*.⁶⁸ Instead, John Paul insists that limits on the exploitation of privately-held goods should be determined by its effect on the common good, especially to the disadvantage of the poor. The law of the common destination of earthly goods is rooted in the *social quality* of private property.⁶⁹ Furthermore, the common good is achieved only when individuals and local political groups are understood as subjects.

According to *Rerum novarum* and the whole social doctrine of the Church, the social nature of man is not completely fulfilled in the State, but is realized in various intermediary groups, beginning with the family and including economic, social, political and cultural groups which stem from human nature itself and have their own autonomy, always with a view to the common good. This is what I have called the "subjectivity" of society which, together with the subjectivity of the individual, was cancelled out by "Real Socialism".⁷⁰

John Paul's account of subjectivity is multi-layered, and in some ways similar to Michael Walzer's description of complex equality. This subjectivity is expressed by (although not reduced to) the variety of social relationships in which each person engages, including both involuntary and freely-chosen associations. Persons must participate within each organization according to its internal workings. Property may be owned, but exchanges may be blocked according to their deleterious effects on the common good.

Another difference with *Rerum Novarum* is found in John Paul's discussion of the various forms of property. While Leo conceived of "property" as commercial real estate and industrial machinery, John Paul widens this understanding to include intellectual property: know-how, technology, and skill. In fact, John Paul claims that these latter

⁶⁸ RN, 15.

⁶⁹ GS, 71.

⁷⁰ CA, 13; cf. John Paul II, *Sollicitudo Rei Socialis* (1988), 15, 28.

forms of ownership constitute the wealth of industrialized nations far more than natural resources.⁷¹ By extension, intellectual property also possesses a social characteristic that allows its use for all in service to the common good. As the next chapter demonstrates, Cahill locates her understanding of social justice in the context of biotechnology along this line of thought.

To conclude this brief sampling of John Paul's social teaching, three significant points influence the remaining chapters of the dissertation. One, his theological reflection on work locates its positive meaning within the created order, though this meaning may be compromised in the future due to the development of enhancement technology. Two, he implies identity between the common good and social justice, as Cahill frequently is wont to do. Three, his complex understanding of subjectivity and extension of the social nature of private property in service of the common good has further implications for the futurist technology of human engineering. Now, the study turns to the American context, with a consideration of the United States Bishops' statement on economic justice.

The NCCB's Pastoral Letter: *Economic Justice for All*

This section analyzes *Economical Justice for All*, a 1986 pastoral letter from the United States National Conference of Catholic Bishops (NCCB) on Catholic Social Teaching in light of the economic policies that the U.S. government was pursuing at the time.⁷² It is arguably one of the most influential documents that this episcopal assembly

⁷¹ CA, 32.

⁷² National Conference of Catholic Bishops, *Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy* (Washington: United States Catholic Conference, 1986), hereafter EJA. NB – In 2001, the National Conference of Catholic Bishops changed its name to the United States Conference of Catholic Bishops.

has written since it was published. In the quarter century since its publication, the precise economic conditions described by the bishops do not necessarily apply in the post-Cold War era. With regard to this dissertation, though, the document remains significant for two reasons. One, the NCCB offers a definition of “basic justice,” and outlines justice’s role in serving the common good. Two, the letter attempts to synthesize many of the various hierarchical resources summarized in this section thus far with regard to participation in order to describe the unique American context with respect to social justice. The first point provides a useful working definition within the setting of the liberal values of the United States, and the second point warrants further participation in public discourse to provide pragmatic solutions to pressing issues.

Basic Justice

Drawing from the received Catholic social tradition, the NCCB claims that “basic justice” is a virtue that lends itself to full and active participation in society, which itself is a basic right of all people.⁷³ It establishes a “floor of material well-being on which all can stand.”⁷⁴ There are three interpenetrating spheres of basic justice: commutative justice, distributive justice, and social justice. Anthropologically, basic justice is consistent with the received social tradition insofar as it is founded on Catholic Social Teaching’s three affirmations of human dignity, sociality, and the common good, but the pastoral letter emphasizes the first two affirmations over the last one. The NCCB also holds a somewhat different view of solidarity as a guiding virtue. Instead, they prefer to

⁷³ EJA, 15.

⁷⁴ EJA, 74.

uphold hope and courage as the leading virtues that lend themselves to achieving basic justice.

First, the NCCB's view of commutative justice is located primarily within the realm of employment. The virtue of industriousness facilitates commutative justice.⁷⁵ Diligent work is demanded of employees and fair wages are expected from employers for their work.⁷⁶ To this point, the NCCB upholds the church's support for labor unions to maintain this aspect of basic justice.⁷⁷ They call for a less adversarial posture between labor and management. In doing so, labor unions must make a positive contribution over and above a protectionist stance.

Labor unions themselves are challenged by the present economic environment to seek new ways of doing business. The purpose of unions is not simply to defend the existing wages and prerogatives of the fraction of workers who belong to them, but also to enable workers to make positive and creative contributions to the firm, the community, and the larger society in an organized and cooperative way.⁷⁸

In light of the unique situation for American workers in the 1980s (i.e., loss of manufacturing jobs and President Ronald Reagan's anti-union policies), the bishops encourage increased cooperation within industries between labor and management.

Next, the NCCB claims that distributive justice is another essential aspect of basic justice. Built upon libertarian notions of desert, the American polity is frequently uncomfortable with redistributive schemes, preferring religious and charitable organizations over government-run bureaucracies to meet the basic needs of the poor.⁷⁹

⁷⁵ EJA, 102.

⁷⁶ EJA, 69.

⁷⁷ EJA, 104.

⁷⁸ EJA, 304.

⁷⁹ Leo XIII argues similarly, see RN, 30.

By contrast, following the words of the Second Vatican Council, basic justice requires that all distributive schemes be evaluated by its effect on the poor.⁸⁰ Toward this end, tax policies should be reformed to support working families and non-commercial farming as they compete in the marketplace.⁸¹ Furthermore, the NCCB conceives of distributive justice as more than the exchange of material goods. Following John Paul II, they see employment itself as a fundamental good that is constitutive of human dignity.⁸² In turn, they support equitable policies to curtail discrimination and increase opportunities especially for disenfranchised social groups.⁸³ These endeavors require considerable government intervention.

Third, they envision social justice as encompassing the organization of all social and political institutions. The institutions are also composed of individuals. As such, there is a corresponding demand of contributory justice from individuals to participate actively and effectively toward the common good. Citing Pius XI, contributory justice is the “very essence of social justice.”⁸⁴ Its teaching focuses on individual rights and responsibilities. At the same time, it casts these responsibilities against the backdrop of the common good. Thus, the bishops’ view of social justice attempts to reconcile the liberal values of Western democracy with the communitarian values of Catholic Social Teaching.

⁸⁰ EJA, 70; see also GS, 69.

⁸¹ On families see EJA, 207. For farming, see especially 244.

⁸² EJA, 72; cf. LE, 6, 9.

⁸³ EJA, 73.

⁸⁴ EJA, 71; cf. Pius XI, *Divini Redemptoris*, 51.

Anthropologically, the document privileges human dignity and sociality over the common good. In keeping with the Catholic social tradition, they avoid both extremes of individualism and collectivism. As mentioned in the preceding paragraph, they focus upon individual action, but their outline of urgent problems emphasizes their effects at the local levels of society, especially the family.⁸⁵ The bishops claim that the common good redounds to the individual and local good.⁸⁶ For example, in their discussion of employment as a basic right, a healthy economy serves the common good, but it especially lends itself toward achieving the self-actualization of persons and meeting the basic needs of families.⁸⁷

Finally, the NCCB offers two guiding virtues that help to achieve basic justice. Catholic Social Teaching is grounded in a firm belief in the inestimable worth of persons, in light of their dignity as human subjects. They claim that hope and courage are the primary virtues in order to engage in building up the kingdom of God on earth.

This conviction gives Christians strong hope as they face the economic struggles of the world today. This hope is not a naïve optimism that imagines that simple formulas for creating a fully just society are ready at hand. The Church's experience through history and in nations throughout the world today have made it wary of all ideologies that claim to have the final answer to humanity's problems.⁸⁸

This hope engenders courageous action on behalf of the kingdom by transcending the blighted vision of the present situation, and looking ahead toward a better future. Courage helps to overcome the difficulties that contribute to the present bleakness.

⁸⁵ EJA, 15-19.

⁸⁶ Charles E. Curran makes this point. See Curran, "The Reception of Catholic Social and Economic Teaching in the United States," in *Modern Catholic Social Teaching*, 480.

⁸⁷ EJA, 137.

⁸⁸ EJA, 131; cf. GS 39.

In the previous chapter, solidarity was described in Catholic Social Teaching as a fundamental virtue to achieve and maintain the common good. To be clear, the NCCB also find solidarity important, as the word appears over thirty times in the pastoral letter. However, solidarity is not necessarily a virtue in their estimation. Rather, it is more of a pragmatic value in that it is useful for building a community.⁸⁹ Alternatively, perhaps they mean solidarity as a “first principle” in a liberal democracy like the United States. In a nation of strangers bound together by choice and free association, solidarity offers a way of relating to the other. It gives rise to a sense of civic commitment, which in turn demands one’s contribution to the common good. While it is certain that solidarity plays some role in the bishops’ letter, it is not clear that they use the term in a manner consistent with the tradition.

The analysis of *Economic Justice for All* now turns to the NCCB’s discussion of participation, which reiterates previous calls for engagement in public discourse and other cooperative strategies. There is also an element of pragmatism in their writing that must be considered in light of the epilogue of this dissertation, which offers a practical resolution to a future public dilemma about human engineering.

The NCCB’s Interpretation of the Principle of Participation

Participation is one of the principal themes of the pastoral letter. It is elemental to the common good, since individuals must contribute to its advancement. By the same token, society must ensure that all are able to contribute appropriately. Therefore,

⁸⁹ “Solidarity is another name for this social friendship and civic commitment that make human moral and economic life possible,” EJA 66.

participation is prior to the common good. Due to this priority, society has an obligation to enumerate the fundamental conditions of participation.

These fundamental duties can be summarized this way: *basic justice demands the establishment of minimum levels of participation in the life of the human community for all persons.* The ultimate injustice is for a person or group to be treated actively or abandoned passively as if they were nonmembers of the human race. To treat people this way is effectively to say they simply do not count as human beings.⁹⁰

The bishops imply that there is a basic right to participation.⁹¹ This right is derived from human dignity and sociality, which are affirmed by Catholic Social Teaching.⁹² In one sense, they argue in a manner consistent with Walzer's view of justice, in that participation connotes membership in society, which is the primary distributive good, according to Walzer.⁹³ Participation thereby allows individuals to select a life plan and contribute to the common good in their own way. The NCCB's view of basic justice is also an instance of Walzer's simple equality. Participation can easily become a dominant good, since membership includes all of the goods demanded by basic justice. Thus, frequent government intervention is required to ensure that goods do not become monopolized over time.

Nonetheless, their insistence on participation as a basic right is aimed at improving living conditions for those who, due to unfortunate and especially unjust social arrangements, have been excluded from contributing to the common good. The

⁹⁰ EJA, 77.

⁹¹ With regard to participation in economic/social life, they are explicit. See EJA, 15.

⁹² "This tradition insists that human dignity, realized in community with others and with the whole of God's creations, is the norm against which every social institution must be measured." EJA, 25.

⁹³ Walzer, *Spheres*, 28.

overcoming of marginalization is not complete, but is gradually decreased. The bishops strive for what they call “biblical justice,” which they understand as a society fully expressive of “love, compassion, holiness, and peace,” but they understand that in light of human sinfulness, guidance is required toward this ideal aim.⁹⁴ As such, they see great value in finding practical solutions, perhaps in the form of a *modus vivendi*, that ameliorate conditions gradually over time, as they continue to strive for ideal, biblical justice.

Our approach in analyzing the U.S. economy is pragmatic and evolutionary in nature. We live in a “mixed” economic system which is the product of a long history of reform and adjustment. It is in the spirit of this American pragmatic tradition of reform that we seek to continue the search for a more just economy.⁹⁵

The bishops seek to achieve increased participation through cooperative strategies. In the context of this dissertation, their goal is significant with respect to arguments about resource allocation for human genetic engineering. According to the norms spelled out in the pastoral letter, basic justice remains as an overriding concern. The principle of participation calls for a right relationship between research and development in genetic technology and the economic situation and basic needs of the larger community.⁹⁶

Before leaving this section, it is important to note that the virtues played some role in the bishops’ letter. For example, basic justice is the primary societal virtue. It empowers individuals to participate actively in order to contribute to the common good. Like Paul VI, John Paul II, and Cahill, the NCCB argues that it is incumbent upon society

⁹⁴ EJA, 68.

⁹⁵ EJA, 131.

⁹⁶ Cahill makes a similar argument, “Aging, Genetics, and Social Justice,” in Catherine Y. Read, Robert C. Green, and Michael A. Smyer ed. *Aging, Biotechnology, and the Future* (Baltimore: The Johns Hopkins University Press, 2008), 219-222.

to ensure that every individual possesses the material wherewithal that facilitates this participation. They depart somewhat from the Catholic social tradition by reducing the scope of solidarity, but this discrepancy is more pragmatic than epistemological. Instead, hope and courage are the guiding virtues that serve the advancement of basic justice. Due to the recent recovery of the virtue tradition in Catholic moral theology, a discussion of virtues warrants further analysis, which is forthcoming in the next major part of the chapter. The dissertation now analyzes Benedict XVI's accounts of justice, charity, and the common good, which is found in his 2009 encyclical *Caritas in Veritate*.

Benedict XVI's *Caritas in Veritate*

Located within the context of a recent global financial crisis, Benedict's first social encyclical outlines his vision of global economic development in light of the message of Paul VI's *Populorum Progressio*.⁹⁷ Written in 2009, it represents the most recent papal encyclical in the tradition of Catholic Social Teaching. There are two facets of Benedict's encyclical that are pertinent to the aims of this dissertation. First, Benedict's accounts of charity and justice overcome the implied dichotomy between them described in earlier social encyclicals, especially Leo's *Rerum Novarum*. Second, he offers a few incisive comments on the proper use of technology, especially in the realm of bioethics.

⁹⁷ Benedict considers *Populorum Progressio* "the *Rerum Novarum* of the present age," Benedict XVI, "Caritas in Veritate," *Origins* 39, no.6 (July 16, 2009), 129-159, paragraph 8 (hereafter CV).

The Relationship between Charity and Justice

In the opening paragraphs of *Caritas in Veritate*, Benedict seems initially to take a regressive approach to the received social tradition. Whereas social justice has been at the heart of Catholic Social Teaching since the time of Pius XI, Benedict argues that *caritas in veritate* is the guiding principle of the tradition.⁹⁸ As his argument develops, though, Benedict insists that justice and the common good are intrinsically linked to charity. In fact, justice is prior to charity. Conversely, charity transcends justice in that it offers a strategy of giving and forgiving, going beyond the “minimal duties” of justice.⁹⁹ He adds that the common good is a requirement of both justice and charity. This duty is found especially within the local context. Securing the common good in the political order discloses love for one’s neighbor.¹⁰⁰ This charity is also found in an increasingly globalized society, as the human family works together to achieve the universal common good.

Moreover, Benedict calls for a greater appreciation of the meaning of charity. He points out several problems raised by a misunderstanding or reduction of its meaning.

I am aware of the ways in which charity has been and continues to be misconstrued and emptied of meaning, with the consequent risk of being misinterpreted, detached from ethical living and, in any event, undervalued. In the social, juridical, cultural, political and economic fields – the contexts, in other

⁹⁸ “Every responsibility and every commitment spelled out by that doctrine [of Catholic Social Teaching] is derived from charity which, according to the teaching of Jesus, is the synthesis of the entire law (cf. Mt 22:36-40),” CV, 2; cf. Pius XI, *Quadragesimo Anno*, 58. Vatican II rejected charity as the primary virtue for helping the poor.

⁹⁹ “I cannot ‘give’ what is mine to the other without first giving him what pertains to him in justice,” CV, 6.

¹⁰⁰ CV, 7.

words, that are most exposed to this danger – it is easily dismissed as irrelevant for interpreting and giving direction to moral responsibility.¹⁰¹

Benedict attempts to resolve this problem by linking charity with truth. He sees two advantages to this strategy. He bases these benefits upon a two-fold conception of truth that is informed both by reason and by faith. One, reason allows charity in truth to advance beyond mere emotivism. Truth allows for a disinterested charity without reducing the latter to sentimentality, which he perceives as a danger that makes charity irrelevant and morally superfluous. He implies a natural law approach, though his evidence here is largely scriptural.¹⁰² Nevertheless, he does argue that the pressing social and economic questions are in the final analysis questions about human nature. Two, charity has both a personal and public dimension when it is informed by faith.¹⁰³ Charity in truth demands a personal commitment to human development in light of each person's vocation toward fulfillment in the created order.¹⁰⁴ Following Paul VI's argument in *Populorum Progressio*, a lack of material goods is not the primary cause of underdevelopment. It is first of all a lack of personal will that neglects one's duties of solidarity, and second of all an absence of thoughtful reflection that fails to properly guide the will.¹⁰⁵ There is also a public dimension of charity in truth.¹⁰⁶ Given the

¹⁰¹ CV, 2.

¹⁰² In fact, Benedict explicitly mentions natural law only twice in the document (at paragraphs 59 and 75), both times in the context of technology's effect on human nature.

¹⁰³ CV, 3.

¹⁰⁴ CV, 18.

¹⁰⁵ CV, 19; cf. Paul VI, *Populorum Progressio*, 44.

¹⁰⁶ Cahill comments positively on the public aspect of Benedict's view of charity. She perceives his attention to the political and economic realm as a significant development in his later pontificate. See Cahill, "Caritas in Veritate: Benedict's Global Reorientation," *Theological Studies* 71, no.2 (June 2010): 317.

tendency toward relativism in the social context, Benedict insists that truth, which he identifies as “the values of Christianity,” is essential for building a good society.¹⁰⁷

Benedict’s idealism here is at odds with the NCCB’s pragmatism in *Economic Justice for All*. Benedict’s importunity also has consequences with respect to discourse in a diverse society. On the one hand, he argues that a Christianity of charity without truth would become reduced to a helpful set of sentiments, but ultimately irrelevant. For that reason, he decries coercive government family planning policies that promote contraception and impose abortion. “Respect for life” cannot be detached from questions about human development.¹⁰⁸ Benedict also takes a “common good” approach to finance. Investors are not a company’s only stakeholders, but also include workers, suppliers, consumers, the natural environment, as well as society at large.¹⁰⁹ On the other hand, he remains committed to seeking “satisfactory solutions” to the socioeconomic problems that have persisted since Paul VI’s encyclical.¹¹⁰ For instance, he calls for a reform of the United Nations, and seeks a global political authority with what Benedict calls “real teeth” to ensure compliance with its decisions.¹¹¹ But it is that same world political authority (namely, the United Nations) that institutes the family planning policies that he denounced in his previous paragraphs.¹¹² Furthermore, Benedict calls for redistributive

¹⁰⁷ CV, 4. Benedict continues: “Without truth, charity is confined to a narrow field devoid of relations. It is excluded from the plans and processes of promoting human development of universal range in dialogue between knowledge and praxis.”

¹⁰⁸ CV, 28.

¹⁰⁹ CV, 40.

¹¹⁰ CV, 5.

¹¹¹ CV, 67

¹¹² Conservative Catholic commentator George Weigel identifies the source of this discrepancy (Weigel calls it “incoherence”) as Benedict’s attempt to appease certain

policies and public welfare in order to increase an “openness to forms of economic activity marked by quotas of gratuitousness and communion.”¹¹³ His proposed policies do not square with the socioeconomic ethos of the current American context. As the next election cycle for president and Congress draws near, there seems to be little political will to undertake such intervention.

Nonetheless, Benedict makes a strong case for tying charity to a truth that is rooted in human reason and Christian faith. Benedict’s account of the human person insists upon both personal development in one’s own life and public engagement with the world. This strategy also warrants a uniquely Christian way of participating in public discourse about social, economic, and moral issues. Further still, justice remains at the fore in these debates. While Benedict’s proposed answers seem to fall short for the current American situation, *Caritas in Veritate* makes a convincing argument for continuing to seek such practical solutions in the tradition of Catholic Social Teaching.

Technology and Development

Turning to the impact of technology on development, Benedict follows John Paul II in his claim that technology is the objective side of human action.¹¹⁴ More importantly, there is a danger in the context of globalization that ideologies could be replaced with

thinkers in the Curia’s Pontifical Council for Peace and Justice. See George Weigel, “*Caritas in Veritate* in Gold and Red,” *National Review Online* (August 29, 2009), 1-2. Online Document. <http://www.nationalreview.com/articles/227839/i-caritas-veritate-i-gold-and-red/george-weigel?page=1>, accessed August 20, 2011.

¹¹³ CV, 39. Regarding this statement, Weigel opines: “This may mean something interesting; it may mean something naïve or dumb. But, on its face, it is virtually impossible to know *what* it means.” Weigel, 2.

¹¹⁴ CV, 69; cf. John Paul II, *Laborem Exercens*, 5.

technology. Benedict argues that technology must not become a substitute for human freedom.

The development of peoples goes awry if humanity thinks it can re-create itself through the “wonders” of technology, just as economic development is exposed as a destructive shame if it relies on the “wonders” of finance in order to sustain unnatural and consumerist growth. In the face of such Promethean presumption, we must fortify our love for a freedom that is not merely arbitrary but is rendered truly human by acknowledgment of the good that underlies it. To this end, man needs to look inside himself in order to recognize the fundamental norms of the natural moral law that God has written on our hearts.¹¹⁵

Instead, technology must refer to the subjective dimension, i.e., to the moral agent at work. With subjectivity comes moral responsibility, especially with regard to technology.¹¹⁶

Benedict also worries that technology might become a dominant good if it benefits only those who possess it. The current logic of business practice submits to the maximization of profit as its sole criterion for action. While the drive for profit reaps a short-term benefit, overall human development is diminished.¹¹⁷ His claim is similar to John Paul II’s in that technology must serve the common good.¹¹⁸ More importantly, men and women must be “finely attuned” to the requirements of the common good.¹¹⁹ The sharing and exchange of technology are now a vital component of diplomacy in the

¹¹⁵ CV, 68.

¹¹⁶ CV, 70.

¹¹⁷ Cahill also makes this argument in several different essays. For instance, pharmaceutical research and development is finding cures for “profitable” diseases. See Cahill, “Biotech and Justice: Keeping up with the Real-World Order,” *Hastings Center Report* 33, no.4 (2003), 34.

¹¹⁸ cf. John Paul II, *Centesimus Annus*, 32.

¹¹⁹ CV, 71.

world. Thus, a common-good approach to technology lends itself to peace-building strategies.

Next, Benedict moves explicitly to the realm of bioethics.¹²⁰ He is pessimistic about the current technocratic ethos, and names the field of bioethics a “battleground.” The combatants locked in this pitched skirmish, according to Benedict, are the supremacy of technology and human moral responsibility. He sees expressions of this technological supremacy especially in embryonic research and *in vitro* fertilization. He envisions the “systematic eugenic programming of births” just below the horizon.¹²¹ It is not enough that Christians avoid these technological advancements; they must offer convincing reasons to others about their objectifying tendencies.

Toward this end, Benedict claims that a faith informed by reason will avoid deluded thoughts of human omnipotence on the one hand, and irrelevant fundamentalism on the other.¹²² Just as John Paul sought to develop a spirituality of work, so Benedict attempts to produce a spirituality of technology.¹²³ One aspect of this spirituality is a renewed appreciation of mystery in nature, something over and above the empirical datum.

The development of individuals and peoples is likewise located on a height, if we consider *the spiritual dimension* that must be present if such development is to be authentic. It requires new eyes and a new heart capable of *rising above a materialistic vision of human events*, capable of glimpsing in development the “beyond” that technology cannot give. By following this path, it is possible to

¹²⁰ CV, 74-75.

¹²¹ CV, 75.

¹²² CV 74; cf. Congregation for the Doctrine of the Faith, *Dignitas Personae: Instruction on Certain Bioethical Questions* (2008).

¹²³ “There cannot be holistic development and universal common good unless people’s spiritual and moral welfare is taken into account, considered in their totality as body and soul,” CV, 76.

pursue the integral human development that takes its direction from the driving force of charity in truth.¹²⁴

Building on the common-good approach to technology and the subjective dimension of work, Benedict asserts that a spiritual appraisal of technological advancement lends itself to fruitful human development. From this perspective, technology is not neutral, but it does not necessarily have to be ominous, either.

Benedict's cautious appraisal of technology in *Caritas in Veritate* is a timely work on the vital priority of human freedom and responsibility as subjects. Cahill has also commented favorably on Benedict's encyclical, in light of what she perceives as a significant development in his attention to social concerns during his pontificate.

Conclusion to the Analysis of the Catholic Hierarchy's Statements on Justice

This lengthy opening part of Chapter Three has attempted to highlight a few of the perspectives on justice from the Catholic hierarchy. Vatican II's *Pastoral Constitution on the Church* captured the development about justice in the Catholic social tradition from its inception in Leo XIII's *Rerum Novarum* through the pre-conciliar social encyclicals. Rooted in the essential notions of human dignity and sociality, the justness of human action must be evaluated with regard to its impact on the poor. Moreover, the common good, which is the third affirmation of Catholic Social Teaching, is bidirectional. All individuals are called to serve the common good; this is a matter of contributory justice. In turn, society, which also must serve and is served by the common good, is enjoined to provide each person with the material goods necessary to facilitate his or her contribution; this is a matter of distributive justice. Vatican II describes the

¹²⁴ CV, 77.

ideal conditions, when all can most readily serve (and are best served by) the common good, as “social justice.”

The social encyclicals of Paul VI and John Paul II build upon the council’s teachings on justice and apply them in a variety of ways. Paul VI argues that free trade and property rights are subordinated to the council’s principles of social justice. He also applies Leo’s relationship between labor and management to the analogous relationship between nations in terms of international trade. The guiding virtues of human solidarity, social justice, and universal charity dictate that wealthier nations should negotiate commerce agreements with poorer nations by principles in excess of commutative justice. John Paul argues that workers’ rights are derived from human rights. He also provides a spiritual reflection on the meaning of work, perceiving it as a fundamental good in the created order. There may be a further development in the tradition, as John Paul begins to identify the common good as social justice. Here, the conditions are not simply an ideal; social justice ought to be the norm. The conditions can be said to be contextualized in what he calls the “just good.” Furthermore, John Paul’s claims about property are consistent with the post-conciliar social tradition insofar as they are relativized by the demands of social justice. But he also outlines a fuller account of property to include its intellectual dimensions. Skills and technology thereby fall under the jurisdiction of the common good, a theme that Benedict takes up in his encyclical.

The National Conference of Catholic Bishops offers a definition of “basic justice,” which encompasses three interrelated spheres of commutative, distributive, and social justice. They argue similarly to the *Pastoral Constitution* that participation is a human right, and call for concrete action to help each person contribute toward the

common good. They express a desire for pragmatic solutions, found through cooperative strategies, toward facilitating that fundamental right.

Finally, Benedict XVI's encyclical opens with the theme of charity. He clearly demonstrates that justice is prior to charity, but also wants to present a fuller account of charity as a theological virtue. Charity must be informed by both reason and faith. Without reason, charity is reduced to sentiment. Without faith, charity becomes irrelevant. Moreover, he presents a spiritual reflection on technology that hearkens back to John Paul's subjective dimension of work. Technology should not master nature, but instead should open up the subject to ponder nature's mystery's further. Technology ought not to be used as a tool of oppression, but should serve the common good.

Taken together, these theological perspectives on justice from the hierarchy highlight a circuitous trajectory toward a terminus that can be called social justice or the common good. All aspects of justice discussed thus far seem to find their realization in one or the other. Sometimes its conditions are presented ideally, as in Vatican II, Paul VI, and Benedict XVI. Other times, they are described in situational or pragmatic terms, as in John Paul II and the NCCB, respectively. Looking ahead to Chapter Three, Cahill's conception of justice is similarly complex. Part of her context is rooted in the Catholic Social Tradition, which emphasizes social justice as an overarching principle.

The dissertation now turns to the idea of justice as a personal virtue. Virtue ethics has a longstanding prominence in Catholic moral theology, though for many years its influence was somewhat understated. The first section described virtue in philosophical terms, with its analysis of Alasdair MacIntyre. Recently, there has also been a palpable return of virtue in theological ethics, too, though its impact thus far is difficult to discern.

The next section outlines some of the features of the recovery of virtue ethics and considers a few representative writings from scholars within the contemporary virtue tradition.

Recovery of Virtue Ethics in the Catholic Moral Tradition

The first chapter briefly outlined the Natural Law tradition, where the virtues play a vital role. The previous chapter already explored Alasdair MacIntyre's account of the virtues and its connection to the living tradition of a community. Now, this part briefly considers writings from American moral theologians Jean Porter and James Keenan as representatives of a strand of Catholic moral theology that attempts to reunite virtue with Catholic Natural Law ethics. A treatment of virtue is required because justice is included as one of the four cardinal virtues, along with courage, self-control, and prudence. In the Catholic tradition, these volitional, affective, and intellectual attitudes have been understood as virtues upon which all the others hinge (Wisdom 8:6-7).¹²⁵ They ground human action, orienting the person toward those ends which are considered "worthy of praise" (Phil 4:8-9). For their part, Keenan and Porter demonstrate that there is neither a complete nor an uncritical recovery of the classical Thomistic tradition. Moreover, even in a critical reclamation and outright revision of the virtue tradition, justice remains indispensable.¹²⁶

¹²⁵ *Catechism of the Catholic Church*, 1805.

¹²⁶ See Jean Porter, *The Recovery of Virtue: The Relevance of Aquinas for Christian Ethics* (Louisville: Westminster/John Knox Press, 1990), 124-154, where justice is the only virtue to receive a chapter-length treatment. See also James F. Keenan, "Proposing Cardinal Virtues," *Theological Studies* 56, no. 4 (December 1995), 709-729. In his "new" cardinal virtues, which are also discussed in this section, justice heads the list.

This discussion of the contemporary virtue tradition proceeds in three parts. First, a cursory examination of ethical method since Vatican II reveals a reinvigoration of Natural Law ethics, with brisk exchanges among several contrasting approaches. As these debates waned, it seems that a conceptual space had cleared for greater attention to personalist ethical methods. Among these, a rediscovered virtue tradition is prominent. After this brief excursus, Jean Porter's work on Natural Law is analyzed in light of her reliance on MacIntyre's account of the virtues. She concludes that virtue ethics cannot be universal in scope, a point disputed by Cahill (see Chapter Four). Third, the work of influential American Jesuit moral theologian James Keenan is explored in the context of his attempts to root moral discourse more deeply in scripture while continuing to reflect the realities of the contemporary world.

Excursus: Moral Theology in the Wake of the Second Vatican Council

It is interesting to trace the renewal of Catholic moral theology since Vatican II, especially when viewed from a wider perspective which includes the Council's sixteen major promulgations. It seems strange that the oft-cited warrant for reinvigorating moral reflection in the church comes from a relatively minor document on priestly formation, where the Council calls for greater attention to the revision of ecclesial studies, especially philosophy and scripture, as they lend themselves carefully to the "perfection of moral theology."¹²⁷ This approbation is underwhelming in light of the Council's dramatic announcement of a both a universal "priesthood of believers" and "call to holiness."¹²⁸ Vatican II seems to retain a view that moral theology, albeit a "perfected one," was solely

¹²⁷ Second Vatican Council, *Optatam Totius*, October 28, 1965, 15-16.

¹²⁸ See *Lumen Gentium*, especially Chapters IV and V.

for the confessional, as its renaissance is located in a document that deals with the ministerial priesthood alone. Thus, it is surprising that so much literature has been produced from this narrowly-focused decree.

Nevertheless, the sheer amount of scholarly and ecclesial work in moral theology requires at least a brief historical examination of them as they pertain to the dissertation, and warrants this departure from the discussion of justice in the Catholic moral tradition. As this section demonstrates, Catholic ethical method clearly developed in the wake of the Second Vatican Council, but for the most part, it also remained firmly anchored within natural law reasoning. Some of the contrasting and sometimes vehement exchanges seem initially to vindicate Alasdair MacIntyre's lament about the incommensurability of rival traditions which have both lost their tether to the predecessor culture. By the same token, it can also be a sign of development within that rich culture; it is making room for mature, individual, and responsible decision-making on pressing moral issues. Instead of seeing it as a dysfunctional dialogue that wrongly uses vocabulary from the forgotten past, perhaps it is a healthy disagreement *within* an evolving tradition about the purpose of moral action. In either case, it proceeds in a MacIntyrean way; Porter's and Keenan's work especially bear out this claim.

First, a brief look at the taxonomy of ethical methods is helpful to navigate the writings of Porter and Keenan in the next two parts. Porter describes the traditionalist post-conciliar efforts in moral theology as "new" natural law theory.¹²⁹ She uses this designation to refer particularly to American writers like Germain Grisez and John

¹²⁹ Jean Porter, "Natural Law and the Specificity of Christian Morality," in Todd A. Salzman ed., *Method and Catholic Moral Theology: The Ongoing Reconstruction* (Omaha: Creighton University Press, 1999), 215-224. I summarize her critique of the new natural law theory in the next section.

Finnis. In turn, they call their own method the “Basic Goods Theory.”¹³⁰ By contrast, Keenan sees them as contemporary examples of “neo-manualists.”¹³¹ In fact, the structure of Grisez’s three-volume work, *The Way of the Lord Jesus*, resembles classical moral manuals in that it introduces basic principles, then exhorts Christian living, and finally considers hard cases. With an appreciation for its several aliases, the following paragraphs focus on Grisez’s work.

The Basic Goods Theory (hereafter BGT) attempts to give content to Aquinas’ first principle of practical reasoning: the good is to be sought, while the evil is to be avoided.¹³² While initially seeming to connect his theory with the classical tradition, Grisez’s account of the basic goods describes them as *a priori* and self-evident. In other words, they do not, as Aquinas does, derive these goods from observed knowledge of the natural order, and do not depend on any particular comprehensive doctrine. Grisez lists seven basic goods: human life (to include health and procreation), knowledge/aesthetic appreciation, skilled performance, self-integration, authenticity/practical reasonableness, justice and friendship, and religion/holiness.¹³³ Later, Grisez adds an eighth good:

¹³⁰ Germain Grisez, *The Way of the Lord Jesus*, 3 vol. (Chicago: Franciscan Press, 1983, 1993, 1997); and John Finnis, *Moral Absolutes: Tradition, Revision, and Truth* (Washington: Catholic University of America Press, 1991).

¹³¹ James F. Keenan, *A History of Catholic Moral Theology in the Twentieth Century: From Confessing Sins to Liberating Consciences* (New York: Continuum, 2010), 127.

¹³² Grisez, *The Way of the Lord Jesus: Christian Moral Principles* [vol.1], 178. See also Todd Salzman, *What Are They Saying about Catholic Ethical Method?* (Mahwah: Paulist Press, 2003), 21-22.

¹³³ Grisez, 124.

marriage.¹³⁴ Even though they are free from experience, they stand in no serial or lexical relation to one another.

After listing the basic goods, the BGT further explains that human actions must reflect a “will toward integral human fulfillment.” Grisez names this the first principle of morality.¹³⁵ This principle is further explained by eight modes of responsibility, which demand that the agent should not be moved by “a stronger desire for one instance of an intelligible good to act for it by choosing to destroy, damage, or impede some other instance” of them. Hence, the basic goods are also incommensurable.¹³⁶

The BGT is not the only natural law theory to develop since Vatican II. Other theologians have used the natural law as a starting point for specifying moral norms, though they have attacked the issues in a manner at odds with the BGT. As with the BGT, they are also called by various names: revisionism, proportionalism, and consequentialism, among others. For instance, moral theologian Todd Salzman uses “revisionism” to describe the natural-law methods that have developed in contrast to BGT.¹³⁷ Bernard Hoose utilizes the term “proportionalism” to describe methods that generally accept the basic goods as formal norms. However, he insists that in concrete action, a right relationship must be realized among them in order for an act to be considered morally good.¹³⁸ Still others like Richard McCormick and Charles Curran employ the word “consequentialism” to emphasize the goodness in the act, which is

¹³⁴ Grisez, *The Way of the Lord Jesus: Living a Christian Life* [vol.2], 568.

¹³⁵ Grisez, *The Way of the Lord Jesus: Christian Moral Principles*, 184.

¹³⁶ *Ibid.*, 225-226.

¹³⁷ Salzman, 26-27.

¹³⁸ Bernard Hoose, *Proportionalism: The American Debate and Its European Roots* (Washington: Georgetown University Press, 1987).

found by looking to the reasonably foreseeable consequences as they affect the human person, adequately considered. However, consequentialism is a label often used pejoratively by McCormick's opponents. Grisez, for example, equates the term with utilitarianism, as "efficiency in promoting measurably good results," and calls it "dangerous nonsense."¹³⁹ American Jesuit Paul Quay describes consequentialism in a manner consistent with MacIntyre's emotivist, consumerist culture: as a "mercantilization of values," which are to be "balanced, exchanged, and traded off for one another."¹⁴⁰ McCormick's writings from the 1970s are especially attacked by his critics, though his work develops significantly until his death in 2000.¹⁴¹

Through the early 1990s, the BGT-proportionalism debate seemed to be an exemplar of MacIntyre's claim to the interminability of rival arguments.¹⁴² In fact, they mirrored the debates among Enlightenment thinkers. On the one hand, the BGT insists on a set of universal, rational, *a priori* norms, which must always be upheld and never undermined directly. More importantly, there are some acts which are excluded from moral choice by the *nature* of the acts themselves. They are called intrinsically evil; no good intention can ever overcome the badness in such acts. But such acts are problematic. What happens when one is faced with a choice of undermining truth in order to protect innocent life? On the other hand, proportionalist arguments counter that the goodness of

¹³⁹ Grisez, "Against Consequentialism," *American Journal of Jurisprudence* 23 (1978), 24, 27.

¹⁴⁰ Paul M. Quay, "Morality by Calculation of Values," *Theology Digest* 23 (1975), 352; cf. MacIntyre, *After Virtue*, 18.

¹⁴¹ E.g., Richard McCormick, "Ambiguity in Moral Choice," in Richard McCormick and Paul Ramsey eds., *Doing Evil to Achieve Good: Moral Choice in Conflict Situations* (Chicago: Loyola University Press, 1978), 7-53.

¹⁴² As early as the mid-1980s, Hoose already refers to the acrimonious debate as a "situation of stalemate," see Hoose, x.

an act cannot be determined without attending to *all* aspects of the act. It must hold a right relationship among the goods, both proximate and remote. Furthermore, these ends are most readily discovered by looking toward the consequences of the act. Still, while no proportionalist writer would ever justify murder, they have difficulty in claim that murder *in se* is wrong from within their context. If some imaginably (if improbably) better consequence could be proposed, could such a terrible act be found more tolerable than something else?¹⁴³ Space does not permit a fuller treatment of these debates, but they remain very interesting for the recent history of moral theology and significant for the field today.

Suddenly, the debate seemed to have dissipated in the 1990s. In one recent study, American theologian Aline Kalbian proposes that these “deontology vs. teleology” debates were certainly fierce and seemingly unrelenting, but in the end they were the undercard to the main conflict in Catholic moral theology. Instead, proportionalism was ultimately successful “in influencing the development of Catholic ethics by encouraging a reappraisal of the methodology for evaluation moral action in a direction that was more hospitable to concerns about the particularity of the context of the agent.”¹⁴⁴ While their sometimes myopic focus upon consequences is perhaps unwarranted, they facilitated a

¹⁴³ These exchanges are interminable. Proportionalists might claim that intrinsically evil acts -- like murder, masturbation, or perjury -- describe either physical acts or negative “value judgments” of such an act. Representatives of the BGT counter that these acts already include morally relevant intentions and circumstances, such that, were any of them to be removed, they could not be called as such. See Cahill, “Teleology, Utilitarianism, and Christian Ethics,” *Theological Studies* 42, no.4 (December 1981), 610-611.

¹⁴⁴ Aline Kalbian, “Where Have All the Proportionalists Gone?” *The Journal of Religious Ethics* 30, no.1 (Spring 2002), 5.

shift toward personalist thinking in three ways.¹⁴⁵ First, the emphasis on agency is consistent with Vatican II's universal call to holiness. As such, the striving of the moral agent becomes the source and context for deliberation, a point driven home by proportionalism's representatives. At the same time, a rejection of intrinsically evil acts arouses fears of relativism; one example is urgently described by John Paul II.¹⁴⁶ Kalbian argues here that proportionalists in fact agree that exceptionless norms can be stated as universals, but that they are not so solely by virtue of the object.¹⁴⁷ Instead of looking to the intrinsic nature of moral acts, proportionalists acknowledge the complex environment of human intentions. Every act contains within itself values and disvalues. Aquinas' elegant account of the procession of human action backs Kalbian's claim. Curiously, Aquinas' reflections here are ignored by Grisez.¹⁴⁸

Third, proportionate reason was first described in Chapter One of the dissertation. Here, Kalbian refers the four-conditioned principle of double effect. Drawing on seminal essays from German theologian Peter Knauer¹⁴⁹ and the work of Richard McCormick,

¹⁴⁵ Ibid., 7: "Proportionalism's role in facilitating a shift in emphasis in moral theology is most notable when one isolates and examines three components of the proportionalist approach: (1) a holistic understanding of agency that is based on a Catholic personalist philosophy; (2) the rejection of the category of intrinsically evil acts and the corresponding critique of physicalism in natural law reasoning; and (3) the positive valuation placed on proportionate reason."

¹⁴⁶ John Paul II, *Veritatis Splendor*, 48: "And since the human person cannot be reduced to a freedom which is self-designing, but entails a particular spiritual and bodily structure, the primordial moral requirement of loving and respecting the person as an end and never as a mere means also implies, by its very nature, respect for certain fundamental goods, without which one would fall into relativism and arbitrariness."

¹⁴⁷ Kalbian, 11.

¹⁴⁸ Aquinas, *ST I-II*, 6-17.

¹⁴⁹ E.g., Peter Knauer, "The Hermeneutic Function of the Principle of Double Effect," *Natural Law Forum* 12 (1967):132-62.

she claims that the associated goods of an act must be commensurate when allowing physical evils to occur.¹⁵⁰ On McCormick's account of proportionate reason, consequences have a determining role, but they are not the only one. Moreover, proportionate reason is not identical with a utilitarian calculus. As Alasdair MacIntyre has complained, one cannot determine best outcomes without a prior and determinant notion of the good.¹⁵¹ In proportionate reason, McCormick already has a notion of the good, rooted in his firm commitment to the Christian tradition. Thus, the problem is not that there is a calculus; it is that the calculus must be "truly adequate and fully Christian."

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Finally, Kalbian applies proportionalism's contributions in the context of three contemporary, contrasting streams of Catholic ethics – virtue ethics, case studies, and feminist ethics. While in no way implying that these three developing methods are basically proportionalist, she demonstrates that proportionalism's vanguard attempts to problematize more traditional ethical methods have cleared a conceptual space that allows for a more holistic, personalist reflection upon human action.¹⁵³ A proportionalist approach does not capture the richness of virtue, but still requires the virtue of practical wisdom implied in proportionate reason. A contemporary ethic of virtue builds upon the context of the striving moral agent, thereby coinciding with a central component of proportionalism. The reinvigoration of casuistry, described in the work of Albert Jonsen and Stephen Toulmin in Chapter One, ascribes vital importance to context and

¹⁵⁰ Kalbian, 13.

¹⁵¹ E.g., see the earlier discussion of MacIntyre's treatment of Rawls and Nozick.

¹⁵² Kalbian, 15; cf. McCormick, "Ambiguity in Moral Choice," 27.

¹⁵³ Kalbian, 17.

circumstances. Citing Jonsen and Toulmin, Kalbian connects proportionalism to casuistry by noting that in both instances, “moral knowledge is essentially particular.”¹⁵⁴ Thus, contemporary casuistry offers no deductive principles to dictate proper action in all future cases, but instead affords an inductive method to aid reflective discernment in light of particular circumstances. While acknowledging the wide range of feminist thought, Kalbian focuses on one common strand: feminist critiques of natural law physicalism.¹⁵⁵ By rooting feminist method in human experience, rather than given norms derived from natural law, one can more readily evaluate moral action in a manner consistent with proportionalism.

Before moving on to an analysis of the contemporary virtue tradition, a brief consideration of this part’s relevance to Cahill’s work is in order. As mentioned in Chapter One, Cahill’s earliest scholarly work focused on McCormick’s consequentialism. In several essays, she attempts to defend McCormick against his critics by distinguishing between his teleological method and crass utilitarianism. For instance, she anticipates MacIntyre’s insistence on foundational notions of the good to make human action intelligible by pointing out that proportionalists (and especially McCormick) advance “a *telos* whose substance is not circumscribed.” More importantly, proportionate reasoning must be evaluated as “the consistency of an action or pattern of action with the life of virtue, understood by Christian authors as a *life consistent with the will of God*.”¹⁵⁶ A truly good action must bear fruit that resonates with this *telos*. Thus, McCormick’s

¹⁵⁴ Ibid., 18 (emphasis removed); see Jonsen and Toulmin, 330.

¹⁵⁵ Ibid., 18-20.

¹⁵⁶ Cahill, “Teleology, Utilitarianism, and Christian Ethics,” 628 (emphasis added).

emphasis upon consequences is intelligible because it is rooted in the Christian command to love God and neighbor (Matt 22:34-40).

Many writers, including Kalbian, describe Cahill's writings under the banner of "feminist" theology. While this dissertation hesitates to label her work strictly as such, it is true that Cahill's understanding of natural law is consistent with Kalbian's feminist analysis.¹⁵⁷

A commitment to an objective moral order, knowable by reasonable reflection on human experience, especially of the goods which are constitutive of human flourishing, and the institutions necessary to secure, protect, and distribute them.
¹⁵⁸

In other words, Cahill's method is rooted in human experience, and this contextual givenness is far from static. It stands in a mutually-informative relationship to both the past and present. More significantly, it generates a mutually-corrective thrust toward a more just future. Further still, Cahill seeks to transgress the marked boundaries of tradition, to form coalitions with likeminded representatives of other religious and secular traditions to achieve that end.

Now the dissertation analyzes two representatives of the new virtue tradition, both of whom engage in academic exchanges with Cahill in their respective works. First, Jean Porter's account of the virtue tradition is considered with respect both to her interpretation of the natural law (with a strong affinity to Kalbian's analysis) and to the

¹⁵⁷ Thus far, I have deliberately avoided this label. For one thing, I do not think it is an accurate description for reasons to be discussed in Chapter Four. I see richness in the totality of Cahill's writings that transcends *any* accurate label, and attempts to classify them within a single category fail to do justice to her contribution to Catholic theology.

¹⁵⁸ Cahill, cited in Kalbian, 19; cf. Cahill, "Feminist Ethics, Differences, and Common Ground: A Catholic Perspective," in Charles E. Curran, Margaret A. Farley, and Richard A. McCormick eds., *Feminist Ethics and the Catholic Moral Tradition* (New York: Paulist Press, 1996), 190.

earlier exploration of MacIntyre's work. Then, a brief survey of James Keenan's work will help to locate Cahill's understanding of justice as a virtue in the next chapter.

Jean Porter's Thomistic Accounts of Natural Law and Justice

After a brief introduction to Porter's account of traditional understandings of the natural law, this part analyzes her critique of Grisez's conception of the natural law. She claims BGT is at odds with these traditional descriptions. Next, it explores Porter's recovery of the natural law tradition and her strong commitment to personal virtue within it. Her account of the natural law also departs from traditional understandings of it, though in a much different manner than Grisez. Lastly, this part turns to her treatment of justice, which stresses the personal aspect of this cardinal virtue over and above its social applications.

Natural Law and a Critique of the Basic Goods Theory

On the traditional view of natural law, which Porter claims is also endorsed by the Catholic magisterium, moral norms are "grounded in the processes and inclinations of the human person, including sensual, rational, and spiritual inclinations."¹⁵⁹ Furthermore, these norms are seen as intrinsically teleological and universally binding. They dictate that humans should act in a manner consistent with these normative purposeful functions, which are discerned through reasoned observation of human life.¹⁶⁰ Traditional moral rules that prohibit murder, theft, lying, and the like are considered expressions of the natural law, and are therefore universal and exceptionless.

¹⁵⁹ Jean Porter, "Natural Law and the Specificity of Christian Morality," 211.

¹⁶⁰ *Ibid.*, 212.

Porter claims that the BGT is innovative, in that it departs from this traditional understanding of the natural law as rooted in the physical nature of human persons.¹⁶¹ Grisez attempts to overcome criticisms of naturalistic fallacy by detaching moral significance from physicality in human action. For instance, he distinguishes between direct and indirect action, especially with regard to killing, without interpreting the action in terms of causality.

As Grisez explains, an act involves an evil will in the moral sense if either of two conditions is met: If the bad effect is the very point of the act, or if the good sought can only be attained through some further action, either by the agent, or by someone else.¹⁶²

Porter argues here that eschewing traditional language runs the risk of reducing the agent's intention to the act itself, so described. Killing a patient can be described simply as seeking the good of "pain relief."¹⁶³ Furthermore, human action is not often as indivisible as Grisez would like. Complexity in human action, as described by Aquinas, demonstrates that an evil will rises to the surface in deliberation and choice regarding the means to achieve some desired end.¹⁶⁴ Grisez simply bypasses this stage of action by locating the unity in the act within the good to be sought.

In the end, Porter suggests that the whole reason Grisez and other "new" natural law thinkers approach these moral questions in such a manner is that they seek to justify

¹⁶¹ Ibid., 218.

¹⁶² Ibid., 219. See also Porter, "Direct/Indirect Action in Grisez's Theory of Morality," *Theological Studies* 57, no.4 (December 1996), 611-632.

¹⁶³ Porter, "Natural Law and the Specificity of Christian Morality," 219-220.

¹⁶⁴ On this point, see especially Kaczor, "Distinguishing Intention from Foresight: What is Included in a Means to an End?" 84.

the institutional agenda of the Catholic magisterium with regard to moral teachings.¹⁶⁵ In fact, she argues that Grisez's influence is particularly pronounced in John Paul II's subsequent encyclical dealing with the natural law.¹⁶⁶ Other American moral theologians, like Salzman and McCormick, have made similar claims.¹⁶⁷ As Porter notes, the problem is not with upholding the norms of a community. Rather, as a comprehensive doctrine, it limits the scope of what can be reasonably demonstrated to those outside that tradition.¹⁶⁸

Particularity in Porter's Conception of Natural Law

In other words, Porter is arguing that moral norms derived from natural law are not universal. In subsequent work, she develops and advances this claim by pointing to the inherently theological manner by which medieval natural law theologians employed

¹⁶⁵ Porter, "Natural Law and the Specificity of Christian Morality," especially 221: "Grisez and Finnis seem to distinguish between direct and indirect forms of killing (and, where relevant, other forms of attacks on basic goods) on the basis of prior judgements [sic] on the moral licitness of these kinds of actions. If that is so, then their logical analysis of goods and actions is not doing the normative work; it serves, rather, to justify moral judgements which have been arrived at on other grounds."

¹⁶⁶ Porter, "Direct/Indirect Action in Grisez's Theory of Morality," 611, n.3; cf. John Paul II, *Veritatis Splendor*, October 14, 1993, 46-53.

¹⁶⁷ Salzman, 3-4. See also Richard McCormick, "Some Early Reactions to *Veritatis Splendor*," *Theological Studies* 55, no.3 (September 1994), 489: "Basically Grisez passes in review 'four ways various dissenters have tried to soften received moral teaching about intrinsically evil acts.' Confronted with the encyclical's criticisms 'dissenting theologians undoubtedly will respond that the Pope has misinterpreted them, missed them altogether, and/or found no new or convincing arguments against their views.' Grisez sees this as inadequate *because the papal argument is from revelation*. He concludes that dissenting theologians are left with three choices: 'to admit that they have been mistake, to admit that they do not believe God's word, or to claim that the Pope is grossly misinterpreting the Bible'" (emphasis added).

¹⁶⁸ Porter, "Natural Law and the Specificity of Christian Morality," 218.

their methods. This entrenched theology is especially prominent in Aquinas.¹⁶⁹ In his *Summa*, he frequently turns to the sources of revelation and the Christian tradition which grew from them. Moreover, he does not compartmentalize them, but instead oscillates between his intelligent observations and the revelatory texts. He offers no “hermeneutics of suspicion” with regard to scripture, but seems to envision them as justifying his claims about the natural law. This affinity among revealed scripture, reasoned observation, and the natural world is a hallmark of the *Summa*.

Porter sees natural law as germinating from and shaped by a religious tradition. Human reasoning about nature or anything else is also shaped by the particularities of human experience. The sources of revelation and tradition thereby inform one’s personal experience to the degree that they constitute a major component of a community’s self-understanding. In light of contemporary pluralism, though, any moral claims necessarily arise from within a local context. Porter sees insuperable difficulties in achieving universal moral consensus.

The claim that all moral traditions share a fundamental core, which amounts to a universally valid morality, appears to me to be defensible only if the core in question is described at such a high level of generality as to be virtually empty, and even then, it is difficult to arrive at a statement of principles that would be universally acceptable.¹⁷⁰

¹⁶⁹ Porter, *Nature as Reason: A Thomistic Theory of the Natural Law* (Grand Rapids: Eerdmans, 2005).

¹⁷⁰ Porter, “The Search for a Global Ethic,” *Theological Studies* 61, no.1 (March 2001), 121.

The ubiquity and pervasiveness of pluralism seems to militate against any meaningful claim of universality. Any argument about a good to be achieved must begin from “the particular convictions and practices of the communities out of which they emerge.”¹⁷¹

At first blush, this line of argument raises a large problem for anyone who speaks from a religious tradition. In fact, it seems to encourage theologians to relinquish their strongest symbols and practices in order to participate in public discourse. But Porter does not go this far. In fact, she argues that particularity is problematic only “if we assume that rational inquiry must be purified of all historical and cultural contingencies.”¹⁷² By contrast, she claims that natural law offers “a way of thinking about the theological significance of human nature and the *moralities* stemming from nature.”¹⁷³

In this vein of diversity within a community’s moral tradition, Porter reveals her indebtedness to Alasdair MacIntyre with respect to virtue. She argues that virtues “operate in and through the pursuit of the goods proper to human life.”¹⁷⁴ Following Aquinas, she further claims that happiness is best understood as the “ultimate perfection of a rational nature.”¹⁷⁵ And since for Aquinas, this perfect happiness is only realized within the beatific vision, Porter makes the case that the practice of the virtues lends themselves to this aim. Virtues also help individuals to strive toward attainment of the

¹⁷¹ Porter, “A Tradition of Civility: The Natural Law as a Tradition of Moral Inquiry,” *Scottish Journal of Theology* 56 (2003), 29. See also Porter, *Nature as Reason*, 338.

¹⁷² Porter, *Nature as Reason*, 29.

¹⁷³ *Ibid.*, 327, emphasis added.

¹⁷⁴ *Ibid.*, 171.

¹⁷⁵ *Ibid.*, 157.

ends of humanity's "natural principles of operation."¹⁷⁶ Still, virtues remain "paradigmatic" rather than universal in scope.¹⁷⁷

Porter's analysis of virtue is undergirded by a commitment to the wide communal context, which she claims is lost in new natural law theories like the BGT. Once again, her reliance upon MacIntyre becomes apparent. The content of the natural law draws upon the "collective processes of experience, debate, and reflection," all facilitated through prudent examination of the community's purpose.¹⁷⁸ In turn, those norms constitute the paradigmatic point of departure from which individuals discern proper human action.

It is one thing to say that we are naturally oriented toward certain desiderata, and this orientation provides a natural starting point for practical reflection and moral action. It is something else again to say that we have a rational grasp of certain basic goods, elemental enough to be regarded plausibly as self-evident to all and yet provided with enough content to provide an immediate basis for practical reflection.¹⁷⁹

In short, natural law provides at most a basis for moral reflection, rather than readymade answers for moral action, as the BGT claims it does.

Despite Porter's reliance upon MacIntyre, she departs from him with regard to modern rights language, though not radically so. Whereas MacIntyre cannot see rights as existing in the current state of grave disorder, Porter sees them as potentially functioning in a community of common material and emotional needs.¹⁸⁰ Moreover, she argues that human rights can serve Christian purposes. But she accomplishes this task by tracing the

¹⁷⁶ Ibid., 158.

¹⁷⁷ Ibid., 184, 229, respectively.

¹⁷⁸ Ibid., 320.

¹⁷⁹ Ibid., 128.

¹⁸⁰ Ibid., 210-212.

idea of rights to their roots in medieval natural law thinking.¹⁸¹ Of course, MacIntyre's argument that rights do not exist turns on his premise that an Aristotelian or Thomistic foundation has been lost, and these are the only traditions that could have supported a healthy notion of rights.¹⁸² In the end, her claim is not so much at odds with MacIntyre with regard to rights, as it is to the possibility that a recovery of the Thomistic tradition is not so far off as he presumes.

Yet a different problem emerges for Porter. She summarizes her argument by claiming that setting forth normative behavior is a fundamental necessity. At the same time, she claims that these norms are provisional at best. And even with a theological foundation, it cannot be known with certainty "whether in a particular case they are informed by grace, reflective of the unconditional will of God."¹⁸³ A particular Christian community is constituted by the prior understanding that it stands in relation to a triune God who has acted in human history. It would seem strange then that the community envisioned by Porter would lack the necessary tools to discern moral action with regard to divine guidance, given that these resources give rise to the paradigm in the first place. Nevertheless, her compelling case for a richer recovery of the Thomistic natural law tradition and her subtle contrast against MacIntyre's problems with rights language allow for a more precise analysis of Cahill's theological writings on justice in the next chapter. In fact, Cahill offers a critical response both to Porter's pessimism regarding a universal ethic and to her agnosticism with regard to particular cases. For the moment, the

¹⁸¹ Porter also insists that charity underwrites this commitment to rights, over and above the virtue of justice. This idea is discussed later in this part (see below).

¹⁸² MacIntyre, *After Virtue*, 11, 68-69.

¹⁸³ Porter, *Nature as Reason*, 399.

dissertation analyzes Porter's conception of justice, and its implications for the next chapter.

Porter's Thomistic Account of Justice

Porter's fullest treatment of justice as a personal virtue is found in her 1990 book, *The Recovery of Virtue*, where she offers a lengthy analysis of Aquinas' exposition on justice from the *Summa*.¹⁸⁴ Her Thomistic understanding of justice remains a large part of her subsequent work. Thus, this section draws largely from this earlier essay, while noting its lasting influence throughout her later work. After a short introduction to Thomistic justice in relation to other virtues, this part turns to Porter's claim that Aquinas is not a one-sided communitarian. This argument is supported by Aquinas' notions of harm to others, equality among persons, and justice in community, all of which she discusses at length in the essay considered here. Her work on justice is significant toward the aims of this dissertation because she emphasizes the importance of the individual good over that of the common good in Aquinas. This is a major point of contrast between Porter and Cahill, as introduced in Chapter One and to be further analyzed in the next chapter.

To begin, justice consists in giving to others what is due to them. It contrasts with the other cardinal virtues in two ways. First, it is a volitional virtue, unlike the intellectual virtue of prudence, and the affective virtues of temperance and fortitude. Because Aquinas sees the will as naturally inclined toward the good, it needs no further orientation toward the good of the moral agent. Correlatively, justice, coupled with charity, directs action toward the good of others. Justice thereby is "exhibited in terms of

¹⁸⁴ Porter, *The Recovery of Virtue: The Relevance of Aquinas for Christian Ethics* (Louisville: Westminster/John Knox Press, 1990), 124-154.

external actions which embody right relations among individuals, or between individuals and the community.”¹⁸⁵ Justice, then, is aimed primarily toward the right functioning of a well-ordered society.

This conclusion would seem to have the common good as its goal. Indeed, Aquinas claims that the common good takes precedence over the good of individual at several places in the *Summa*.¹⁸⁶ Porter argues that Aquinas’ emphasis on the common good results from his anthropology. Human beings are inherently social; they can flourish only within a communal setting. Part of this flourishing comes through the necessary exercising of humanity’s natural capacities.¹⁸⁷ The larger community is also necessary to help in providing material support, even more so than the family, which is the basic unit of the community.

At the same time, Aquinas’ anthropology insists upon the fundamental equality of persons. This egalitarian precept places limits upon a community’s coercive capacity over the individual. For instance, the wrongness of theft is founded on the legitimation of private property, which itself is developed from a notion of human dominion over creation.¹⁸⁸ As such, the community has a normative obligation to punish theft as a crime against the natural order. Nonetheless,

When the institution of property threatens its own *raison d’être* by preventing individuals or the whole community from having access to the necessary means of life, then the institution itself breaks down, or at least the claims that it guarantees under ordinary circumstances must give way to more exigent claims. It is on this

¹⁸⁵ *Ibid.*, 124.

¹⁸⁶ Aquinas, *ST II-II* q.47, a.10; q.58, a.12; and q.64, a.2.

¹⁸⁷ Porter, *The Recovery of Virtue*, 126; cf. Aquinas, *ST I* q.96 and *II-II* q.47, a.10.

¹⁸⁸ Aquinas, *ST II-II* q.66, a.2; cf. Gen 1:27-28.

basis that Aquinas justifies the seizure of property by private individuals who are pressed to do so by urgent need.¹⁸⁹

While the community must provide for the protection of private property as a basic right, there is a limit to this right. Hence, communal needs redound to the individual. Moreover, the example of property demonstrates conflicting claims with regard to harm. An *individual* has seized the property of another *individual* out of an urgent desire for survival. The presence of this need reflects poorly upon the community that is charged with the just distribution of the materials required for meeting basic necessities. In Aquinas' estimation, the community must forego the punishment of individuals in these circumstances. The harm incurred by the property owner is also considered in relation to the needy individual's situation.

Porter's analysis of Aquinas' account of distributive justice demonstrates his complex interplay between the individual good and the communal good. Another example of this intricacy is found in her discussion of the Thomistic distinction between murder and justifiable homicide. On the one hand, capital punishment and wartime killing can be morally justified under stringent criteria.¹⁹⁰ In both instances, the state accomplishes the killing through its authorized agents. On the other hand, vigilante killings or remorseful suicides both ought to be condemned as murder, since no private individual has authority over the life of another or even oneself.¹⁹¹ Once again, the difference is found in the essential equality of persons and a presumed immunity from harm. In the latter cases, it is not for individuals to decide who may be killed. In the

¹⁸⁹ Porter, *The Recovery of Virtue*, 133; cf. Aquinas, *ST II-II*, q.66, a.7.

¹⁹⁰ Aquinas, *ST II-II*, q.64, a.2.

¹⁹¹ Porter, *The Recovery of Virtue*, 129; cf. Aquinas, *ST II-II*, q.64, aa.3 and 5.

former cases, a further distinction can be made. In the case of capital punishment, the condemned has forfeited his or her protection from harm by some prior action for which he or she is found guilty. In the case of killing in war, there are also presumptions of just cause and means of last resort. In both cases, an unjust aggression against the order of the community must be answered with a definitive response.

Aquinas' account of killing in self-defense provides yet another instance of his preference for the individual good over the common good. Since the killing is being done by a private citizen, it seems to contradict the aforementioned cases of justifiable homicide. However, so long as the actor's sole intention is the preservation of her or his life, killing is vindicated because "no one has a duty to take more care of another's life than his own."¹⁹² Like the example of acquiring another's property in times of urgent need, killing another in self-defense is morally justified by analyzing the agent's circumstances in light of communal notions of survival and flourishing. The just community agrees that all citizens are equal with respect to protection from harm. By the same token, the aggressor's grave action *de facto* forfeits his or her security. Thus, the immediate and extraordinary circumstances which threaten one's survival override the ordinary criterion that would identify this act as murder.

Finally, Porter analyzes Aquinas' brief treatment of distributive justice in the context of these three notions of harm, equality, and community. Aquinas specifies two kinds of justice: commutative and distributive. Commutative justice concerns exchanges between private individuals, and distributive justice concerns the sharing of common

¹⁹² Porter, *The Recovery of Virtue*, 130.

material (and spiritual goods).¹⁹³ Both are rooted in equality, but they reflect different forms of it.¹⁹⁴ Commutative justice insists on equality with regard to contractual exchanges; distributive justice describes the due proportion an individual receives from the community. Porter describes his account of distributive justice as “too abstract to provide for much substantive guidance” for at least two reasons.¹⁹⁵ For one thing, Aquinas distinguishes among the various systems of government in which distribution takes place in a descriptive sense. He offers no opinion on which would provide the most just forms of distribution. Correlatively, there is no difference between merit and desert with regard to distribution. Desert seems to have a more direct application in matters of distributive justice, at least with regard to the “necessities of life.”¹⁹⁶ Justice, therefore, is completed by the virtue of prudence in giving definitive content to the concrete principles of justice.

This last point raises another problem that was introduced in previous discussion of MacIntyre’s work. Questions about distribution can be paraphrased: “Whose justice? Whose prudence?” Aquinas’ account of distributive justice seems to fit any distributive scheme, but this versatility offers little resolution to today’s pressing issues. It does not follow that prudent deliberation will result in just principles of distribution, as demonstrated by the varieties of disagreement outlined in the first part of this chapter. Without a more complete rendering of the good, Thomistic notions of justice are no more or less problematic than any of the others offered thus far.

¹⁹³ Aquinas, *ST II-II*, q.61, a.2. He also describes spiritual goods, honor, and respect in his discussion of distributive justice (q.63, aa.2 and 3).

¹⁹⁴ Porter, *The Recovery of Virtue*, 153.

¹⁹⁵ *Ibid.*, 154.

¹⁹⁶ *Ibid.*, 154.

Porter has anticipated this problem through a prior analysis of Aquinas' discussion of the human good.¹⁹⁷ There, she describes his first principle of practical reason – “good is to be done and pursued, and evil is to be avoided” – as a self-evident claim.¹⁹⁸ Through a complex discourse, Porter builds a case that actions can be discerned with respect to the human good, though it is only an overture to a fuller account of the virtues. Following Aristotle, Aquinas claims that all action is aimed at some perceived good. In fact, the ultimate goal of action is grounded in the pursuit of the good life. While most human action does not attend directly to this remote end, immediate ends are sufficiently similar to render it intelligible.¹⁹⁹ Thus, Aquinas' account of the good allows for pursuit of many ends that harmonize with the comprehensive good, but this ultimate happiness is found in the proper exercise of virtues.²⁰⁰ It is not enough that a moral *action* be good; the moral *agent* must also be so.

This examination of Porter's work concludes by summarizing her description of the permanent significance of Aquinas' theological reflection. He synthesizes the received tradition up to his time, and addresses the ongoing arguments that constituted that tradition. His work remains foundational for the current rival arguments within the Catholic moral tradition today.²⁰¹ Moreover, his thought sheds light on ecumenical and political discourse in light of the development of his work by others inside and outside of

¹⁹⁷ *Ibid.*, 69-99.

¹⁹⁸ *Ibid.*, 85.

¹⁹⁹ *Ibid.*, 74-75.

²⁰⁰ *Ibid.*, 79, 84; cf. Aquinas, *ST I-II*, q.5, a.5.

²⁰¹ *Ibid.*, 173.

the Catholic context.²⁰² Porter retains her claim that Aquinas' work is most suited for ongoing discourse within the tradition. In fact, Catholic thinkers would do well to consider the claims of modern science and American pragmatism in order to dialogue more fully with these rival traditions.

James Keenan's Account of the Virtues

The dissertation now moves to the writings of American Jesuit James Keenan, an influential moral theologian whose work in virtue coincides with some of the considerations suggested by Porter. Like Porter, Keenan claims that the virtues are largely paradigmatic in function, though he uses the term "heuristic" to demonstrate the individual's role in learning or discovering virtue.²⁰³ Keenan's tradition-dependent account of the virtues over a principle-based approach is also consistent with MacIntyre's and Porter's work.²⁰⁴ While he engages the classical tradition, his work is also characteristically post-conciliar insofar as he uses scripture as the source and milieu of his virtue ethics rather than a reminder or confirmation of it.²⁰⁵ His work also contrasts with Porter in at least two ways. First, he emphasizes a common good approach to justice,

²⁰² Ibid., 174-176. Here, Porter points to the work of Gustafson and Hauerwas, among others, who have analyzed Aquinas' claims in light of their respective traditions.

²⁰³ Daniel J. Harrington and James F Keenan, *Jesus and Virtue Ethics: Building Bridges between New Testament Studies and Moral Theology* (Lanham: Sheed and Ward, 2002), 122. Note: While this text is coauthored, each writer helpfully labels his respective contribution at the opening of each section. Unless otherwise noted, my dissertation deals exclusively with Keenan's work in this particular book.

²⁰⁴ Keenan, "Virtues, Principles and a Consistent Ethics of Life," in Thomas Nairn, ed., *The Consistent Ethic of Life: Assessing its Reception and Relevance* (Maryknoll: Orbis Books, 2008), 48-60.

²⁰⁵ Keenan, *Jesus and Virtue Ethics*. See also Keenan, *A History of Catholic Moral Theology in the Twentieth Century*, 77, hereafter *A History*.

one that has a closer affinity to Cahill's work than Porter's, at least in the texts considered thus far. Sometimes, justice can compete with one or more of the other cardinal virtues.²⁰⁶ This conflict comes from Keenan's relational anthropology and encompasses a globalized perspective which is emphasized especially in his most recent work.²⁰⁷ Second, for almost two decades he has expressed dissatisfaction with the classical list of cardinal virtues, due in part to his anthropological concerns. In proposing new virtues, justice still heads the list.²⁰⁸

This section briefly examines Keenan's account of the virtues, and explores his proposed revision of the cardinal virtues. In continuity with the aims of the dissertation, this segment focuses upon his writings on justice. It is presented in two parts. The first includes a general discussion of Keenan's analysis of goodness and rightness in the *Summa* and his work on the virtues in recent scholarship. The second explores his Thomistic interpretation of justice, and its place in his new list of cardinal virtues.

Intellect and Will in Keenan's Analysis of the Virtues

Keenan points out that the goodness/rightness distinction is vital for post-conciliar moral methodology.²⁰⁹ Goodness means that the agent strives out of love to live and act rightly; rightness means that "our ways of living and acting actually conform to rational

²⁰⁶ Keenan, "Proposing Cardinal Virtues," *Theological Studies* 56, no.4 (December 1995), 721.

²⁰⁷ Much of Keenan's recent work has focused on globalized theology and cross-cultural discourse. For instance, see his recent Notes on Moral Theology, "What Happened at Trento 2010?" *Theological Studies* 72, no.1 (March 2011), 131-149.

²⁰⁸ Keenan, "Proposing Cardinal Virtues," 724.

²⁰⁹ Keenan, *A History*, 183.

expectations set by the ethical community.”²¹⁰ In human action, goodness’ goal is to become more rightly ordered, and rightness’ aim is to behave in accord with reason.²¹¹ With rich attention to the development of the *Summa*, Keenan notes that Aquinas’ writings after 1270 implicitly contain this distinction, while it is absent in his prior work.²¹² He claims that in Aquinas’ discussion of the relationship between the will and the intellect, the former moves toward goodness of a specification of the act proposed by the latter.²¹³ Failure to act in accordance with reason or to submit to its dictates is a moral failure.²¹⁴ Thus, an agent’s good will redounds to right reason.

Keenan argues that rightness is neither a necessary nor sufficient condition for goodness. This difficulty stems from several examples, among them the case of the lying Egyptian midwives (Ex 1:15-21).²¹⁵ Aquinas, uncomfortable with calling their lie meritorious, must deal with the fact that their actions were rewarded. He resolves the problem by distinguishing between two acts: one of truth telling and another of saving children. It was for the latter act and not the former that God rewarded the midwives.

²¹⁰ Keenan, *Goodness and Rightness in Thomas Aquinas’ “Summa Theologiae”* (Washington: Georgetown University Press, 1992), 3, hereafter *Goodness and Rightness*.

²¹¹ *Ibid.*, 9-10.

²¹² *Ibid.*, 180.

²¹³ Aquinas, *ST I-II*, q.9: “It is evident that the intellect through its knowledge of the principle reduces itself from potentiality to act, as to its knowledge of the conclusions; and thus it moves itself. And, in like manner, the will, through its volition of the end, moves itself to will the means.” See also Keenan, *Goodness and Rightness*, 23: “Striving to know pertains to goodness and requires an autonomous will. When we strive both to understand what right activity is and to execute that activity, we are good. But, in order to strive or will to know the right, we must have a concept of the will as that which moves the reason to understand.”

²¹⁴ Keenan, *Goodness and Rightness*, 25-26.

²¹⁵ *Ibid.*, 168-175.

Keenan further claims that the contemporary goodness/rightness distinction represents this later Thomistic bifurcation.²¹⁶

If Keenan's claim is true, then justice becomes the comprehending moral virtue, with prudence as its evaluative measure.²¹⁷ The object of justice is life's needs. Without prudence, the virtues can only be habits or inclinations. Prudence formalizes justice and the other moral virtues by directing them toward their achievement in the mean of action. Prudence, then, is "the form, rule, and measure" of justice."²¹⁸ At the same time, the moral virtues cannot be perfected without the infused virtue of charity.²¹⁹ With the exception of charity, the intention, end, and even virtuous striving by the agent are located within rightness, not goodness.²²⁰ Keenan explains that charity alone pertains to goodness because this virtue's final end is union with God. It remains imperfect during a pilgrim's life until it is achieved in Beatific Vision.²²¹

Keenan describes the task of virtue as the "acquisition and development of practices that perfect the agent into becoming a moral person while acting morally

²¹⁶ Ibid., 174.

²¹⁷ Ibid., 100. Jean Porter criticizes Keenan's reading of Aquinas in this regard. Granting that there is a first movement of the will that is directed toward the good generally, she further notes that all things naturally love the supreme good (i.e., God), and that the will is naturally directed toward goodness because of the supreme good from which it originates and returns (*ST I-II* 109, q.3). Porter further claims this desire *toward* God is distinct from the union *with* God that arises from charity. See Porter, "Recent Studies in Aquinas's Virtue Ethic: A Review Essay," *The Journal of Religious Ethics* 26, no.1 (Spring 1998), 197-202.

²¹⁸ Keenan, *Goodness and Rightness*, 104.

²¹⁹ Ibid., 103.

²²⁰ Ibid., 124.

²²¹ Ibid., 127.

well.”²²² Following MacIntyre, he also claims that specific cultures employ paradigmatic practices that disclose and inform their sense of virtue.²²³ Within this culturally- and historically-informed context, Keenan expresses dissatisfaction with the received list of cardinal virtues that lend themselves toward this worthy end. He argues from the premise that the virtues are not prescriptive in an absolute sense.

Rather than being definitive expressions of character, the cardinal virtues perform a heuristic function to answer broadly the three questions of MacIntyre. These three questions are extraordinarily general; they do not fill in the claims of either culture or the individual. Thus we pursue the cardinal virtues because they express what minimally constitutes a virtuous person.²²⁴

On the one hand, Keenan’s proposed changes acknowledge the same difficulties as Porter does regarding universal consensus on moral norms.²²⁵ The virtues sketch the general and basic conditions of the virtuous person. On the other hand, Keenan argues that justice and prudence are in fact universal in scope, and can be articulated with a greater degree of specificity than Porter allows.²²⁶ Thus, the next section analyzes Keenan’s proposed list of new cardinal virtues and the role of justice within it.

²²² Keenan, “Proposing Cardinal Virtues,” 711.

²²³ *Ibid.*, 713; cf. MacIntyre, *After Virtue*, 121-180.

²²⁴ Keenan, “Proposing Cardinal Virtues,” 714: “In order to understand virtue ethics as life-guides, we can turn to MacIntyre’s *After Virtue*, where he proposed that the issue of morality is a three-fold question: Who am I? Who ought I to become? How ought I to get there? The answer to each question refers to the virtues. Applying the list of classical cardinal virtues, the first question is not simply ‘Who am I?’ but ‘Am I just, temperate, brave and prudent?’ The second question reflects on the first, and in asking, ‘Who do I need to become?’ it presumably answers, ‘more just, temperate, brave, and prudent.’ The third question asks, ‘In which virtuous practices ought I to engage in order to attain that goal?’”

²²⁵ Porter, “The Search for a Global Ethic.”

²²⁶ Keenan, “Proposing Cardinal Virtues,” 714.

Justice and New Cardinal Virtues

While the cardinal virtues rightly direct an agent's actions, they do not necessarily inform one's faith life. Because virtuous habits can be acquired by all persons regardless of their religious identity, they can be applied in a wide range of social contexts.

In scholastic language they are the acquired virtues and not the infused ones which, like charity, God gives through grace. Certainly these cardinal virtues can be "informed" by a community's faith life. But the virtues can be pursued by anyone who intends and exercises them rightly. Thus we can urge each other to acquire them whether we are sitting in the same pew or on the same park bench.²²⁷

For this reason, the traditional list of virtues is called cardinal because they order human life in its many activities. In fact, in a different context, Keenan notes that virtue ethics serves as a connection between theologians and pastors and their worshipping communities by offering a practical response to the call of Christ.²²⁸

Nonetheless, Keenan argues that the received list is inadequate to serve the contemporary needs of moral agents.²²⁹ His argument rests on three premises. First, he claims that it is "deceptively simple and inadequate." Aquinas' structure of the virtues does not admit of conflict. Since each virtue has its own sphere of operation, there are no shared grounds that require them to challenge one another. Even if there is an overlap, Aquinas insists on a hierarchical distinction. As the previous section described, prudence is the most important acquired virtue, and justice is the chief moral virtue.²³⁰

²²⁷ Ibid., 717.

²²⁸ Keenan, *Jesus and Virtue Ethics*, 25.

²²⁹ Keenan, "Proposing Cardinal Virtues," 718.

²³⁰ Ibid., 719.

Next, Keenan describes an emerging relational anthropology that admits of the possibility of conflict among the cardinal virtues.²³¹ Correlatively, he points to a trend that bears out this anthropological claim. Citing the diverse thought of theologians like Walter Burghardt, Margaret Farley, John Paul II, and Stanley Hauerwas, Keenan claims that human relationality has rendered the Thomistic understanding of human action problematic.

Like others, I believe that to have a viable anthropology is to understand ourselves as agents and not as objects; moreover as agents we are always relational. Thus virtues do not perfect what we have or what we do; rather they perfect who we are in the mode of our being, which is as being in relationships.²³²

Keenan's relational anthropology is especially founded upon love.²³³ Building upon this claim, he proposes a new list of cardinal virtues: justice, fidelity, self-care, and prudence.

Rather than perfecting "powers" in the Thomistic sense, these virtues are built on Keenan's understanding of relationality. He claims that persons are relational in three ways, and each moral virtue corresponds to a relational sphere of operation. One, humans are relational in a general manner, and so justice is the comprehensive virtue that dictates all interpersonal interaction. Two, they are also relational in a specific way. Fidelity helps to sustain particular relationships. With love as a formal principle, faithfulness helps to determine right action in the concrete operations that involve those familial and affective ties common to humanity.²³⁴ Three, humans are uniquely relational, in that they can relate to themselves. Self-care attends to this sphere of relationality. This intrapersonal relationship is complex, and animates all aspects of the person: affective, cognitive,

²³¹ Ibid., 721.

²³² Ibid., 723.

²³³ Keenan, *Jesus and Virtue Ethics*, 8.

²³⁴ Keenan, "Proposing Cardinal Virtues," 725.

physical, and spiritual.²³⁵ Finally, prudence serves the same role as it did in the classical list. It integrates and connects the other virtues, fixing the mean of right action according to circumstances.

Finally, as cardinal virtues, they order the web of human relationships. In the Christian context, they are founded upon the love that is idealized in Jesus Christ.

In fact, I think we can say that it was precisely because Jesus knew the virtues of fidelity, justice, and self-care that the agony in the Garden was so painful. He was a man who loved God, humanity, his friends, and himself: his conflict, like all true conflicts, was to determine which relationship made the greater claim on him.²³⁶

Thus, for the Christian, Keenan's new list of cardinal virtues helps to balance the competing claims not only to live authentically in imitation of Jesus' loving example, but also to strive virtuously toward one's human self-actualization.

In conclusion, this limited exploration of virtue ethics closes with a few points that are germane to the forthcoming analysis of Cahill's writings on justice. First, it should be noted that she does not often use the vocabulary of virtue. Instead, she tends to privilege the conciliar discourse of rights described in the previous section. Unlike Porter, moreover, Cahill believes that substantive universal consensus can be achieved regarding human goods through passionate dialogue and collaborative action aimed at justice. Her faith commitment gives rise to this participatory strategy, and shapes the contours of her contribution to such involvement. At the same time, Cahill's work, which emphasizes the intricate nature of human persons and the complex dynamics of their relationships, has a harmonic resonance with the writings from Keenan considered in this section. Keenan's classification of justice as the virtue that operates in humanity's general relationships fits

²³⁵ *Ibid.*, 727.

²³⁶ *Ibid.*, 728.

well with Cahill's firm adherence to equal personal dignity. She also attempts to recover a sense of universality in human nature and objectivity in moral reasoning, while critiquing both abstract reason in Enlightenment philosophy and ahistorical universalism in natural law.²³⁷

Now, the final section of this chapter examines justice in theological bioethics. In this highly specific context, elements from these analyses of philosophical and theological ideas of justice can be discovered. Notions of natural law, liberal principles, human rights, communal concerns, and virtue ethics can be discerned throughout this discussion.

Justice in Recent Catholic Bioethics

Since the goal of this dissertation is to demonstrate how Cahill's commitment to justice undergirds her call for participatory strategies toward justice, it is necessary to locate her concept of justice within the specialized field of Catholic bioethics. To accomplish this task, this final section of the chapter briefly surveys writings about justice from American scholars Thomas Shannon and Margaret Farley as they relate to theological bioethics. Their contributions are important to the goals of this dissertation not only due to the depth and breadth of their individual scholarship, but also because of their occasional collaboration with Cahill in bioethical writings.²³⁸ Shannon's approach to

²³⁷ Scholars have commented positively on this trend in Cahill's scholarship. For example, see Keenan, *A History*, 149-150, and Charles E. Curran, *The Catholic Moral Tradition Today: A Synthesis* (Washington: Georgetown University Press, 1999), 23.

²³⁸ For example, see Cahill and Margaret Farley (Ed.), *Embodiment, Morality, and Medicine* (Dordrecht: Kluwer Academic Publishing, 1995); and Cahill and Thomas Shannon, *Religion and Artificial Reproduction* (New York: Crossroad, 1988). Shannon

bioethics tends to integrate the “principlism” of Thomas Beauchamp and James Childress that was highly influential during the 1980s and 90s with Catholic proportionalist arguments, especially those of Richard McCormick.²³⁹ Farley’s methodology employs a clear feminist perspective that emphasizes personal freedom in pursuit of the common good. While Shannon’s and Farley’s methods contrast considerably with one another, there are elements in their respective works that resonate at various points with Cahill’s bioethical essays.

Thomas Shannon: Justice and the Idea of Human Nature

This section briefly analyzes select writings in Shannon’s essays that bear upon the notion of justice in Catholic bioethics. This portion of the dissertation is outlined in three parts. First, an early sketch of his account of justice is similar to the principle of justice described by Beauchamp and Childress. At the same time, Shannon exhibits a preference toward proportionalist moral reasoning in his project. Second, an important component of this discussion of justice is Shannon’s differentiation between human persons, who are the subject of rights (and, by extension, of justice), and human nature, which is the subject of value. His distinction is problematic for an examination of germline interventions, because his ethical reflections do not allow adequate room to consider their impact on future persons. Third, Shannon’s later ethical analyses of the medical applications of the Human Genome Project and its potential implications for

and Farley also critically engage Cahill’s later essays at times, and these examples will be discussed in the next chapter.

²³⁹ While they write for a large audience that includes secular philosophers, it is significant that Beauchamp and Childress both hold advanced degrees in theology. Their project thereby expresses an affinity for religious considerations of bioethics at many points.

human nature demonstrate a development in his own understanding of justice. In this last part, two similarities to Cahill's work can be also be discerned. Like Cahill, Shannon's bioethical work is influenced by a turn to Catholic Social Teaching. The other is his retrieval of casuistry as a part of his lasting commitment to proportionate reasoning.

Justice in Shannon's Scholarship

In the Introduction to his bioethics reader, Shannon relies heavily on Beauchamp's and Childress' categories of bioethical principles to outline the necessary ethical framework for analyzing the articles in this volume. Eighty percent of the citations come from their essays.²⁴⁰ Shannon also utilizes McCormick's account of proportionate reasoning as a crucial determinant for the obligation to nonmaleficence in bioethics.²⁴¹ References to McCormick's works comprise the other twenty percent of the citations from his introductory chapter. Taken together, these three scholars form the foundations not only for an informed reading of Shannon's anthology, but also for the major claims of his later arguments regarding human persons and human nature.

Regarding justice, Shannon employs an overarching theme of distribution and allocation, both of which are vital considerations in medical ethics. He describes two modes of thinking about justice.²⁴² The first is comparative justice, by which the goods

²⁴⁰ See Thomas A. Shannon (Ed.), *Bioethics*, 4 Ed. (Mahwah: Paulist Press, 1993), 6-15; cf. Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics*, 6 Ed. (New York: Oxford University Press, 2008). Shannon also has a later introduction to thematic ethical issues in his *Introduction to Bioethics*, 3 Ed. (Mahwah, Paulist Press, 1997), 21-40, but his discussion of justice is more detailed in his 1993 text.

²⁴¹ Shannon, *Bioethics*, 7. See especially *Ambiguity in Moral Choice* (Milwaukee: Marquette University Press, 1973).

²⁴² Shannon, *Bioethics*, 8.

received by one person or group are determined by consideration of completing claims from others. Comparative justice implies competitive strategies for the same, scarce resource (as access to health care is often depicted). Applications of comparative justice are manifold, and generally embody material principles of justice. That is, distribution is usually determined on the basis of medical need, social worth, individual desert or some combination of the three.²⁴³ The other is non-comparative justice, which is rooted in a formal principle of justice. In this scheme, goods are distributed through some determined procedure. While non-comparative justice offers a clear rule, and upholds a clear respect for the equality of persons, it generally does not specify a moral component to its procedures.

Shannon points to a hybrid strategy between comparative and non-comparative types that entails allocation strategies that emphasize equality of opportunity. This approach satisfies the formal principle of justice by employing a randomized lottery or triage system into which all can enter during a time of medical need. At the same time, equitable material distribution can be achieved according to the momentary severity of each patient's need. Shannon argues that its strengths lie in the emphasis on respect for persons and building of trust in the health care system. Additionally, the distributive system avoids thorny questions of social worth. Unfortunately, this last point could threaten to undermine this system as it ignores three important factors.²⁴⁴ If there is no required screening to be admitted into the randomization process, it removes questions of personal responsibility from the situation. Thus, lifestyle choices that increase risk factors (like diabetes, cancers, and sexually-transmitted diseases) are essentially irrelevant. This

²⁴³ Ibid., 9.

²⁴⁴ Ibid., 10.

compromise position also overlooks the condition of the patient in the overall context of health. “That is, if a fifteen year old is more likely to benefit from a procedure than an eighty year old, should the eighty year old have an equal opportunity for treatment?”²⁴⁵ Correlatively, this mode of distribution presumes boundless resources, since the “only relevant criterion” is apropos of nothing, excepting equality of opportunity.

Human Natures, Human Persons, and Human Rights

Moving from the classical discussion of distributive justice to a modern discourse of rights language, Shannon outlines five major understandings of rights.²⁴⁶ Essentially, rights fall into one of two categories: positive or negative. Positive rights express one’s claim to action upon another person, and negative rights describe an obligation to noninterference by others. It is here that the question of the subject of rights becomes especially relevant for this dissertation. Shannon argues that persons alone can be the bearer of rights (as opposed to non-human animals or non-sentient life forms). In itself, this claim is uncontroversial. For the purposes of this dissertation, other considerations outside of human rights are unnecessary. However, Shannon’s conception of personhood, introduced in this text and further analyzed in the next few paragraphs, raises a number of problems with regard to genetic manipulation. He sets a very high standard by describing a person as a moral agent “with an enduring concept of self and capable of autonomous

²⁴⁵ Ibid., 10.

²⁴⁶ Ibid., 14-15. Shannon describes five understandings of rights: as privileges or social good (i.e., in excess of routine moral obligations, as social immunity (protection from state coercion), as political/social power, as entitlement, and as moral claims on others.

actions.”²⁴⁷ While he tempers this view of personhood in later essays in light of its implications for abortion and embryonic research, it remains a troubling issue for the concept of justice in the context of genetic interventions.

Throughout a series of articles spanning the 1990s, Shannon – sometimes as an individual scholar and others as co-author – makes a consistent argument that the protection afforded to human life is relative to its developmental stages.²⁴⁸ One catalyst for these writings is the Congregation for the Doctrine of the Faith’s (CDF) 1987 *Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation*. The document describes life as a “gift” given from God, for which each human person is responsible for its promotion.²⁴⁹ Moreover, it calls human life an inviolable right “from the moment of conception until death.”²⁵⁰ Still another major claim from the *Instruction* is the “immediate animation” of the human person.

From the moment of conception, the life of every human being is to be respected in an absolute way because man is the only creature on earth that God has “wished for himself” and the spiritual soul of each man is “immediately created” by God; his whole being bears the image of the Creator. Human life is sacred because from its beginning it involves “the creative action of God” and it remains forever in a special relationship with the Creator, who is its sole end.²⁵¹

²⁴⁷ Ibid., 15.

²⁴⁸ Thomas A. Shannon and Allan B. Wolter, “Reflections on the Moral Status of the Pre-embryo,” *Theological Studies* 51 (1990), 603-626; Shannon, “Cloning, Uniqueness, and Individuality,” *Louvain Studies* 19, no.4 (Winter 1994), 283-306; Shannon, “Delayed Hominization: A Response to Mark Johnson,” *Theological Studies* 57 (1996), 731-734; and Mark Johnson and Thomas A. Shannon, “*Questio Disputata*: Delayed Hominization,” *Theological Studies* 58 (1997), 708-717.

²⁴⁹ Congregation for the Doctrine of the Faith, *Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation* (February 22, 1987), 1.

²⁵⁰ Ibid., 4.

²⁵¹ Ibid., 5.

Through a careful study of developmental biology, Shannon raises problems with both the idea of a “moment of conception” and the theory of “immediate animation.”²⁵² He claims that a zygote (i.e., the fused gametes that concludes the *process* of conception) does not possess sufficient genetic information to develop into an embryo, which is the “precursor of an individual member of the human species.” Furthermore, an embryo lacks individuality because it has the potential for fission and recombination following twinning. These distinct biological features have no explicit moral implications for at least three weeks after fertilization, when embryonic totipotency and twinning are no longer possible.²⁵³ Even after individuation, there is a further problem of the “rational soul.” On a contemporary interpretation of the Aristotelian formula that form is “educated from the potency of matter,” Shannon insists that the structures necessary (i.e., a “fully integrated” human nervous system) for such actuality do not develop until at least eight weeks after fertilization.²⁵⁴

While Shannon’s primary purpose of the article in the current analysis is to achieve an irenic resolution to contentious debates about abortion, there are further implications for manipulation of the human genome. Shannon builds upon these conclusions in two later works about the morality of genetic research and its consequences for understanding human nature.²⁵⁵ In theological terms, the ethical use of

²⁵² Shannon and Wolter, “Reflections on the Moral Status of the Pre-Embryo,” in Shannon ed., *Bioethics*, 37-40.

²⁵³ *Ibid.*, 44. In a later article, Shannon revises this time downward to two weeks. See Shannon, “Delayed Hominization: A Response to Mark Johnson,” 734.

²⁵⁴ *Ibid.*, 51-52, 54.

²⁵⁵ Shannon, “Human Nature in a Post-Human Genome Project World,” in Harold W. Baille and Timothy K. Casey ed., *Is Human Nature Obsolete? Genetics, Bioengineering, and the Future of the Human Condition* (Cambridge: The MIT Press,

science and technology are rooted in human nature, understood as part of the created order.²⁵⁶ As such, the core principle of ethical genetic research lies in its prior respect for human dignity.²⁵⁷ Thus, there is a “positive value” in this kind of scientific exploration but not an “absolute right” to it. The good of knowledge from genomic inquiry thereby must be placed in due proportion with regard to the good of protecting persons from undue risk of harm.²⁵⁸

Here again, Shannon’s understanding of personhood is a decisive component of his qualified approbation for embryonic research and subsequent manipulation of the human germ line. He distinguishes between “dignity” and “value.” Persons have dignity; natures have value.²⁵⁹ Human nature deserves value, but it is not identical with a human person, which deserves protection. He turns to proportionate reasoning as the justification for embryonic research.

The destruction of embryos is indeed always a significant disvalue because they are killed. Nonetheless because they are prepersonal, such killing is not murder. However, such a premoral disvalue needs to be offset by equally significant premoral and moral values.²⁶⁰

2005), 269-316; and “The Roman Catholic Magisterium and Genetic Research: An Overview and Evaluation,” in Ronald Cole-Turner ed., *Design and Destiny: Jewish and Christian Perspectives on Human Germline Modification* (Cambridge: The MIT Press, 2008), 51-72.

²⁵⁶ Shannon, “The Roman Catholic Magisterium and Genetic Research,” 53.

²⁵⁷ *Catechism of the Catholic Church*, paragraph 2295.

²⁵⁸ Shannon, “The Roman Catholic Magisterium and Genetic Research,” 57. In this context, it seems that Shannon rejects Grisez’s claim of knowledge as a basic, absolute good.

²⁵⁹ *Ibid.*, 62.

²⁶⁰ *Ibid.*, 67; cf. McCormick, *Ambiguity in Moral Choice*, 93.

Shannon argues that current embryonic stem cell techniques have not sufficiently advanced to be applied with safety and efficacy. This caution notwithstanding, he claims that protocols can be developed by investigators and funded by the government.²⁶¹

He closes with an appeal to Catholic Social Teaching by attempting to locate the debate about genetic research within the larger needs of the U.S. healthcare system. Given the expense of such research and the limited resources to be allocated, there must be further discussion regarding the social justice aspects of funding embryonic research. While Shannon claims that this argument is separate from that of the moral status of the human embryo, it also seems to qualify further his use of proportionate reasoning to resolve the matter. These social justice considerations give him pause to weigh the short- and long-term consequences of genetic inquiry.

Embryonic Research and Human Transcendence

The analysis thus far might raise the question: does Shannon's account of "human nature" have any impact upon his notion of justice? He seems to hold that nature ought to be justly valued to some degree, but that it has no decisive role in questions about the moral status of the pre-embryo. In another writing though, Shannon comments on the influence of the Human Genome Project for understanding human nature. Reacting to claims from scientific materialists (represented in this essay by evolutionary biologist Richard Dawkins and sociobiologist E.O. Wilson), Shannon cautions them against limiting the range of discourse about human nature to mere biological reduction. In other essays, he focuses on the individual act of embryonic research. But here, he concentrates

²⁶¹ Ibid., 68.

on the larger implications of freedom for moral analysis as a continuous, ongoing endeavor.²⁶²

Utilizing insights from medieval Christian theology and contemporary transcendental methods, Shannon argues that the natural world disclose a possibility of transcendence beyond any claim of scientific materialism. He builds this case upon three foundational analyses. The first is that materialistic investigations of nature do not adequately explain the whole. For example, Wilson describes genes as “holding culture on a leash.” As such, cooperative strategies must be essentially selfish, and any altruism that is *unilaterally* directed toward others is the “enemy of civilization.”²⁶³ Sociobiological accounts of freedom and altruism describe behaviors, which are indicative of, but not reducible to, natures.²⁶⁴

The second is a *Ressourcement* of John Duns Scotus’ concept of nature. Shannon claims that Duns Scotus’ concept of nature is determinative and has explanatory value for behavior. But in the will in which those behaviors are realized, two further distinctions can be made to reflect a human nature behind one’s choice, which is not predetermined by biology. One is *affectio commodi*, by which the agent seeks the good for himself or herself. The other is *affectio iustitiae*, by which the agent seeks the good for its own sake.²⁶⁵ Both aspects have a bearing on justice. The *affectio commodi* lends itself toward the perfection of an individual. According to Duns Scotus, while *affectio commodi*

²⁶² Shannon, “Human Nature in a Post-Human Genome Project World,” 293.

²⁶³ *Ibid.*, 275, 285.

²⁶⁴ *Ibid.*, 282.

²⁶⁵ *Ibid.*, 290.

essentially seeks one's self-interest, it is nevertheless part of a divinely-created order.²⁶⁶ The *affectio justitiae*, or affection for justice, goes beyond an understanding of freedom as simple choice for one's own benefit. In other words, *affectio justitiae* allows the agent to value another being irrespective of personal or social utility.²⁶⁷ In this sense, *affectio justitiae* transcends the "natural state" that is indicated by *affectio commodi*.

The third foundation of Shannon's argument concerns the limitation of genetic knowledge that has been outlined in the previous essay, and the tendency to overestimate the moral clarity that comes from that information. Using the transcendental theology of Karl Rahner, Shannon insists that all matter is part of a dynamic system, and that human persons are beings "in whom the basic tendency of matter to find itself in the spirit by self-transcendence arrives at the point where it definitively breaks through."²⁶⁸ This perfection is an addition, rather than a transformation, and is mediated through the "historical patterns of God's self-communication." By contrast, naturalistic accounts of human nature fall short because of their refusal to admit any transcendence in reality.

In synthesizing these three parts of Shannon's argument, two points can be made. One, Duns Scotus' *affectio justitiae* "checks" human nature, but not as an opposing force.

²⁶⁶ Ibid., 291: "In fact, to ignore our perfection or give it no standing in our actions is an act of *injustice* to oneself" (emphasis added).

²⁶⁷ Ibid., 295. Citing Allan B. Wolter, Shannon describes four characteristics of the *affectio justitiae*. "First, it gives us the capacity to love a being for itself rather than for what it can do for us. Second, it enables us to love God for who god is rather than for the consequence of God's love on us. Third, the *affectio justitiae* allows us to love our neighbor as ourselves, thereby making each individual of equal value. Finally, such a seeking for the good in itself leads to a desire to have this good beloved by all rather than being held to oneself" [Ibid., 292; see Wolter, "Native Freedom of the Will as a Key to the Ethics of Scotus," in Marilyn McCord Adams ed., *The Philosophical Theology of John Duns Scotus* (Ithaca: Cornell University Press, 1990), 150].

²⁶⁸ Ibid., 298. See Karl Rahner, "Christology within an Evolutionary View," in *Theological Investigations 5*, trans. Karl Kruger (New York: Crossroad, 1983), 164.

Instead, it gives direction to human action beyond self-seeking behaviors. Medieval understanding of freedom does not reduce choice to a particular event and contrasts with normative “American expressions of freedom.”²⁶⁹ By the same token, this orientation should not be confused with Aristotelian accounts of ethics. The free moral agent is not concerned *only* with self-perfection, but can act toward others in ways that include charity, forgiveness, reconciliation, and mercy. In short, human freedom is the stuff of “grace and glory” in which self-actualization can take place.²⁷⁰

Before leaving this discussion of Shannon’s work as it relates to justice, it is useful to point out two similarities and one contrast to Cahill’s methodology. Like Cahill, Shannon’s later work is heavily influenced by Catholic Social Teaching.²⁷¹ While he does not share the tradition’s concern for nascent human life, Shannon nevertheless envisions medical care as part of an overall structure of a health system that privileges human dignity and social interdependence over and above its technological aspects. His appropriation of Duns Scotus’ categories of *affectio commodi* and *affectio iustitiae* supplies a foundation for human dignity beyond social worth. Shannon also utilizes casuistry as an illuminative strategy in resolving hard moral cases. As discussed in Chapter One, casuistry is not an endeavor for its own sake, but is set within the context of the moral striving of the agents involved and their moral community. Cahill sees casuistry as an inductive and dialogical method for achieving the common good.²⁷² Shannon argues similarly that casuistry does not solve *a* problem, but helps a moral agent

²⁶⁹ *Ibid.*, 293.

²⁷⁰ Rahner, “Christology within an Evolutionary View,” 171.

²⁷¹ See David J. O’Brien and Thomas A. Shannon (Eds.), *Catholic Social Thought: The Documentary Heritage* (Maryknoll: Orbis Books, 1992).

²⁷² Cahill, *Bioethics and the Common Good*, 18-20.

to recognize the importance “of the development of moral character and a theology of love.” The traditional sources of moral wisdom shed light on the situation in a relevant way.²⁷³ By prudently appreciating a situation, one can use casuistry to resolve a hard case in a virtuous manner.²⁷⁴

Even though Shannon and Cahill employ similar methods in their respective bioethical inquiries, they come to opposing conclusions regarding genetic research and intervention. Shannon’s concern for social justice does not dissuade him from arguing that further research and implementation of genetic protocols should be more widely pursued and publicly funded. However, his argument seems to overlook the consumerist culture which is prevalent in North Atlantic countries. By contrast, Cahill fears that the distribution of new germline technologies will be accomplished through market forces.²⁷⁵ While Shannon is optimistic that human self-transcendence can be aided by genetic interventions, Cahill worries that genetic “shortcuts” can undermine the social practices that elucidate such prized human traits.²⁷⁶ The dissertation will address Cahill’s view of genetic technology more pointedly in the Epilogue.

Margaret Farley: Justice and Compassionate Respect

Chapter One introduced the idea of local and global concerns within the context of public discourse, and the potential value that a natural law approach might bring to that endeavor. Natural law, which is rooted in the complexities and commonalities of human

²⁷³ James F. Keenan and Thomas A. Shannon (Ed.), *The Context of Casuistry* (Washington: Georgetown University Press, 1995), xxii.

²⁷⁴ *Ibid.*, 229.

²⁷⁵ Cahill, “Germline Genetics, Human Nature, and Social Ethics,” 159.

²⁷⁶ *Ibid.*, 156.

experience, can advance a moral argument that transcends the particular values of each community whose voices are represented in the larger debate. Cahill's critical analysis of the natural law tradition has noted that both "public sphere" and "human experience" have been rooted historically in male paradigms. Likewise, Enlightenment thought was dominated by men's experiences and those experiences were often amplified into universal norms. By contrast, feminist ethics attempts to deal with the polarity of particular versus universal concerns by including women's perspectives into considerations of human experience.²⁷⁷

This final chapter portion briefly sketches the contributions of controversial American feminist scholar Margaret Farley toward this greater cognizance of women's experience as it relates to justice in Catholic bioethics.²⁷⁸ Her attempts to wrest moral norms from abstract and essentialist universals are a constant theme in essays that span four decades of her academic career. At the same time, she avoids falling prey to what Cahill calls a "nagging relativism" in feminist thought that insists there are no universals by rooting her ethical writings in an obligation of respect for concrete persons within a real context, no matter how diverse or particular it may be.²⁷⁹ This section analyzes three interdependent elements in Farley's conception of justice. The first is personal freedom,

²⁷⁷ Charles E. Curran, *The Catholic Moral Tradition Today: A Synthesis* (Washington: Georgetown University Press, 1999), 22.

²⁷⁸ On March 16, 2012, the Congregation for the Doctrine of the Faith promulgated a *Notification* regarding Farley's book, *Just Love: A Framework for Christian Sexual Ethics*. While this dissertation does not explore the larger claims of her book regarding homosexuality, masturbation, or divorce and remarriage, it cites illustrative examples of the foundations for her arguments for a universal obligation to respect persons.

²⁷⁹ cf. Cahill, "Notes on Moral Theology: Feminist Ethics 1989," *Theological Studies* 51, no.1 (March 1990), 63.

which is found in the context of the second, the common good. The third, a common morality, is the foundation for both.²⁸⁰ Together, they resist tendencies to bifurcate justice into “personal” and “social” forms. They also spur further reflection upon the kind of public discourse analyzed in Chapter One.

Personal Freedom and Embodiment

The Catholic tradition has insisted that human freedom and autonomy define moral agency. Moral analysis, which includes the object, intention and circumstances, presumes that an act must be free. The same tradition also claims that humans are also social beings. Because both are a significant part of Catholic social thought, Farley contends that there must be an interdependence of individual relations and social institutions that are part of the meaning of justice.²⁸¹ But this relationship is rendered *prima facie* problematic because of the wide historical exclusion of women from public life. Utterances about human universals, even as they apply to individuals, are difficult to maintain because of “the historical, the particular, the situated, the contingent” upon which all experience is bound.²⁸²

²⁸⁰ Here, I am aided greatly by Cahill’s own analysis of Farley’s work. While Cahill applies these categories in the context of sexual ethics, she builds them upon Farley’s larger paradigm for Christian feminist ethics. Thus, I am prepared to argue that they can be applied a wide range of Farley’s thought to include bioethics. See Cahill “Feminist Theology and Sexual Ethics,” in Maura Ryan and Brian F. Linnane, *A Just and True Love - Feminism at the Frontiers of Theological Ethics: Essays in Honor of Margaret A. Farley* (Notre Dame: University of Notre Dame Press, 2007), 22.

²⁸¹ Margaret A. Farley, *Compassionate Respect: A Feminist Approach to Medical Ethics and Other Questions* (New York: Paulist Press, 2002), 24-39.

²⁸² Farley, “Feminism and Universal Morality,” in Gene Outka and John Reeder ed., *Prospects for a Common Morality* (Princeton: Princeton University Press, 1993), 176.

Farley employs the free human agent as her point of departure. Autonomy and relationality are the obligating features that ground her universal requirement to respect persons in all ways they relate to one another as ends in themselves. This practical method is built upon her inquiry of whether it is even possible, given the perspectival nature of knowledge, to identify common elements in *any* human experience (male or female) that does not suppress “voices different from one’s own and without mistaking the contingent for the essential.”²⁸³ It is practical because human relationality demands the task, no matter how wary, to sketch the contours of human nature at least be undertaken.²⁸⁴

The obligating features of Farley’s argument deserve further analysis. First, Farley sees autonomy as the capacity for free choice, and it is constitutive of respect.

Why? Because freedom of choice as we experience it is a capacity for *self-determination* as embodied, inspirited beings, which means a capacity to choose not only our own actions but our ends and our loves. It is a capacity therefore to determine the meaning of our lives and, within limits, our destiny.²⁸⁵

To respect autonomy means not only to acknowledge one’s ability to set her or his own agenda, but also to refrain from violating another’s autonomy by unfairly absorbing him or her into that agenda. Second, the idea of respect itself already implies relationality at work. Farley understands that this human capacity for relationship is not simply instrumental in scope, insofar as persons must depend on one another for their survival.

²⁸³ *Ibid.*, 177.

²⁸⁴ Farley, *Just Love: A Framework for Christian Sexual Ethics* (New York: Continuum, 2007), 211: “It seems to me that we cannot reasonably assert either that we know nothing at all about the human person as person, or that we have nothing of a shared knowledge in this regard.”

²⁸⁵ *Ibid.*, 212.

²⁸⁶ Rather, it is obligating because it is an ability to open oneself to others while simultaneously reaching out to them. Freedom, then, has as its end the sake of relationship.²⁸⁷

Farley's obligating features of respect for persons are mediated by her concept of embodiment. Respect for persons as a universal moral principle has been advanced especially by Kant as a grounding premise for his Categorical Imperative. While it is a laudable rule to treat others as ends in themselves in all situations, the universality offers only one way to respect others as ends in concrete situations. Or, as Farley puts it, the problems of Kantian autonomy stem from the understanding of a "disembodied self."²⁸⁸ Contrasting with Kantian respect for persons, Farley's understanding of embodied autonomy allow for a universal principle to be applied differentially and contextually.²⁸⁹ Cognizance of the particularity and diversity of others provides "the content of the obligation to respect persons," which in turn provides the norms for "true caring."²⁹⁰ Embodied agency gives rise to universal claims to rights, and recognizes that they can be fulfilled in manifold ways.

Farley's notion of embodiment transcends the Enlightenment dualism that she often criticizes in her work. The body transcends mere instrumentality for the sake of free

²⁸⁶ Ibid., 213.

²⁸⁷ Ibid., 214.

²⁸⁸ Farley, "A Feminist Version of Respect for Persons," *Journal of Feminist Studies in Religion* 9, nn.1-2 (Spring-Fall 1993), 187-188: "Here, seemingly, is a freedom that needs no social context, no affective ties, no history of desire. Here is a rational freedom that opposes duty to inclination and remains deaf to claim from anything but its own logic."

²⁸⁹ Farley, *Compassionate Respect*, 38: "Respect cannot be separated from the obligation to respect and to care for their bodies (or better, for them as embodied)."

²⁹⁰ Ibid., 39.

choice. Her account of autonomous embodiment as a vehicle of self-transcendence also contrasts with Thomas Shannon's discussion of the topic in the previous section.

Shannon, following Karl Rahner, sees the capacity for transcendence arising from within the *matter* of the universe. Moreover, the process of perfection is additive rather than transformative in Shannon's view; a new creation is not born. But Farley claims that

The capacity for free choice is the capacity to introduce something new into what one is – as when we ratify love in a new way, nurture an attitude that is only partially formed, develop talents in this way or that, attempt to gain possessions or to let them go, respond to a call that still beckons, or chooses against all calls and all loves and hence end up alone.²⁹¹

The implication here is that a free choice generates a new context, and hence a fresh opportunity for the embodied agent to determine oneself. Part of this new context entails the relationships that one has formed with others.

Farley's concept of an embodied, contextualized person deserving of respect is the foundation of her formal ethical principle of justice: "persons and groups of persons ought to be affirmed according to their concrete reality, actual and potential."²⁹² Once again, capacity for freedom engenders a call to relationality. It is necessary, then, to analyze the other two elements of Farley's work. The next portion describes her description of the common good, and its role in providing better understanding of her notion of justice.

The Common Good and Its Relation to Justice

Since her earliest writings, Farley has resisted attempts to dichotomize the personal and social aspects of justice. She employs a concept of the common good,

²⁹¹ Farley, *Just Love*, 128-129.

²⁹² *Ibid.*, 209.

gleaned from Catholic Social Teaching, to demonstrate the complementarity between justice as fairness and justice as rightly-ordered social relations.

From the standpoint of the Roman Catholic ethical tradition, it is a mistake to pit individual good against the good of the community, or the social good, when what is at stake is the fundamental dignity of the individual. If it is the case, then, that the reality of woman is such that a just love of her demands that she be accorded fundamental personal rights, including equality of opportunity in the public world, then to deny her those rights is inevitably to harm the common good.²⁹³

Farley's notion of the common good provides meaning for justice in social relations that does not neglect the individual good. One is not reducible to the other; both remain independent from one another. At the same time, they are not isolated from each other, either.

In the realm of bioethics, Farley's continues to apply this complementary concept of the common good to the HIV/AIDS pandemic, especially in Africa. In this real context, justice can be applied in at least three ways. Regarding the moral norms from Catholic teaching on sex and gender, Farley insists that a woman lacks personal justice due to the "uncritical imposition of traditional rules."²⁹⁴ If anything, it has added to the shame and stigmatization associated with AIDS. Moreover, it may even contribute to its spread by refusing to allow infected partners to use condoms or other "safer sex" practices.²⁹⁵ A distinct but related issue to the first is the institutionalized victimization of African women.

²⁹³ Farley, "New Patterns of Relationship: Beginnings of a Moral Revolution," *Theological Studies* 36, no.4 (1975), 644.

²⁹⁴ Farley, *Compassionate Respect*, 12.

²⁹⁵ Farley, "Partnership in Hope: Gender, Faith, and Responses to HIV/AIDS in Africa," *Journal of Feminist Studies* 20, no.1 (Spring 2004), 139.

Stories abound, for example, of the exile or even stoning of women infected by their husbands, and of unmarried women raped and infected by men who think that sex with virgins will prevent or cure their own infection by the AIDS virus.²⁹⁶

Just and compassionate social policies, rooted in the Preferential Option for the Poor, should seek to protect and empower women. This goal can be accomplished by reflecting upon sexual norms within the larger milieu of societal function and dysfunction.²⁹⁷

Thirdly, justice is applied to both individuals and the community through a concerted effort to allocate the necessary life-saving medicines to combat HIV. Farley has argued at length that current ethical methodologies like “principlism” and “ethics of care” stumble in their efforts to resolve the issue justly for opposite reasons. The former cannot reasonably relate to patients as unique persons, and the latter cannot formulate adequate criteria for “true caring.”²⁹⁸ Reiterating the demand to respect persons, Farley calls for a collaborative, cross-cultural approach toward allocation beyond market capitalism.

In fact, Farley has attempted to put the Preferential Option for the Poor into practice by leading one such cooperative effort: All-Africa Conference, Sister to Sister (AACSS).²⁹⁹ The product of a long collaboration with academic, government, and religious organizations, AACSS provides collegial and financial partnerships to gather women for training in the religious dimensions of the struggle against HIV/AIDS.³⁰⁰ AACSS represents not only a drive to develop the personal freedom and empowerment of

²⁹⁶ Farley, *Compassionate Respect*, 10-11.

²⁹⁷ *Ibid.*, 18-19.

²⁹⁸ *Ibid.*, 39.

²⁹⁹ In two essays, Cahill speaks highly of Farley’s efforts in garnering international support for AACSS. See Cahill, *Theological Bioethics*, 166-168; and Cahill, “Feminist Theology and Sexual Ethics,” 40-43.

³⁰⁰ Farley, “Partnership in Hope,” 147.

African women, but also a commitment to advance the common good in their societies. One might ask how these various disciplines can hope to collaborate effectively with their disparate methods, values, and goals. Within these interdisciplinary bonds of relationships, there is in Farley's project yet a third element – a concept of common morality – which requires further analysis.

Common Morality and Public Discourse

Farley's notion of the common good places limits on what can be accomplished externally from a particular social context. It is unjust to impose externally any action purporting to be help that does not arise from a respect for other persons within their concrete situation. Historical examples include various forms of paternalism and colonialism. It is problematic to know "what is good" for someone without having a prior relationship with that person. How, then, can one understand the criteria for just caring in light of the perspectival nature of knowledge? Farley describes her attempts to answer the question as a "chastened realism:"

One that acknowledges the partiality of all knowledge and the influence of social constructions of meaning on all that we know, but that nevertheless keeps looking to understand things as they are, as best we can.³⁰¹

The criteria for just social practices are essentially dialogical, and require the participation of all who are affected by them.

Given the wide diversity of human experience, Farley is challenged to find a common ground that roots morality in some universal experience. As Michael Walzer

³⁰¹ Farley, *Compassionate Respect*, 90, n.28.

notes, there must be *some* degree of sameness before one can recognize otherness.³⁰²

Farley attempts to locate demand for respect in the experiences of love and suffering. Unlike the Kantian idea of respect for persons, grounded firmly in reason, Farley insists that suffering gives rise to compassion as the primary component of respect. Whereas the cognitive faculty can identify the poor circumstances of another, it is the affective part that discloses “an assumption of more acute access to knowledge of the concrete reality of others.”³⁰³ While it is not likely to generate a detailed list of justice’s requirements, compassionate respect can detect unjust social practices across cultures. Farley’s efforts in support of the AACSS are emblematic of her commitment to this common morality.

Expanding these three-fold elements into the church’s political agenda, there is a clear connection to be made between theology and public discourse. Farley sees three major problems with the church’s myopic focus upon abortion as the axial public issue.³⁰⁴ Taken together, they undermine the effectiveness of the church’s witness in the public forum. The first is a lack of credibility regarding abortion. Besides its staunch opposition to most forms of contraception, the church has generally excluded women’s issues from its considerations surrounding abortion. The church must address its own relation to women before it can be effective in combating overly-permissive abortion policies. The second is what Farley calls the “extreme politicization” of abortion and related issues. Here, she refers to attempts to recriminalize abortion. At the same time, she criticizes the church’s lack of nuance regarding its rhetorical use of the “moment of conception.”

³⁰² Walzer, *On Toleration*, 89.

³⁰³ Farley, *Compassionate Respect*, 39.

³⁰⁴ Farley, “The Church in the Public Forum: Scandal or Prophetic Witness?” in Charles E. Curran and Leslie Griffin ed., *The Catholic Church, Morality, and Politics* (New York: Paulist Press, 2001), 209-213.

Following Thomas Shannon, she claims that embryonic biology admits no such moment.³⁰⁵ The third is the opportunity cost of a near-exclusive emphasis on abortion. Alluding to the United States Bishops' 1996 statement, "Political Responsibility," she lists eighteen pressing issues for the nation, with abortion at the top of the alphabetical list. She wonders at the possibilities of success if *all* of them received the same attention as abortion.

Farley also notes the tension between the internal discourse of the Catholic Church and the external arena in which it speaks. Echoing a few of the sentiments raised in analysis of the post-conciliar documents, Vatican II represents a turning point in the life of the church insofar as it engaged the problems of the modern world. Farley claims that this development was received with "trust and confidence" by those outside the church.³⁰⁶ Unfortunately, as previous sections of this dissertation have also noted, there has been a general repression of internal debate over moral issues. Theologians have found themselves at odds not only with local bishops and other representatives of the church's magisterium, but also with "self-appointed groups of lay and clerical monitors of Catholic orthodoxy."³⁰⁷ She argues that the damage to the church's credibility is more than a matter of bad press. It also limits the church's capacity to participate effectively. Farley moves toward a potential resolution of the conflict by urging the church's hierarchy to place abortion within the complex of other pragmatic and pressing concerns.

³⁰⁵ Ibid., 212. Farley cites Shannon, "Moral Status of the Pre-Embryo." See Ibid., 221, n.18.

³⁰⁶ Ibid., 217.

³⁰⁷ Ibid., 216.

Founded on her three-fold obligation to respect persons, she claims that participation in the public forum entails requires a spirit of humility, respect, and compassion.³⁰⁸

Finally, two comparisons can be made between Farley's and Cahill's respective projects. On the one hand, Farley seems to emphasize to a greater degree the *internal* strife of the ongoing debates that constitute the church's living tradition. Her concern is that the church's role in the open forum will be undercut by what she perceives is a destructive force of suppression. On the other hand, Cahill is more focused on the valuable *external* contribution that theological voices can make toward public discourse. This is not to say that Cahill ignores the internal debate. Instead, she identifies the interior arguments as part of the self-critical and self-limiting aspects of the community which is participating in the discourse.³⁰⁹ In spite of this difference, both conclude that there is a prophetic aspect to the church's participation in the public sphere. There is also a legitimate role that offers reasons for political action that can be rationally defended to those outside the tradition and beyond standard liberal accounts of free choice.

Moreover, there is a shared concern for the common good which in turn influences each scholar's notions of justice. It is further interesting to note how they differ with regard to locating the meaning and content of justice in their respective accounts of the common good. In Farley's case, it offers a general *meaning* for justice in social relations, while particularity provides the content of justice's demands through compassionate respect. In Cahill's work, the common good provides justice's *content*, while ancillary notions of solidarity and equality help to define justice's meaning in

³⁰⁸ Ibid., 220.

³⁰⁹ Cahill, "Can Theology Have a Role in 'Public' Bioethical Discourse?" 13.

particular contexts.³¹⁰ This difference might account for their contrasting emphases in the context of public discourse. For Farley, it is scandalous to engage in political discourse when she perceives so much injustice within the church. Unless the church can effectively address these problems, its message will necessarily be weakened. By contrast, Cahill argues that the common good demands the participation of *all* peoples, and that this is not just an ideal but an incipient form of life. Thus, it is unjust to exclude oneself from the liability to serve the common good.

Summary and Conclusion to Chapter Three

Because of the vast diversity and history of Catholic thought, it was necessary to limit the scope of the theological views on justice to three general categories: select statements from the Catholic hierarchy since Vatican II, recent reinvigoration of the Catholic virtue tradition, and a brief analysis of justice in Catholic bioethics. In analyzing these magisterial documents, there is an overwhelming emphasis on “social justice” and “the common good.” In her later writings, Cahill’s conception of justice is rooted within the Catholic social tradition. Like the U.S. Bishops’ *Economic Justice for All* and John Paul’s social encyclicals, Cahill is concerned with pragmatic yet just solutions to pressing ethical issues.

The accounts of justice also explored writings from American moral theologians Jean Porter and James Keenan, who represent the reinvigoration of virtue ethics within Catholic Natural Law tradition. Dissatisfied with novel post-conciliar interpretations of the natural law from Basic Goods theorists, Porter argues that virtues are paradigmatic

³¹⁰ Cahill, “Sex, Gender, and the Common Good,” 145-146.

rather than universal in scope. Relying upon MacIntyre's work, she envisions the community as the point of departure for individual discernment of right human action. The natural law provides a space moral reflection, rather than readymade answers to moral questions. Her notion of justice underscores the individual good over the common good in Aquinas, which contrasts with Cahill's work in several ways to be discussed in the next chapter. Additionally, Keenan argues that the traditional list of cardinal virtues is inadequate to guide contemporary moral agents. Building upon a relational anthropology founded upon love, he proposes a new list of virtues: justice, fidelity, self-care, and prudence. Because humans are relational in a general manner, justice is the comprehending virtue that dictates correct interpersonal interaction. Keenan's anthropological claims are very similar to Cahill's, which argue similarly that justice ought to be the overriding principle that determines right action.

Finally, since this dissertation concludes by way of analysis of Cahill's work in a bioethical context, it was necessary to sketch the contours of scholarship on justice in Catholic bioethics. The works of Thomas Shannon and Margaret Farley were selected because of their resonance with Cahill's essays, and because of their occasional scholarly collaboration with her. Shannon's work emphasizes distributive justice in medical ethics. He employs methods from the Catholic social tradition to place genetic research within the larger context of the needs and goals of American medical care. Moreover, his *Ressourcement* of Duns Scotus' idea of *affectio justitiae* allows the agent to value another being beyond one's personal or social utility. In spite of similar points of departure, Shannon and Cahill arrive at opposing conclusions regarding genetic research and intervention. Margaret Farley's obligation to respect persons is founded upon three,

interdependent concepts: free choice, the common good, and a shared morality. Farley finds this common ground in the face of the experience of suffering, which gives rise to compassion. Compassionate respect allows the moral agent to help the individual sufferer in a just manner and to criticize the unjust situation in solidarity with him or her. Farley's thoughts on the church's role in public discourse are also emblematic of her tripartite foundation of respect. While the church has much to offer in the political realm, it creates scandal because of its poor treatment of women and its exclusive focus on abortion. Cahill's and Farley's separate interpretations of the common good locate the meaning and content of justice at different points. For Cahill, the common good supplies the content; for Farley, it provides the meaning. This contrast may be two sides to the same coin, since both require supplementary notions of particularity, solidarity, and equality to fill out the complementary aspects for justice's meaning (for Cahill) and content (for Farley) in their respective accounts.

In the next chapter, the dissertation employs a chronological reading of Cahill's work to analyze several significant developments in her ideas about justice over time. The six accounts of justice under consideration in these two preceding chapters will serve as guideposts to help find points of continuity and contrast with her own. As will be demonstrated, there are many points during her writing career where her notions of justice resonate with one or more of the scholars represented here and in Chapter Two. At the same time, Cahill's complex notion of justice seems to transcend all of them. While she has not yet put forth a fully-developed theory of justice, her various applications of justice – as cardinal virtue and as a theological or political principle – can be constructed into a coherent unit. This dissertation refers to this unified, synthetic whole as

“collaborative justice.” In turn, this holistic, synthetic account, gleaned from the wide range of her scholarship, can offer a method for theological voices to participate in future public discourse about bioethics in an effective manner.

CHAPTER 4

JUSTICE IN THE WRITINGS OF LISA SOWLE CAHILL

With the aid of the examination of significant philosophical and theological accounts of justice from Chapters Two and Three, the present chapter builds upon those analyses to explore Cahill's writings on justice within her intellectual context. As the previous chapter demonstrated, the various referents for "justice" in recent scholarship are clearly divergent. Even individual scholars' understandings of justice expand or narrow over time. For instance, Rawls' thought develops considerably between his broadly-conceived *Theory of Justice* in 1971 and its focused refinement two decades later in *Political Liberalism*. Similarly, it is unsurprising to discover that Cahill's scholarly reflections have shifted foci throughout the course of more than thirty-five years of inquiry. Like many Catholic ethicists of the mid-1970s, Cahill's early work engaged the contentious methodological debates over post-conciliar applications of natural law theory. In the 1980s and 90s, her research turned to pressing and persistent issues of the day like sex, gender, war, and poverty, among others.

Cahill's most recent work attempts to construct theoretical and foundational frameworks that are applicable across a broad range of ethical and theological issues. In bioethics, she designs participatory and collaborative strategies aimed at achieving equitable health-care access for all, especially among the most vulnerable populations of the world's diverse societies. In fundamental moral theology, she formulates a Christian

political and economic worldview for the twenty-first century, emphasizing personal and societal responsibility toward the common good. In foundational systematic theology, Cahill's latest work exemplifies a vital shift toward Christology and spirituality not explicitly found in her previous thought.¹ It remains to be seen – indeed, anticipated – precisely how this Christological turn will influence her future reflections on ethics.

A chronological reading elucidates a few consistent motifs in Cahill's essays on ethics. One of them is the feminist perspective that she brings to Catholic natural law ethics. Another is her firm commitment to justice, which is also informed by her feminist standpoint. While it is clearly a prominent theme throughout her work, her conception of justice – like that of other thinkers considered in this dissertation – has evolved over time. This development seems to correspond with some of the shifts in her research interests, which were previously mentioned. Her early view of justice is mostly consistent with a Thomistic understanding of the virtue tradition. Later essays develop an idea of justice that is not only a personal virtue that guides a moral agent's action *toward* others within an interpersonal context, but is also an ongoing enterprise that engages social action *with* others toward the common good. It is also important to note that this latter view of justice is conjunctive rather than disjunctive with her earlier work; she does not abandon personalist ethics so much as situate it within a wider milieu. Therefore, an historical analysis of Cahill's writings is warranted in order to discover the context and significance of this development in her notion of justice.

¹ Cahill, "Christology, Ethics, and Spirituality," in Tatha Wiley ed., *Thinking of Christ: Proclamation, Explanation, Meaning* (New York: Continuum, 2003), 193-210; "The Atonement Paradigm: Does It Still Have Explanatory Value?" *Theological Studies* 68 (2007), 418-432; and "Christian Theology and Ethics," in Regina Ammicht Quinn, et al. ed., *Evil Today and Struggles to Be Human* (London: SCM Press, 2009), 74-75.

The research for this chapter divides Cahill's ethical writings into three temporal units in order to synthesize them into a coherent whole. The first section considers her early writings, spanning from 1976 until roughly 1990, in which her prevailing notion of justice is related to her deconstruction and critique of Catholic personalist ethics. Influenced by feminist and ecumenical interpretations of the natural moral law, Cahill's project strives for greater inclusion of women's experience and communal referents for ethical decision making. While she premises her arguments upon Catholic values such as fidelity to scripture and love of neighbor, she rarely cites the Catholic social tradition during this part of her scholarship.

The second part describes a "transitional" period in Cahill's thought from 1990 through 1996. During this time, her writings in ethics and her notion of justice expand beyond strictly confessional issues (i.e., Catholic moral theology) toward concerns within the larger American political order. While she remains firmly rooted in the Catholic moral tradition, her project focuses greater attention to an American context in which, sadly, the voices of Catholic leadership seemed to have become less and less relevant. Much of this ground has already been covered in Chapter One's discussion of public moral discourse, but here it is integrated with and bolstered by Cahill's thoughts on justice. If there is a countercultural Catholic voice, it will resound more clearly as communitarian critic of a myopic focus upon autonomous choice as the decisive indicator of justice, rather than constabulary monitor of sexual matters and other moral norms. As Cahill and other Catholic theologians have exemplified, these concerns also remain the subject of ongoing debate within their own tradition.

The third unit analyzes Cahill's move from "local" communal concerns to pressing global issues from 1996 to the present. While her work continues to address a largely American audience, Cahill rarely writes without a purposeful eye toward international contexts, especially those of developing nations. This trend, which is at times implicit in her previous work, moves to the forefront in her most recent essays. She never loses a grasp on the particular, though, as she calls special attention to the plight of women across cultures. It is also during this latter period that her concept of justice expands most clearly from a nexus of personalist-local ethics toward a widely inclusive, immanently participatory schema. She also fully integrates the Catholic social tradition into her work.

Ultimately, the dissertation refers to Cahill's holistic, inclusive, and cooperative framework as "collaborative justice." As this chapter will demonstrate, Cahill's collaborative justice resonates to some degree with *all* of the accounts of justice considered in Chapter Two while simultaneously transcending them. As her notion of justice evolves, she begins to apply it futurist genetic technologies like human cloning and germline enhancement as a part of her participatory strategy of bioethics. Collaborative justice provides pragmatic answers to moral issues of wide social import more readily than the liberal, communitarian, and other theological justice concepts presented so far. These writings will be considered in the dissertation's Epilogue.

Early Writings: Justice in a Personalist Context

This first section analyzes Cahill's essays from 1976 through 1989, and discovers three overarching thematic elements during this part of her academic career. The first is

an enthusiastic defense of proportionalist ethical methodology, particularly the kind represented by Richard McCormick. This trend is most evident in her bioethical writings. The second is an inchoate Christian theory of sexual ethics that is eminently communal in its foundations. This theory evolves considerably over the next two decades. At the same time, her account of individual moral agency regarding sexual issues remains firmly rooted in the ethics of proportionate reasoning. The third major theme is a consistent assertion of the universality of “human dignity” throughout her early work in both medical and sexual ethics. Her conception of dignity is founded upon the theological claims of Catholic Social Teaching, albeit tacitly, over and above liberal notions of respect for persons. This methodological grounding in dignity serves as a springboard for the widening scope of her later work, which will be examined in subsequent sections.

During the early part of her career, Cahill rarely addresses the issue of justice *per se* and even then her notion of justice is more implicit than overt. Nonetheless, her inquiries into medical and sexual ethics are far more than a tangential discussion of justice. She raises related issues like the communal context for Christian ethics, hermeneutical uses of empirical data, and social implications of gender roles, all of which impact questions of justice.

Cahill’s Developing Communitarian Ethic: 1976-1981

Cahill’s earliest publications employ bioethical and theological principles developed from her dissertation, which applied the contrasting ethical methodologies of the Catholic moral theologian Richard McCormick and Methodist ethicist Paul Ramsey

to the case of euthanasia.² Chapter One of the present dissertation already described Cahill's 1979 analysis of their exchange regarding biomedical research.³ There, Cahill argues that their conflicting claims are neither founded upon a comprehensive Christian faith nor adjudicated by appeals to scripture and tradition. Because the two speak from related though distinct theological traditions, the outcome must be decided on other, secular grounds. These resources are provided by what she elsewhere calls "normative and descriptive" accounts of the human person, referring here to philosophical and empirical research.⁴ Though it is clear in the essay that she prefers McCormick's proportionalist approach to Ramsey's covenantal-deontological method, she envisions their debate as an intra-disciplinary matter regarding the role of religious commitment in medical practice and research.⁵

Much of her subsequent work further defends McCormick against charges of utilitarianism. In a 1981 article, her paradigm is McCormick's reconsideration of formal moral norms.⁶ McCormick suggests that exceptions to abstractly stated moral norms can be justified by reference to the special circumstances in which an act falling within the purview of a norm will be performed, and that a due "proportion" must exist between the

² Cahill, "Euthanasia: A Catholic and a Protestant Perspective" (PhD diss., The University of Chicago, IL), 1976.

³ Cahill, "Within Shouting Distance: Paul Ramsey and Richard McCormick on Method," *Journal of Medicine and Philosophy* 4, no. 4 (December 1979), 398-417. See also Richard McCormick and Paul Ramsey, ed., *Doing Evil to Achieve Good* (Chicago: Loyola University Press, 1978).

⁴ Cahill, *Between the Sexes: Foundations for a Christian Ethics of Sexuality* (Philadelphia: Fortress Press, 1985), 4-11.

⁵ Cahill, "With Shouting Distance," 415.

⁶ Cahill, "Teleology, Utilitarianism, and Christian Ethics," *Theological Studies* 46 (1981), 601-629; cf. Richard McCormick, *Ambiguity in Moral Choice* (Milwaukee: Marquette University Press, 1973).

value concretely sacrificed and the value realized by the choice. After providing a concise historical perspective regarding the development of deontological and utilitarian norms, Cahill moves to an evaluation of McCormick's early work on "consequentialism."

It is during the course of this analysis that Cahill's early notion of justice as a personal virtue becomes apparent. Following the moral taxonomy of the Scottish philosopher W.D. Ross, she argues that deontological and teleological models can be construed in terms of the priority they give to principles of justice and beneficence, respectively.⁷ Against the charge of "utilitarianism" leveled by McCormick's critics, Cahill counters that John Stuart Mill's notion of justice is identified with expediency, embodied in an "immediate, empirical, and quantifiable" aggregate concerned solely with maximizing welfare.⁸ Critics of proportionate reason like Germain Grisez, Paul Quay, and John Connery (who were mentioned in Chapter Two) have missed the point when they equate proportionate reason with "moral mercantilism," and instead refer to the binding authority of a traditional yet transient list of intrinsically-evil acts. Cahill counters that absolute moral norms simplify matters, but they do not attend adequately to potential disproportion between the ends sought and the values sacrificed. Nonetheless, as part of her critique of McCormick's earlier work, she notes that he has provoked his critics by failing to consider the long-term consequences of his case examples.⁹

⁷ Ibid., 604: "The inclusive or broad teleologist will claim that doing good is the essence of moral obligation, but that good must be distributed fairly, and that the equality and rights of all persons must be respected. The broad deontologist will claim that duty, obligation, and equal respect for persons define moral agency, but that duty contemplates responsibility for the consequences of one's acts."

⁸ Ibid., 605-606.

⁹ Here, Cahill refers largely to McCormick's rejection of absolute norms that prohibit specific physical acts in *Ambiguity in Moral Choice* and his responses to critics

Cahill's defense and critique of McCormick are founded upon prior, inherent, and communal values informed by a Christian tradition, which are found especially in Thomas Aquinas' writings. Cahill's approbation for McCormick's developing proportionalism is rooted in Thomistic natural law ethics.

One pertinent and undeniable shortcoming in McCormick's sort of innovative teleology is that, in the absence of a classical or medieval metaphysics and anthropology, it is no mean task to discern and agree upon the precise relations of values in the hierarchy upon which the theory depends... It is possible to enjoin or to prohibit absolutely certain resolutions of value conflicts only in the light of knowledge of the ways in which such resolutions impinge on human nature. This is why the achievement of some consensus on the hierarchical relations of potentially conflicting values, while so elusive, is so vital.¹⁰

Cahill claims that Aquinas' ethical project is teleological regarding communal welfare and personal morality, but at the same time protects the inviolability of individuals within that community.¹¹ In his later work, McCormick's concept of *telos* is more consistent with Thomistic notions of the common good insofar as it is not founded upon an exclusive maximization of social welfare. Furthermore, his teleological approach presumes that "to actualize human nature through conformity to the *ordo bonorum* is to follow the will of the Creator, and in doing so, to approach the *summum bonum*." Thus, his account of "human flourishing" refers both to the particular human in concrete moral agency and to humans generally in the "universal common good."¹²

A further instance of Cahill's applications of the natural law tradition can be found in a 1980 essay, where she constructs a framework toward a Christian theory of

throughout the remainder of the decade in "Notes on Moral Theology" from *Theological Studies* throughout the 1970s.

¹⁰ Cahill, "Teleology, Utilitarianism, and Christian Ethics," 617.

¹¹ *Ibid.*, 625.

¹² *Ibid.*, 612, 629; cf. *Gaudium et Spes*, 68, 84.

human rights.¹³ In the context of human rights, the “deontology vs. teleology” debate is transcended by God’s love, which makes a prior moral claim on the agent’s moral existence. In the Christian tradition, love of neighbor in light of this priority enjoins the agent’s duty to respect and protect another’s rights, rather than asserting one’s own claims.¹⁴ Citing Aquinas, she claims that the rational and free intellect is under an “unconditional obligation” toward virtue, whose goal orients human action toward happiness beyond one’s rational capacity, that is, friendship with God.¹⁵ Thus, human action is immanently social, constituted by participation with others in the common good.

As such, Cahill affirms the necessity of rights language in postlapsarian morality, since it must address the conflicts that develop between the free responses of persons to God in light of the needs of their neighbors. By focusing on the moral agent as responsible rather than claiming, Cahill believes that a common good approach to rights is able to avoid moral individualism on one extreme with totalitarian collectivism on the other.¹⁶ Moreover, a natural law approach to rights is privileged over utilitarian liberalism since the former proceeds from a universal order inclusive of a community in which individuals live. In a communal context, Cahill admits her argument implies that very few rights can be absolute. While food, education, and healthcare can be classified as essential goods necessary for human flourishing, their distribution can only occur in situations where they realistically can be found. In this early work, she finds only an absolute right to personal integrity, founded on the inviolable dignity of the human

¹³ Cahill, “Toward a Christian Theory of Human Rights,” *Journal of Religious Ethics* 8, no.2 (Fall 1980), 277-301.

¹⁴ *Ibid.*, 281.

¹⁵ *Ibid.*, 283; see also Aquinas, *ST I-II*, q.3, a.8 and q. 62, a.1.

¹⁶ *Ibid.*, 284.

person. An incomplete list of fundamental goods and a corresponding measure of the justice/injustice in a particular society are grounds for social criticism and action, but do not constitute rights in themselves.¹⁷

In synthesizing Cahill's early vision of moral theology from these articles, it is very interesting to find two clear, though limited, connections to Alasdair MacIntyre's conception of moral traditions in Cahill's insightful analysis of Christian teleology vis-à-vis Enlightenment utilitarianism. She takes Richard McCormick to task for reducing proportionalism to a consideration of mere acts rather than persons with his insufficient regard to human dignity. Her penetrating appraisal of his early proportionalism is balanced by her attentive consideration of the later theological development in his method. She claims that McCormick's later work is protected from charges of crass consequentialism to the degree that justice has taken precedence over beneficence in his subsequent ethical writings, and that it has attended to the adequate consideration of human persons.¹⁸ Justice is located in a requirement that all persons be treated equally with respect to social, material, and moral goods. Moreover, a theological grounding helps to determine just distribution of those goods. Here, Cahill – like MacIntyre – appeals explicitly to the Aristotelian-Thomistic tradition.¹⁹

¹⁷ Ibid., 291-292.

¹⁸ Cahill, "Teleology, Utilitarianism, and Christian Ethics," 625.

¹⁹ Ibid., 627-628: "In contrast [to utilitarian accounts of happiness], Aristotle and Aquinas have in common a vision of the *telos* which is limited in its potential range of distribution only by the receptivity or voluntary congruence to the good of those who seek it. For Aristotle, happiness consists in a certain way of being and doing available to all those who have cultivated the appropriate virtues. Aquinas follows Aristotle in this in discussing the moral life natural to humans. At the level of supernatural formation of character, the theological virtues, gifts of divine grace, so form reason and will that the agent is capable of beatitude, friendship with God, or union with God in His essence" (at p. 628).

Additionally, her analyses anticipate parts of MacIntyre's devastating evaluation of contemporary ethical discourse in *After Virtue*. For example, her insistence that the debate between McCormick and Ramsey is a wholly theological matter is consistent with MacIntyre's understanding that moral traditions are constituted by ongoing arguments about their purposes.²⁰ This is not to say that MacIntyre would agree with Cahill on this point. In fact, MacIntyre would likely see Ramsey and McCormick as arguing from two distinct moral traditions (i.e., covenantal deontology vs. proportionalist revisionism, respectively).²¹ By contrast, Cahill does not see their clashing methods as rival traditions, even though they speak from distinct confessional stances. Instead, she locates their exchange within the stream of an evolving but unitary Christian moral tradition.²² Within this tradition, this significant point of difference with MacIntyre is explained by Cahill's widely-inclusive methodology, which will be discussed at greater length in the next portion of this section.

At the same time, this convergence with MacIntyre's thought is limited in two important ways. In his postscript to the second edition of *After Virtue*, MacIntyre concludes with a summary of three critical arguments against his thesis, two of which are relevant to the present discussion.²³ The first questions the relationship of moral

²⁰ MacIntyre, *After Virtue*, 222.

²¹ MacIntyre, "Theology, Ethics, and the Ethics of Medicine and Health Care: Comments on Papers by Novak, Mouw, Roach, Cahill, and Hartt," *Journal of Medicine and Philosophy* 4, no. 4 (December 1979), 436-438.

²² MacIntyre, *Whose Justice*, 400.

²³ This postscript appears as Chapter 19 in *After Virtue*, 3 Ed., 265-278. The third criticism is the issue of relativism, but that issue is not pertinent here. Cahill mentions a "nagging relativism" in feminist ethics, which will be discussed in the following part of this section. See Cahill, "Notes on Moral Theology: Feminist Ethics 1989," *Theological Studies* 51, no.1 (March 1990), 63.

philosophy to history. Against these critics, MacIntyre argues that moral philosophers are, above all, proponents of claims of particular moralities to rational allegiance.²⁴ Cahill argues in a similar fashion throughout her later essays on public moral discourse. She takes the position that there is no form of philosophical discourse which is any less tradition-bound than religious ones. However, MacIntyre goes one step further than Cahill with his claim that one moral theory should transcend the limitations of its rivals.²⁵ In his case, he clearly privileges the Aristotelian account of virtues as the ground of morality. By contrast, Cahill builds her argument upon a premise that no method has a greater claim to rationality or a lesser allegiance to its tradition. Consequently, while MacIntyre seems to abandon any hope of rational consensus, Cahill sees broad, substantive agreement on particular issues as a normative expectation for public discourse. Further parallels and contrasts with MacIntyre's thought on this issue are also evident (especially the manner in which they utilize sociological and empirical data), but these will become more apparent in the next part of the chapter.

The second criticism concerns the relationship of moral philosophy to theology. On MacIntyre's account, the Aristotelian virtue tradition challenges religious claims of divine command. Virtue places human action at the center of moral questions. In reconciling the two components of theological ethics, he argues a religious tradition must uphold the necessity of obedience to divine law as constitutive of the virtuous life. He further claims that Aquinas provides such a defense.²⁶ MacIntyre's attempt to retrieve the natural law in this way is somewhat knotty, and other scholars argue that the medieval

²⁴ MacIntyre, *After Virtue*, 268.

²⁵ Cahill, "Can Theology Have a Role in 'Public' Bioethical Discourse?" 10-14.

²⁶ *Ibid.*, 278.

tradition seemed to have a broader understanding of law as such than MacIntyre seems to allow.²⁷ More importantly, Cahill in her earlier work finds difficulties regarding obedience to the law problematic in light of her proportionalist tendencies. The “law” described by the neo-manualists insists upon intrinsically-evil acts, a position that Cahill, following McCormick, clearly rejects.

This second limitation is further qualified by MacIntyre’s response to Cahill’s 1979 essay, the only time that he has engaged her published work. He claims that Cahill is “quite mistaken” in equating consequentialist and teleological methods of morality, especially in light of her references to Aristotle’s thought.²⁸ Contrary to Cahill and McCormick, MacIntyre insists that teleological thinkers must recognize that certain types of actions are prohibited. He names two categories of precepts that guide the common life of community constituted by a common understanding of the good. The first type refers to the virtues required to achieve that good; the second kind prohibits behavior that is destructive of it.

To violate the second type of precept is to commit an act sufficiently intolerable to exclude oneself from that community in which alone one can hope to achieve the good. Thus the *absolute prohibition of certain specifiable kinds of actions finds a necessary place* within a certain type of teleological framework; since the Christian doctrine of ethics appears to be a teleology of just this type, the existence of Christian theologians who deny that there are any such absolute prohibitions would be *prima facie* puzzling.²⁹

²⁷ As we saw in Chapter Two, Jean Porter argues that the natural law is already rooted within a biblically-informed worldview. Moreover, natural law itself is anthropological; we tend toward happiness and flourishing when we discover the purposes for the things of nature. Natural law is binding because it accords with human nature. See Porter, *Nature as Reason*, 119; Aquinas, *ST I-II*, q.94, a.2.

²⁸ MacIntyre, “Theology, Ethics, and Ethics of Medicine and Health Care,” 436-438.

²⁹ *Ibid.*, 437, emphasis added.

MacIntyre points to McCormick's position that certain actions are always disproportionate simply because of lack of certitude about consequences to act in that way. If this is the sole criterion, MacIntyre argues, then McCormick is "a utilitarian who is more skeptical than most utilitarians" about an agent's ability to determine outcomes.³⁰ MacIntyre's assessment here is consistent with the discussion of Porter's account of Thomistic ethics from Chapter Two. Aquinas could see no conflict among the cardinal virtues. Prudence fixes the mean for right action, and justice orients those actions toward others. Thus, MacIntyre rejects proportionalism's assertions of conflict among the virtues on the basis of this Thomistic assertion of harmony among the virtues.

So far, this first part of the section has focused on an emerging communitarian ethic in Cahill's earliest publications. Her germinating scholarship draws significantly from the research in her dissertation in theological bioethics. She also develops a new stream of research in sexual ethics during this period, and this inquiry will mature throughout the 1980s into a theory of Christian sexual ethics.³¹ The next part analyzes the interplay between personal and communal issues in Cahill's seminal theory of Christian sexual ethics. In it, she accepts a collective morality in sexual matters as normative, but she also allows room for departures from this norm within the striving community. Here, her work continues to contrast with MacIntyre, especially regarding the manner in which they utilize empirical and sociological data in their respective projects. The next part also explores Cahill's resonance with liberal ideas of justice in the context of sexual ethics. At

³⁰ Ibid., 438.

³¹ See Cahill, "Sexual Issues in Christian Theological Ethics: A Review of Recent Studies," *Religious Studies Review* 4, no.1 (January 1978), 1-14. By 1985, her research will culminate in a book-length discussion of Christian sexual ethics in *Between the Sexes*.

the same time, it will examine her feminist reflections on ethics generally and sexuality specifically.

Cahill's Early Work in Feminist and Sexual Ethics: 1981-1989

Cahill's research moves beyond strictly bioethical concerns throughout the 1980s. In addition to her continued work in medical ethics and moral methodology, she delves into issues like human rights, abortion,³² just war,³³ and divorce.³⁴ During this period, though, she concentrates mainly on sexual ethics. The local community remains her consistent focus in the area of sexuality. However, her feminist interpretations of natural law and human sexuality provide a space to discuss matters concerns for individual persons as well. Though she insists on the importance of an individual's autonomous capacity in sexual ethics, she never reduces it to liberal notions of free choice. Instead, the relationship between an individual and the community mutually informs the decision-making process, with a determinative reference to an objectively-knowable and theologically-grounded moral order. Her work remains rooted in both Sacred Scripture and the Catholic Thomistic tradition, but also relies upon normative descriptive accounts of humanity from the natural and social sciences. This part of the discussion emphasizes Cahill's writings on sexual ethics, especially her book, *Between the Sexes*, as well as selected articles on feminist theology from the same period. It will also apply an analysis

³² Cahill, "Abortion and Argument by Analogy," *Horizons* 9, no.2 (Fall 1982), 271-287.

³³ Cahill, "Nonresistance, Defense, Violence, and the Kingdom in Christian Tradition," *Interpretation* 38, no.4 (October 1984), 380-397.

³⁴ Cahill, "Sexual Ethics, Marriage, and Divorce," *Theological Studies* 47, no.1 (March 1986), 102-117.

of these essays to her concurrent work in bioethics, especially artificial contraception and assisted procreation.

Between the Sexes

In her first book-length theory of sexual ethics, Cahill tries to overcome what she perceives as a duality of sexual experience in the Christian tradition.

[Sexual experience] is physical, urgent, and pervasive. It is also an avenue of affective and spiritual relations among persons, for good or ill. Yet the human person is not a duality. At least Western philosophical and religious traditions have learned to resist dualistic interpretations of the person, even if they have not overcome them.³⁵

She claims that this dichotomy, present at least since Augustine and evolving throughout the Patristic era, is at odds with the Genesis creation accounts that disclose the essential unity of individual humans generally and of sexual partners especially. At the same time, this harmony is not reducible to atomistic individualism, which is prevalent in today's liberal societies. Instead, the creation stories portend meaningful richness for the life of a worshipping community and its constitutive members. As such, Cahill outlines four positive implications for this theological narrative of creation.³⁶ One, sexual differentiation is aimed toward cooperative modes of procreation and nurturing. Two, contra modern liberalism, male and female are intrinsically related to the common good. Three, there is an equal dignity between the sexes, derived from the image of God. Four, the communal nature of sexuality is a mirror of that divinity. Taken together, these points give rise to two major claims. First, human sexuality is endowed with a fundamental goodness as a constitutive element of the created order. As a corollary to this first point,

³⁵ Cahill, *Between the Sexes*, 3.

³⁶ *Ibid.*, 52-53.

this theological sense of createdness offers the believing community a *telos* that produces a “harmonious and productive existence” in the natural world.³⁷

As part of creation, an agent’s free response is required to enter into this divinely-ordained accord. Sin disrupts this striving toward this harmony and fulfillment.

Employing the work of Reinhold Niebuhr, Cahill argues that humans exist in a dialectical relationship between freedom and finitude. Sin is constituted in the failure to recognize the limits of either pole, both of which are given by God as part and parcel of creation.³⁸ In other words, one sins when he or she denies what it is to be human. Thus, historical systems of hierarchy and dominance regarding gender relations are aberrations from the original created order, which is marked by equal dignity and cooperation.

It must be noted that Cahill’s exegesis of Genesis 1-3 is not a “pure,” isolated reading of this particular literary unit, but is a prologue to the continuing story of the church tradition. Determining the story’s “original audience” has an illuminative but not a determinative function, and does not preclude later normative interpretations of any biblical text.³⁹ This dialectic between the past and the current state of church teaching is further informed by her careful inquiry into the New Testament community.

Cahill claims that the ethics of the New Testament is “thoroughly communal” in its orientation.⁴⁰ For example, she points out that its most significant discussion of sexual norms is located within Paul’s discourse on the Body of Christ, that is, the community redeemed by Jesus (1 Cor 5:1-8:13). While Paul envisions all preoccupation with

³⁷ Ibid., 55.

³⁸ Ibid., 4; see Reinhold Niebuhr, *The Nature and Destiny of Man* 1 (New York: Scribner, 1964), 190-220.

³⁹ Ibid., 49.

⁴⁰ Ibid., 67.

marriage and sexuality as distractions, a position that contrasts with the creation accounts, Cahill carefully argues that his views are wholly consistent with the norms set forth in Genesis 1-3.⁴¹ She finds this claim upon the communal criterion of the moral life present in both texts, which depict humans as created by and responsible to God. Paul's text is further informed by the redeeming experience of Jesus Christ, who should be the central focus of the Corinthian community to whom Paul addresses himself. Instead, they are distracted by issues of hierarchy and power, all signs of the consequences of sin outlined in Genesis 3:16-23 (1 Cor 3:1-5). Throughout his letter, Paul insists that the community is the Body of Christ. As such, he enjoins them to act in harmony with Jesus' kingdom message in all matters: legal, sexual, and liturgical.⁴²

Cahill's research moves beyond scriptural texts and into Catholic tradition with an analysis of Thomas Aquinas' inquiry into marriage and sexuality. Like Paul, Aquinas claims that virginity is preferable to marriage. The former is more conducive to "thinking on the things of God," which is the *telos* of human existence, according to Aquinas.⁴³ At the same time, Cahill underscores two salient features of Aquinas' reflections on marriage that she claims are often overlooked. The first is what Cahill calls Aquinas' "honest portrayal" of the intense human love between husband and wife. On the question of whether a man ought to love his wife more than his parents, Aquinas claims that on the

⁴¹ Ibid., 60-65.

⁴² But what can be said of Paul's consistently negative appraisal of sex and marriage in his letter in light of this harmony? Cahill points to his expectation of the final judgment. The New Testament community was preparing itself for the immanent return of Jesus, and was not necessarily concerned with long-term solutions to injustice. Thus, Cahill sees Paul's encouragement of celibacy as a tool for promoting "good order" in the community as it serves the Lord while awaiting the *eschaton* (1 Cor 7:35; see Cahill, *Between the Sexes*, 67).

⁴³ Cahill, *Between the Sexes*, 105.

part of the union, a wife ought to be loved more because of the oneness of their flesh.⁴⁴ There is also the value of partnership in the couple's domestic life. This second point correlates to the first. In this special union, there is a friendship "of the highest sort."⁴⁵ To this point, even if polygamy could have been justified through Old Testament texts, in the Christian context it would reduce the friendship of each wife for her husband and turn to a "servile relationship" that emphasizes procreation alone over this loving friendship.⁴⁶

Furthermore, Aquinas' account of virtue turns on what it means to be "genuinely human." Cahill claims that this understanding is "necessarily empirical." His descriptive account of humanity is inclined toward an uncritical application of Aristotle's metaphysical biology. Cahill sees three shortcomings in Aquinas' Aristotelian anthropology. One, women's capacity for rationality is less than men's; two, women are, by nature, assigned a subordinate place within the household; and three, men's aptitudes are greater than women's abilities with regard to wisdom and judgment.⁴⁷ But Aquinas' differentiation in social roles and intellectual capacities is balanced by the essential partnership of men and women found in Gen 2 and is concomitant with their biological differences. Aquinas sees far greater relevance in their equal potential for charity, which Cahill defines as the "love of God which extends to those God loves." Tying sexual expression to its communal foundations, Cahill also finds it significant that Aquinas

⁴⁴ Aquinas, *ST II-II*, q.26, a.11.

⁴⁵ Cahill, *Between the Sexes*, 106; see also Aquinas, *Summa contra Gentiles III*, q.123: "The greater the love, the more need for it to be firm and lasting. But the love of man and woman is counted strongest of all; seeing that they are united, not only in the union of the sexes, which even among beasts makes a sweet partnership, but also for the sharing in common of all domestic life, as a sign whereof a man leaves even father and mother for the sake of his wife (Gen 2:24)."

⁴⁶ Cahill, *Between the Sexes*, 113.

⁴⁷ *Ibid.*, 107, 108.

supports marriage as a “sacrament,” which is what makes Christian marriage a vehicle of Christ’s presence.⁴⁸

In this early search for objective sexual norms, Cahill wrestles with the reality that Christians not only live within a faith community informed by their religious tradition (and its requisite virtues), but also live within a larger society constituted by different and at times competing values (and virtues).

Perspectives on sexuality in both Testaments favor the institutionalization of sexuality in heterosexual, monogamous, permanent, and procreative marriage that furthers the cohesiveness and continuity of family, church, and body politic, and that respects and nurtures the affective commitments to which spouses give sexual expression.⁴⁹

With Cahill’s utilization of the dialectic between the original audience and the current situation, these normative interpretations give rise to practical problems in applying them in contemporary, pluralistic settings. The biblical tendency toward standardization in sexual norms allowed for occasional exceptions.⁵⁰ The post-biblical tradition also demonstrates further development with regard to marriage and sexuality. Moreover, these religious norms are juxtaposed against a liberal societal backdrop that privileges autonomous choice in sexual matters above all else.

To settle the matter, Cahill turns to the use of empirical data as part of the enterprise of ethics. In her earlier essay on McCormick and Ramsey, she saw their exchange as an intra-disciplinary matter, with observed information aiding in its

⁴⁸ Ibid., 111, 119.

⁴⁹ Ibid., 143.

⁵⁰ Ibid., 145. Here, Cahill refers to unusual applications (polygyny, concubinage, and Levirate marriages in the Old Testament; divorce in the New Testament) of norms whose status does not undermine the goods which they defined.

adjudication.⁵¹ In other words, she seemed to argue that the current trends in the social and empirical sciences can settle a theological dispute. In this later context, though, she locates the “special helpfulness” of empirical research in its “ability to illumine the reality of situations that the ethicist evaluates.”⁵² Much like the normative accounts from scripture and tradition, empirical data provide still another observable explanation of human sexuality. However, empirical studies remain wholly descriptive rather than morally prescriptive, and they are not arranged into categories that are necessarily “value free.”⁵³ Therefore, a faith community can decide its course of action in sexual matters only through consideration of the full complement of resources at its disposal.

In light of her research, Cahill’s positive argument suggests two moral criteria that form the central Christian sexual norm of a lasting, monogamous, heterosexual and procreative union. First, the community should express fidelity to this norm while allowing variance in its fulfillment. Second, it is necessary to contemplate rare departures from these norms, provided they “represent the most morally commendable courses of action concretely available to individuals caught in those tragic or ambiguous situations that agonize the decision maker and vex the analyst.”⁵⁴ According to her claims, the Christian tradition might justify some departures such as remarriage after divorce, occasional avoidance of conception in conjugal sex, and committed homosexual

⁵¹ Cahill, “Within Shouting Distance,” 403: “For both [Ramsey and McCormick], theology provides a court with which to hear a moral case, but the outcome is decided only with the assistance of *amici curiae* (e.g., philosophy, the social and empirical sciences).”

⁵² Cahill, *Between the Sexes*, 145.

⁵³ *Ibid.*, 147: “No simple definitions of what is morally ‘normative,’ or even what is ‘healthy,’ in human sexuality will be available from sheer empirical investigations, even though the latter augment ethical reflection immensely.”

⁵⁴ *Ibid.*, 148, 149.

relationships while prohibiting others like adulterous relationships, non-committed cohabitation, and coercive or violent sexual acts.

In analyzing these criteria, two observations can be made about Cahill's early notion of justice. The first concerns her commitment to proportionate reasoning in sexual matters. On the accounts of proportionalism considered here and in Chapter Two, it is clear that Cahill attempts to maintain fidelity to the objective moral order that she espouses in the early part of *Between the Sexes*. By describing the biblical and traditional teachings on marriage and sexuality as "normative," she expresses a deeply-held value in upholding them. She entrusts the wisdom of the faith community to seek a healing and equitable way for those affected by hurtful situations such as divorce to remain fully within the church, should a divorced person choose to remarry.⁵⁵ By the same token, she rejects the notion of marriage as pure contract. Cahill is not claiming (as Michael Walzer does) that the constitutive element of voluntary marriage is the permanent possibility of divorce.⁵⁶ Instead, she infers that remarriage after divorce should be a rare application of the ideal of the permanent marriage. Perhaps the striving moral agent now enters into the second marriage with a fuller knowledge of the pain and difficulty that comes with maintaining a loving relationship, yet still trusts God's grace to help him or her in the sacrament. Cahill here endeavors to uphold the values of reconciliation and justice with that of the permanence of Christian marriage.

⁵⁵ In this specific instance, Cahill is in the camp of at least one of her contemporaries who later was appointed a cardinal. See Walter C. Kasper, *Theology of Christian Marriage*, trans. David Smith (New York: Crossroad Publishing Company, 1983), 71.

⁵⁶ Walzer, *Politics and Passion*, 162.

The second comment pertains to her significant and qualified use of empirical data. Cahill points out that observable phenomena related to human behavior have an impact upon moral judgment.⁵⁷ But she seems to hold two diverging opinions on the use of empirical information. On the one hand, she argues that society is obliged to enhance human life to the greatest possible extent for those that have certain biological or psychological conditions irrespective of the desirability of those conditions.⁵⁸ These circumstances are gleaned from a careful consideration of observable data. This sentiment is consistent with her Thomistic understanding of inviolable human dignity within a community's norms, and with a reasoned observation which is a constitutive element of natural law ethics. It also seems to square with Jean Porter's analysis of Aquinas' individualistic context for the common good, described in Chapter Three.⁵⁹ On the other hand, Cahill claims that empirical studies alone fail to elucidate what these factors ought to be. She also admits that the data are arranged and interpreted into categories that are not value-neutral. Here, there is an implicit resonance with Alasdair MacIntyre's analysis of empirical studies.⁶⁰ Building on a premise that contemporary scientific utterances about human behavior must omit all reference to intentions, purposes or reasons for action, MacIntyre argues that attempts to describe them in purely mechanical terms must conflict with teleological anthropology. He also makes explicit

⁵⁷ It is important here to point out that Cahill is using empirical data to argue for a change in Christian teaching specifically with regard to homosexuality. She references the famous "Kinsey Report" and other studies related to homosexual behavior in these pages.

⁵⁸ Cahill, *Between the Sexes*, 147.

⁵⁹ e.g., Porter, *The Recovery of Virtue*, 133; cf. Aquinas, *ST II-II*, q.66, a.7.

⁶⁰ See MacIntyre, *After Virtue*, especially chapters 7 and 8.

what Cahill implies about the “value-free” façade of empirical data by demonstrating that the flip side to value-neutrality is manipulative power.⁶¹

In *Between the Sexes*, Cahill does not engage in a critical dialectic with empirical studies about sexuality to the same degree that she did with scripture and tradition. She devotes whole chapters to the latter while sparing only a few pages for the former. As a result, she argues for significant departures from the tradition regarding homosexual activity with insufficient attention to the novel sources which she introduces to bolster her argument. By contrast, her claims that pertain to divorce and remarriage, pre-nuptial cohabitation, and marital contraception do not seem as dependent on her analysis of empirical data, and are more deeply rooted in her study of scripture and tradition.

Before leaving this discussion of *Between the Sexes*, it bears repeating that Cahill does not explicitly discuss “justice,” and this feature is common in her early writings. Nonetheless, justice is implied in her insistence that all members of the community be treated fairly with regard to their individual circumstances. If she errs, it is on the side of inclusion rather than exclusion from the Christian community. Her concept of justice as egalitarian fairness will be studied further in the next few paragraphs. Furthermore, it is also interesting to note that she makes no appeal to the Catholic social tradition here. In fact, her conception of justice seems to develop to the degree that she incorporates Catholic Social Teaching into her essays family and sexual ethics. These facets of her work will be introduced in the next major section of this chapter.

⁶¹ Ibid., 84, 86.

Cahill's Feminist Critique

This part of the chapter analyzes Cahill's evolving conception of justice as egalitarian fairness in the context of sexual ethics. Her maturing theological reflections during this epoch in her career turn upon an identification of feminist theology with moral theology and ethics.⁶² As such, defining equality and justice are the primary tasks of feminist ethics. By examining the normative function of women's experience, feminist theology can transform the community by projecting more egalitarian social arrangements among its constituents.⁶³ Coupling the perspectival aspect of personal experience with the historical context of moral agency, feminist criticism is an enterprise informed by a critical dialectic with the sources of Christian ethics.⁶⁴ This section describes Cahill's developing feminist critique of two magisterial teachings on sexual ethics. The first is her early discussion of contraception. The second is the use of assisted procreation techniques. Permanent, heterosexual marriage is the paradigm for her theological reflection.

Cahill opens this discussion on contraception by considering the personalist trend in Catholic sexual ethics since the early twentieth century.⁶⁵ She points to a change in definition of marriage from the 1917 Code of Canon Law as *ius in corpus* that envisions a

⁶² Cahill, "Notes on Moral Theology: Feminist Ethics 1989," *Theological Studies* 51, no.1 (March 1990), 50. "Virtually by definition, *feminist theology is 'moral' theology or ethics*. It emerges from a practical situation of injustice and aims at social and political change" (emphasis added).

⁶³ *Ibid.*, 51.

⁶⁴ This dialogical interaction with Christian sources is a constant theme in Cahill's work, as introduced in previous discussion of her earliest work. See *Between the Sexes*, 6-11.

⁶⁵ Cahill "Catholic Sexual Ethics and the Dignity of the Person: A Double Message," *Theological Studies* 50, no.1 (March 1989), 120.

contract which is tied to “acts apt for procreation” to the 1983 Code’s *communio* definition that combines covenant language with the contractual understanding of it in an interpersonal partnership.⁶⁶ Building upon this interpersonal understanding of marriage, she describes the early controversies surrounding the use of oral and barrier contraceptives. Cahill finds it significant that both supporters and detractors of oral contraceptives in the Catholic moral tradition focused on potential damage to the marriage, rather than to the sexual act itself.⁶⁷ She claims that moralists had to define a woman’s part in sexual acts in terms of traditional roles of domesticity and motherhood.

In Cahill’s analysis of arguments from the early 1960s against the use of contraceptives, she includes “new” natural law theorists like Germain Grisez. He seems to eschew this relational language in favor of an exclusive emphasis on the conjugal act itself. Because contraception intentionally thwarts life, one of Grisez’s basic goods, every instance of its use is inherently immoral.⁶⁸ Cahill offers two responses to Grisez’s thesis. The first questions the incommensurability of the basic goods. Basic goods might be able to be formulated as universal, exceptionless, and formal norms, but they cannot be so in

⁶⁶ *CIC*, Can. 1055, §1; cf. 1917 Code, 1081, §§1-2: “*Matrimonium facit partium consensus inter personas iure habiles legitime manifestatus; qui nulla humana potestate suppleri valet. Consensus matrimonialis est actus voluntatis quo utraque pars tradit et acceptat ius in corpus, perpetuum et exclusivum, in ordine ad actus per se aptos ad prolis generationem.*”

⁶⁷ E.g., Cahill, “Catholic Sexual Ethics and the Dignity of the Person,” 128: “But even the most strenuous arguments against contraception were appealing to personal, relational values, not resting their case exclusively on the physical integrity of the act or on the idea that the generative faculty is directed toward the good of the species, not that of the individual.” Clearly, Cahill does not make the case that the communal good ought to come at the expense of individual choice.

⁶⁸ *Ibid.*, 135.

concrete actions which threaten to undermine at least one of them.⁶⁹ The second more directly reflects Cahill's feminist criticism of a traditional sexual ethic that narrowly defines morality in nearly-exclusive terms of acts.

Why is contraception (especially within an otherwise procreative marriage) genuinely an act "against" the good of procreation, rather than a deferment of it to a more appropriate time? The definition of a contraceptive act as an act violating the procreative good seems to require that the significance of each act of intercourse be defined as an isolated event, rather than in relation to a continuum of events within a sexual, personal, and social relationship. But it is this reciprocal narrowing of the meaning of sex acts to their immediate contexts, and of the procreative and unitive goods to single acts which do or do not realize them concretely, which is precisely the target of personalist revisionism.⁷⁰

Cahill roots her argument here within the communal context, which was developed in *Between the Sexes* and remains a constant theme in her later sexual ethics.⁷¹ She is not making the case that *every* act of contraception can be morally justified. Citing philosopher Paul Ricoeur on the symbolic expressions of sex, Cahill is aware that contraception risks cheapening sex by reducing its significance to become a mere vehicle of pleasure.⁷² Instead, she insists the act cannot be isolated from the pursuit of the common good.⁷³ She also supplies an egalitarian corrective to any personalist ethic that

⁶⁹ On this point see Cahill, "Teleology, Utilitarianism, and Christian Ethics," 617.

⁷⁰ Cahill, "Catholic Sexual Ethics and the Dignity of the Person," 136-137.

⁷¹ See Cahill, "Sexual Ethics: A Feminist Biblical Perspective," *Interpretation* 49, no.1 (January 1995), 5-16, which will be further analyzed in the next section.

⁷² Cahill, "Catholic Sexual Ethics and the Dignity of the Person," 140.

⁷³ As discussed in Chapter One, Cahill argues that the common good orients sex and procreation justly by requiring unique human capacities like commitment, empathy, responsibility, and (later in her work) solidarity. See Cahill, "Sex, Gender, and the Common Good: Family," in James Donahue and M. Theresa Moser ed., *Religion, Ethics, and the Common Good* (Mystic: Twenty-Third Publications, 1996), 145-146.

neglects the social context of the moral agent.⁷⁴ Cahill's ongoing development of this theme of the common good will be addressed further in the next section.

Turning to the use of assisted-reproduction techniques (ART), Cahill's context is heavily influenced by the Vatican's 1987 *Instruction* on procreation, which effectively condemns any attempt to divorce conception from the conjugal act.⁷⁵ The *Instruction* draws largely from traditional natural law understandings of sex, but there are instances of personalist language that describe the conjugal act in inexorable terms of love, intercourse, and procreation.⁷⁶ Cahill offers a qualified approbation for ART on much the same grounds as her consideration of artificial contraception, that is, a consideration of the couple within a community of faith. Her cautiously positive analyses of ART during this period are especially noteworthy because they contrast starkly in later essays with her explicitly negative assessment of germline interventions, which employ similar methods to ART.

From the essays considered in this part thus far, Cahill points out that in the *Instruction's* blanket rejection of ART, the magisterium has "missed another opportunity" to offer timely and prudent advice to Catholics living in a society that locates commitment and procreation almost exclusively within the realm of autonomous

⁷⁴ Cahill, "Catholic Sexual Ethics and the Dignity of the Person," 148.

⁷⁵ Congregation for the Doctrine of the Faith, *Donum Vitae: Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation: Replies to Certain Questions of the Day*, February 22, 1987 (hereafter *Instruction*).

⁷⁶ *Ibid.*, 4b. Here, the *Instruction* cites John Paul II's Wednesday audiences, which later developed into his "Theology of the Body:" "Spouses mutually express their personal love in the 'language of the body,' which clearly involves both 'spousal meanings' and parental ones. The conjugal act by which the couple mutually expresses their self-gift at the same time expresses openness to the gift of life. It is an act that is inseparably corporal and spiritual."

choice.⁷⁷ She raises a concern that the *Instruction* has not made a distinction between donor gametes and homologous fertilization. While she shares the magisterium's objection to third-party donations, she questions whether infertile couples experience "laboratory conception as a violation of their sexually-expressed love relationship, or as an assisted fulfilment (sic) of it."⁷⁸ At the same time, her feminist analysis of the situation recognizes the danger of "alienation" the female body that can arise from conception achieved through technology and the reification of women's social roles as mothers. She extends this criticism to the larger social context by pointing to the commercialization of reproduction, the potential exploitation of the poor, and the perception of children primarily as products rather than persons.⁷⁹ Nevertheless, she remains committed to a favorable appraisal of ART on personalist grounds. Moral analysis of ART must be considered in light of the couple's "total partnership."⁸⁰

The *Instruction* engendered further scholarship for Cahill. In 1988, she co-authored a reference-style commentary on the document with Thomas Shannon (see Chapter Three). They argue that the Vatican goes too far in its prohibition of all ART.⁸¹ While the *Instruction* is a "rather remarkable statement" insofar as it finds homologous

⁷⁷ Cahill, "Catholic Sexual Ethics and the Dignity of the Person," 147.

⁷⁸ *Ibid.*, 147. Here, Cahill follows McCormick and other theologians who envision ART as an *extension* of the unitive dimension of the conjugal act, rather than a violation of it. See Richard A. McCormick, "Therapy or Tampering: The Ethics of Reproductive Technology and the Development of Doctrine," in Thomas A. Shannon ed., *Bioethics*, 4 Ed. (Mahwah: Paulist Press, 1993), 97-122.

⁷⁹ Cahill, "Notes on Moral Theology: Feminist Ethics 1989," 62.

⁸⁰ Cahill, "Catholic Sexual Ethics and the Dignity of the Person," 148.

⁸¹ Thomas A. Shannon & Lisa Sowle Cahill, *Religion and Artificial Reproduction: An Inquiry into the Vatican "Instruction on Respect for Human Life"* (New York: Crossroad Publishing Company, 1988).

fertilization less objectionable than heterologous intervention, the authors find the *Instruction* problematic because it isolates the sex acts from the loving relationship of the couple.⁸² They also claim that these prohibitions are likely to fall upon deaf ears because it asserts rather than argues its position.⁸³ More importantly, they attempt to rehabilitate the document's importance by changing the focus of its natural law approach. Instead of using the natural law as a tool of casuistry in ART, Cahill and Shannon attempt to use a revised natural law approach modeled in Catholic Social Teaching (CST) to demonstrate the interrelated issues of marital love, parenthood, and sexuality in a contemporary, pluralistic society.⁸⁴ This text quickly became outdated because its discussion of techniques, once on the cutting edge of reproductive technology, are now commonplace or have been superseded by more efficacious practices. Nevertheless, it remains significant because it represents one of Cahill's early integrations of Catholic social thought into her larger project.

The following year, Cahill expands on one of the major themes of CST in a comparative analysis between the Vatican's *Instruction* and a secular American

⁸² Ibid, 113; cf. *ibid.*, 138: "It is the committed love relationship of the couple in its totality that gives the moral texture both to their sexuality and to their subsequent roles as parents. It is from the wholeness of the relationship that their specific sexual acts of sex and conception take their moral purpose."

⁸³ *Ibid.*, 115.

⁸⁴ Though it is not stated in the text, it is important to note that the *Instruction* was promulgated in the context of the "Baby M" case in the United States. This surrogate motherhood controversy was prominent in the public media at the time. While the issue of surrogate parenting is beyond the scope of this dissertation, it was a major concern in the CDF's document (*Instruction*, 3). For examples of this context, see W. Steve Sabom's review of Cahill and Shannon in *Christian Century* 106, no.8 (March 1989), 264, and United States Congress, Office of Technology Assessment, *Infertility: Medical and Social Choices*, OTA-A-358 (Washington: U.S. Government Printing Office, May 1988), Foreword.

document: The Office of Technology Assessment's (OTA) *Infertility: Medical and Social Choices*.⁸⁵ In that essay, Cahill argues that the language of natural law "suggests that a mediating language like that of 'rights' may depend for its success at least partly on essential structures of human experience which tradition mediated but which they do not create."⁸⁶ As she considers these two documents, she first notes the diverging foci on their respective subjects of rights language. On the one hand, the *Instruction* focuses on the rights and welfare of the embryo and the protection of familial integrity. As such, it rejects all forms of ART that remove sexual acts from procreation. At the same time, it prohibits surrogate motherhood on similar moral grounds. Furthermore, it urges governments to legislate protection for embryos as persons with full rights from the moment of conception.⁸⁷ On the other hand, the OTA document emphasizes reproductive freedom and rights of couples. The right to procreate as a principle of liberty is relatively uncontroversial in the case of fertile couples or individuals, but in the case of infertility, it becomes difficult to assert a claim against others to realize this otherwise undisputed right.⁸⁸ Thus, the government's role is one of quality control in embryo production and just enforcement of contracts in surrogate parenting.

Despite these differences with regard to premises and conclusions, Cahill points out three significant similarities that might encourage further dialogue between their contrasting opinions. First, they are both products of group authorship. Second, both

⁸⁵ Cahill, "Moral Traditions, Ethical Language, and Reproductive Technologies," *Journal of Medicine and Philosophy* 14, no.5 (October 1989), 497-522 (hereafter "Moral Traditions"); cf. OTA, *Infertility: Medical and Social Choices*.

⁸⁶ Cahill, "Moral Traditions," 510.

⁸⁷ *Ibid.*, 498.

⁸⁸ OTA, 205.

represent attempts to moralize within an affluent, well-educated, Western context that has the resources and will to utilize ART. Most important, they both employ rights language to advance their respective arguments, and strive to achieve consensus on the same thorny public issue.

The authors of each seem to assume that their arguments about rights are self-evident, are grounded in values so basic and indisputable that the only prerequisite to agreement is elucidation and restatement.⁸⁹

The *Instruction* speaks of three “fundamental rights:” to life and physical integrity from conception until a natural death; of the family and of marriage as a normative institution; and of a child’s right to be conceived, born, and raised by his or her parents.⁹⁰ The OTA document speaks of a two-fold right: the couple’s free, autonomous choice to reproduce in accordance with their own values and the correlative respect for those choices.⁹¹

Cahill points to conflicting worldviews as the reason for their diverging conclusions on the morality of ART. The OTA grounds their arguments within liberal, democratic values that maximize liberty, while the *Instruction* is rooted in a Thomistic view of human nature that emphasizes duty equal to rights. Here, Cahill turns to the work of Alasdair MacIntyre and Jeffrey Stout to build her argument that a richer consideration of human nature could serve as a mediating language toward a viable social perspective regarding ART. Stout insists that the moral philosopher must be “pragmatic and eclectic” by exploiting common vocabularies and reasoning patterns in order to resolve troublesome social issues.⁹² He envisions rights as a bridging language for the public

⁸⁹ Cahill, “Moral Traditions,” 498.

⁹⁰ CDF, *Instruction*, III.

⁹¹ OTA, 205.

⁹² Cahill, “Moral Traditions,” 500; cf. Stout, *Ethics after Babel*, 258.

sphere, allowing for consensus from participants with contrasting and even competing worldviews.⁹³ Because of its pragmatic nature, only a partial or overlapping consensus regarding the good is necessary to reach a broad social agreement.⁹⁴ This method is good so far as it goes, though it seems more concerned to proximate ends, rather than ultimate ones. In the case of intentionally making life, it seems a bit imprudent to act rashly on any superficial notion of the good.

Based upon the consideration of MacIntyre's work from Chapter Two, it would seem that he would reject Stout's claims. Common moral vocabulary does not equate with common meanings, and participants from opposing worldviews are reduced to "assertion and counter-assertion."⁹⁵ MacIntyre instead maintains the importance of a unitary tradition as the source of coherent discourse about social practices.⁹⁶ With regard to determining which activities constitute practices, and the virtues internal to them, MacIntyre specifically mentions "the making and sustaining of family life."⁹⁷ In this instance, Cahill notices that the practices of family life "involve different voices," and make it possible to move toward about "consensus about the sort of excellence of which a practice may aim."⁹⁸

⁹³ Stout, 285.

⁹⁴ Cahill, "Moral Traditions," 501; cf. Stout, 294.

⁹⁵ MacIntyre, *After Virtue*, 8.

⁹⁶ MacIntyre, *Whose Justice?*, 400.

⁹⁷ MacIntyre, *After Virtue*, 188.

⁹⁸ Cahill, "Moral Traditions," 501.

Furthermore, despite their diverging conclusions, Cahill demonstrates that both MacIntyre and Stout locate the centrum of their moral discourse in shared practice.⁹⁹ In this context, Cahill suggests that a key theme to moral discourse is “human nature.”

Another reason to adopt this vocabulary to critique the practices of family and reproduction in contemporary North American Culture is that they will be useful as a corrective to the dominant liberal emphasis. Finally, the vocabulary of “nature” can be made flexible or open enough to accommodate the value in the liberal position. This is true because appeals to nature are most fundamentally appeals to human experience and so assume and rely on the *praxis* so key in contemporary hermeneutical theory.¹⁰⁰

Cahill appeals here to Mary Midgley’s work (discussed in Chapter One) as backing for Cahill’s own “modest” natural law claims, which are rooted within an inductive, experiential, and critical process.¹⁰¹ She concludes from this process that while parenthood is “vastly important,” it must remain secondary in marriage to the spousal union itself. Thus, neither document is true to the experience of married couples. The *Instruction* overstates the physicality of individual sex acts; the OTA study exaggerates the autonomy of the couple.

Cahill closes her essay with a carefully qualified and strictly limited claim that ART is morally acceptable only when used by committed couples to conceive a child genetically related to both of them.¹⁰² Her argument is warranted by the liberal notion that a parent-child bond is an embodied and freely-chosen relationship in its formation. It is further backed by a personalist premise that parenthood is achieved as an extension of the loving relationship of the couple, rather than a disruption of it.

⁹⁹ Ibid., 508: “When ‘worldview’ consensus is lacking, begin with common experience.”

¹⁰⁰ Ibid., 509.

¹⁰¹ Ibid., 510; cf. Midgley, *Beast and Man*, 177.

¹⁰² Ibid., 521.

Conclusion to the Analysis of Cahill's Early Work

This analysis of Cahill's early work elucidates three major themes that will give shape to her work throughout the 1990s. Two are well developed while the third remains nascent. First, the community is the constant source and context for her moral reasoning. Sometimes, "community" refers specifically to the Roman Catholic tradition from which she speaks, as in her analyses of the prohibition of ART from the Vatican's *Instruction*. Other times, she expresses a more diverse yet unitary Christian moral tradition, as in both her assessment of Richard McCormick and Paul Ramsey and her first theory of sexual ethics. Still elsewhere, she reaches beyond the confessional boundaries of Christianity to larger American society, as with her comparison of magisterial and congressional documents regarding *in vitro* fertilization, and even occasionally to the human community writ large in global context, like her developing theory of human rights.

Second, with a significant appropriation of the Catholic natural law tradition, Cahill roots her ethical reasoning within an objective and universal moral order created and redeemed by a loving God. Unlike the new natural law theorists like Grisez, Finnis, and others, she does not undertake a search for absolute and exceptionless norms. As introduced in Chapter One and fleshed out further in this section, her utilization of the natural law is based on an inductive and experiential process. A significant part of it is informed by a feminist perspective that historicizes and contextualizes the objective order found in the natural law. These twin resources allow Cahill to embrace and affirm the Roman Catholic tradition while simultaneously criticizing and transforming it.

Finally, the development of Cahill's conception of justice is subtle during this part of her career. In the earliest writings considered in this first section, justice is a largely

personal virtue which is located in the striving agent within his or her context. This narrowly-focused notion is consistent with the Thomistic virtue tradition. As this view is utilized within a larger theoretical framework, she expresses a natural law vision of rights founded upon a major presumption of human dignity. She begins to draw into her project the Catholic social tradition, which was discussed at length in the first two chapters of this dissertation. The addition of Catholic Social Teaching amplifies her ethical arguments to a wider audience that includes secular voices and affirms the communal context that is already present in her writings. As the dissertation moves to the next period in Cahill's writings, it will demonstrate CST is no mere appendage to her work. Instead, justice becomes more pronounced as a function of her growing tendency to integrate the social tradition into her essays.

Egalitarianism, Embodiment, and Social Justice in Cahill's Work: 1990-1996

This section analyzes a "transitional" period of Cahill's scholarship in order to draw out some of the major themes that will comprise her more theoretical projects in the latter part her career. They also shed light on her conception of justice. As mentioned in the introduction to this chapter, Cahill's work is so often timely and practical.

Throughout these diverse writings on early life, end-of-life decisions, family life, and sexual ethics, she employs a few concepts that aid her in reaching firm though cautious conclusions to these and other concerns. This section analyzes three of those notions as they relate to three corresponding, interrelated segments of her theological inquiry during this period. The first is equality, especially with regard to sexual and family ethics. The second is embodiment, particularly as it concerns medical care. The third is justice as it

relates to social issues like war and poverty. While egalitarianism has been a consistent theme throughout the early period of her writing, social justice was latent or implied in her early work. Both have been developed and amplified to become major motifs in later work, which will be discussed in the final section of this chapter. Curiously, embodiment seems to fade as a prominent concept in her later work. At least two possible reasons account for this shift away from embodiment.

Egalitarianism and Sexual Ethics

In *Between the Sexes* and other early essays, Cahill's sense of justice implies fairness: that men and women of the community be treated as social equals. Egalitarian considerations are a constant theme throughout her work, and this transitional period is no exception. Her concept of equality is implicit in every aspect of her research, but nowhere is it more pronounced than in her writings on sexual ethics. This section explores this egalitarian theme in two significant texts during this transitional period. The first is an article, "Sexual Ethics: A Feminist Biblical Perspective," which seeks to locate sexual ethics in a more explicitly communal rather than personalist setting.¹⁰³ The second is a book-length work, *Sex, Gender, and Christian Ethics*, which develops a broader philosophical framework for sexual ethics from her previous work in *Between the Sexes*.¹⁰⁴

Reprising some themes from *Between the Sexes*, Cahill's perspective here is both feminist and Christian. It is Christian in that it attempts to demonstrate that the positive,

¹⁰³ Cahill, "Sexual Ethics: A Feminist Biblical Perspective," *Interpretation* 49, no.1 (January 1995), 5-16.

¹⁰⁴ Cahill, *Sex, Gender, and Christian Ethics* (New York: Cambridge University Press, 1996).

community-building aspects of biblical teachings on sex have normative value for the contemporary Christian disciple. It is feminist in its commitment to personal respect and equal social power for both men and women. As such, her project involves a significant treatment of the “egalitarian inspiration of Christianity,” which is “perennially liable to perversion by powerful authorities.”¹⁰⁵ Cahill points out the New Testament communities challenged the prevailing sexual ethos of Roman culture, which was characterized by power, domination, and exclusion with competing values of compassion, solidarity, and inclusion.¹⁰⁶ While the transformative aim of her article is to argue for greater equality in the social determination of women’s roles, she insists that a feminist interpretation seeks equality for both men and women. As such, her analysis focuses less on the control of sexual behavior and more on the embodiment and social relationships which transcend sexual ethics.

Cahill’s concerns are also not unidirectional. She worries that the decline of traditional Christian sexual morality portends the installation of yet another dominant social order: one in which autonomous choice is the sole determinant.¹⁰⁷ With the prioritization of individual interests, decisions about sex are cut off from all social supports.¹⁰⁸ She insists that sex is social, even political, in nature, this conviction leads her to couple this communal notion with the concept of gender. Gender expresses the social nature of sex in the New Testament, and is the point of departure for feminist

¹⁰⁵ Cahill, *Sex, Gender and Christian Ethics*, 1.

¹⁰⁶ Cahill, “Sexual Ethics: A Feminist Biblical Perspective,” 6.

¹⁰⁷ Cahill, *Sex Gender and Christian Ethics*, 46-72.

¹⁰⁸ Cahill, “Sexual Ethics: A Feminist Biblical Perspective,” 9.

critique of potential injustice, as opposed to particular sexual sins, which were “defined in relation to the unity of the community and to equal consideration of all its members.”

A feminist biblical sexual ethic does not “dilute” or “reject” the normative force of the biblical witness. However, it does shift the focus of the Bible’s interpretation from specific action-guiding norms, especially exclusionary norms, to a positive vision and communal practice that is compassionate and egalitarian.¹⁰⁹

The New Testament vision of sex encourages the growth of the new community in their internal relations. Christian marriage and virginity were once reactions against a dominant political system that used sex as a tool of control. As the church grew in scope and power, these positive functions became institutionalized within a new dominant structure. By recovering the inclusive vision of biblical teachings, the church can ameliorate these injustices. At the same time, the church can rightly criticize various kinds of non-marital sexual practices; sex apart from commitment does not symbolize the solidaristic worldview of the New Testament.¹¹⁰

Today’s Christian ethicists consider equality, autonomy, and fulfillment as moral criteria. In fact, Cahill often uses McCormick’s term “human flourishing” to describe these three terms collectively. She is aware of the varied practical meanings of equality, but grants that their employment as moral criteria are generally taken for granted.¹¹¹ While the vocabulary of equality and rights is distinctly modern, they are essential to moral discourse. At the same time, a renewed understanding of practical reason, rooted in the communal ethics of the Christian tradition, can move these concepts beyond

¹⁰⁹ Ibid., 12, 14-15.

¹¹⁰ Ibid., 15.

¹¹¹ Cahill, *Sex, Gender, and Christian Ethics*, 11.

theoretical considerations in to “concrete, effective means” toward equitable social participation.¹¹²

Cahill’s understanding of justice, which is grounded in her Christian context and coupled with a feminist standpoint, also reflects this sense of equality.

Roman Catholic feminist theology often upholds an ideal of full human moral agency and well-being which presumes a common standard, and understands justice neither procedurally nor as protection of individual rights, but as egalitarian participation of all human beings in the common good.¹¹³

Justice as an egalitarian principle does not stand alone. It is also buttressed by her insistence on participation and the common good. Her vision of justice includes both its commutative and distributive dimensions.

Justice consists in establishing social relations which are conducive to the flourishing of all human persons. Justice goes beyond the assertion of their personal rights by encouraging and supporting each person’s contribution to all the conditions of social living which further the common good, including the fulfillment of duties to other individuals and to the community as a whole.¹¹⁴

Human flourishing, in its sexually-embodied dimension, depends upon the practical equality of men and women. Departing from the various natural law accounts of sexuality that tend to establish hierarchical relationships between them, Cahill admits that equality may in fact be a modern development. But political movements such as abolition and women’s suffrage have also confirmed that equality is a “fundamental form of human excellence.”¹¹⁵ As such, the move toward gender equality is not just about the personal rights of a woman, or even of women in general, but also concerns the good of all in society.

¹¹² Ibid., 39.

¹¹³ Ibid., 62-63.

¹¹⁴ Ibid., 51.

¹¹⁵ Ibid., 104.

As Chapter One pointed out, Cahill argues that sexuality is expressed primarily through the family. Further analysis of Cahill's work will be provided in the third part of this section, which discusses social ethics. But it warrants a brief consideration here in the context of egalitarian structures of the family, since Cahill sees that the family situation and sexual ethics pose similar moral problems in light of Catholic social thought. While early Christians challenged their social context, they opened the door to spousal and familial subordination under the aegis of mutual love (see Eph 5:21-33).¹¹⁶ Family, as the basic unit of society, can help to secure the necessary goods for human flourishing. Moreover, families are a cross-cultural phenomenon, though they take many different forms in various places.¹¹⁷ But the form is not ethically neutral. For instance, contemporary Western societies have narrowed its concept of a domestic household to the "nuclear" family, yet they demand employed adults to work as if there were a caregiver at home for their children.¹¹⁸ With the increased attention to marriage as personal fulfillment or free choice, people also feel less obliged to enter into or remain in marriage. New Testament tradition can teach modern society about the community-building power of sexual ethics, and it can also provide insights for an egalitarian but fragmented, isolated nuclear family.¹¹⁹

¹¹⁶ Cahill makes this point in the introduction of an edition of *Concilium* on the family during this transitional period in her work. See Cahill, "Editorial," in Cahill and Dietmar Mieth ed., *The Family* (SCM: London, 1995), viii-ix.

¹¹⁷ Cahill, *Sex, Gender, and Christian Ethics*, 106-107.

¹¹⁸ Cahill, "Editorial," vii: "All employed adults are expected to devote themselves to their jobs on the traditional model of a husband with a wife at home."

¹¹⁹ *Ibid.*, x.

Embodiment and Medical Ethics

To be clear, embodiment themes are not relegated solely to Cahill's considerations in medical ethics. In fact, in the essays on sexual ethics discussed in the previous section, Cahill utilizes anthropologist Mary Douglas' idea of the body as symbol of social organization to demonstrate the social implications of sexual behavior. Citing Douglas, Cahill claims that the more strongly embedded the social hierarchy is, the more controlled the bodily movements (including sex) of individuals are likely to be.¹²⁰ Cahill returns to the work of Douglas and other contemporary thinkers in her work on embodiment as it relates to medical ethics, and for many of the same reasons. Whether one is talking about legalizing prostitution or marketing organs, both refer to a commodification of the body. In medical and sexual ethics, set within a contemporary context that prizes autonomy over and above other considerations, there is a tendency to separate the "body" from the "self." If the Christian view of the body as a unity of unruly members in need of control has been historically negative, then today's medical view of the body as "a site for technical intervention" is similarly problematic.

Cahill's appreciation for embodiment is implied in her 1991 review of the ethical dimensions of end-of-life care.¹²¹ In the wake of the Supreme Court's decision in *Cruzan v. Director, Missouri Department of Health*, the Catholic distinction between ordinary and extraordinary means of life support arose again to prominence in moral debate. Cahill notes that one of the guiding questions during that period concerns the meaning and function of "personhood" in decisions for incompetent patients. While some thinkers at

¹²⁰ See Cahill, "Sexual Ethics: A Feminist Biblical Perspective," 8; and *Sex, Gender, and Christian Ethics*, 130-133

¹²¹ Cahill, "Notes on Moral Theology: Bioethical Decisions to End Life," *Theological Studies* 52, no.1 (March 1991), 107-127.

the time may interpret the removal of nutrition/hydration from comatose patients as “deliberate starvation,” others may see it the intentional “avoidance of a dehumanizing existence.”¹²² Even though she insists that few Catholic authors would argue that quality of life determines personhood or respect, she admits that it is exceedingly difficult to describe how these obligations are met in comatose patients. At the same time, there is a social justice context that bears upon the deliberation surrounding life-prolonging measures.¹²³ Here, her review turns to age-sensitive treatment policies. Liberal theories of justice (like those of Rawls and Nozick) have advanced the idea that mutual self-interest can provide near-limitless access to health care.¹²⁴ But at the end of life, limited resources are easily stretched beyond their just distribution. Cahill closes with a clear concern about the increased medicalization and institutionalization of aging and death that subtly underscores her growing attention to care for human persons within their community.

In the last two years of this period, she makes an explicit appeal to embodiment as a means of moral critique. Since ethics is at some level about the body, embodiment contrasts these dualistic views by integrating the physical nature of the body into the other non-material aspects of the persons, including the spiritual and the social.¹²⁵ Philosophical and theological inquiry into the body seems to fall into two camps:

¹²² Ibid., 110, 113.

¹²³ Ibid., 115: “Our quandary about how to articulate our moral obligations to PVS patients arises in part because they belong to a *species* of a rational nature, but have irrecoverably lost any capacity to realize that nature in their own *individuality*.”

¹²⁴ Ibid., 126.

¹²⁵ Cahill, “‘Embodiment’ and Moral Critique,” 204. She reiterates this claim in *Sex, Gender, and Christian Ethics*, 73.

affirmation of the body as constitutive of personhood and deconstruction of the body as produced by social discourse.¹²⁶

In medicine, the concept embodiment attempts to overcome this dualism by recognizing both the physical and social nature of the body.¹²⁷ Offering what she calls a “Christian social perspective,” Cahill points out two distinct biblical contributions that advance an embodied vision of the human person in the context of medical intervention. A third may be discerned in the classical Thomistic tradition as well. First, the incarnation provides a path to understanding compassionate care within the patterns of God’s self-communication.

One finds, if anything, an anti-dualism about the body in the Gospels. God’s reign is realized in the life and ministry of a man formed bodily in the womb of a woman, a man who in his very walking, sleeping, eating, drinking, talking, touching, fasting, night-watching, pain and death makes present the compassion of God for human suffering.¹²⁸

Jesus, as embodied redeemer, is the centrum of a new community that channels his vision of the kingdom at least partly in terms of bodily experience. Second, the previous section and Chapter One highlight Cahill’s claim that Pauline writings about the body disclose a reaction against the Roman hierarchy. Even though Paul’s preference for celibacy may reflect a hint of dualism, there is a kind of “egalitarian solidarity of discipleship” found in marriage, where believers “rule over one another’s bodies” (1 Cor 7:4). There are also “seeds of alienation” for the Christian community as Roman domination is eventually replaced by ecclesial power. For example, Paul discounts the “bodily mark of

¹²⁶ Cahill, *Sex Gender, and Christian Ethics*, 73.

¹²⁷ Cahill, “‘Embodiment’ and Moral Critique,” 199: “The body is always central in defining the self, while in all cultures, the meaning of the body reflects and augments social relationships.”

¹²⁸ *Ibid.*, 201.

circumcision,” because the practice was used to categorize believers into higher and lower social statuses within the believing community (Gal 6:12-15).¹²⁹ In Aquinas’ perspective, moreover, there are further social considerations insofar as the “complex array of needs and capacities innate to our embodied existence” roots one’s moral perspective and orders one’s moral obligations.¹³⁰ In principle, these concerns could be a matter for deliberation about the just distribution of resources.

Cahill’s constructive proposal claims that a positive Christian view of the body offers three valuable recommendations to medical practice.¹³¹ The first is a “stance of compassion” toward those who are suffering. Using the metaphor of the Good Samaritan, Cahill roots this empathy in “neighborliness” over pity (Luke 10:25-37). The second point is a call to realize one’s own future suffering and ultimate mortality. It correlates to the first in that it requires recognition of human vulnerability. As part of this universal phenomenon, Cahill points out elsewhere that embodiment is a starting point for intercultural reflection on shared experiences, values, and norms.¹³² As Margaret Farley notes, pain and death are universal experiences.¹³³ In this context, the caregiver and patient are “only provisionally set apart” by the latter’s suffering. Finally, a holistic practice must appreciate the social and spiritual goods of bodily life. In her attempt to counterbalance the competing goods of autonomy and justice, Cahill sees human vulnerability as a value rather than defilement.

¹²⁹ Ibid., 207, 211.

¹³⁰ Cahill, *Sex, Gender and Christian Ethics*, 96-97.

¹³¹ Cahill, “‘Embodiment’ and Moral Critique,” 213-214.

¹³² Cahill, *Sex, Gender and Christian Ethics*, 72.

¹³³ Farley, *Compassionate Respect*, 39.

All persons in such a community might learn to take their own bodily vulnerability as an occasion for self-transcendence through compassion for the vulnerability of others and in openness to the sustaining communion of being which Christians symbolize as “resurrection life.”¹³⁴

This solidarity allows for compassionate care not only in avoiding death when possible but also in embracing death when it is not.

Two points can be made about Cahill’s attention to embodiment during this transitional period. One, there is a conspicuous absence of explicit references to Catholic Social Teaching as part of her “social” perspective. Outside of a few citations in her review of end-of-life issues, there are no direct citations of the social tradition. The opening chapter also pointed out this missing part in her early work on aging.¹³⁵ This trend stands in stark contrast to her later writings, which firmly endorse CST. It is significant because it seems to imply that Cahill “discovered” fruitful research in CST at some point during this transitional period. As the next portion of this section demonstrates, it becomes apparent that Cahill is attempting to integrate the social tradition into various aspects of her work. Two, it is interesting to note that Cahill’s consideration of embodiment seems to dissipate after this period. It is not just the case that she does not write about “embodiment” as such or that the concept is once again implicit in her work. The word simply ceases to appear in her essays after this period.¹³⁶

¹³⁴ Cahill, “‘Embodiment’ and Moral Critique,” 214.

¹³⁵ Cahill and Dietmar Mieth ed., *Aging*, ix-x.

¹³⁶ A notable exception is Cahill, “Feminist Theology and Sexual Ethics,” in Maura Ryan and Brian F. Linnane ed., *A Just and True Love - Feminism at the Frontiers of Theological Ethics: Essays in Honor of Margaret A. Farley* (Notre Dame: University of Notre Dame Press, 2007), 31. In that essay, however, Cahill discusses *Farley’s* concept of embodiment in a *Festschrift* dedicated to the latter’s contribution to theology.

With its potential value for public bioethical discourse, as the discussion of Farley's work points out, it is surprising that the concept has departed altogether from her lexicon.

At least two reasons can be offered for its disappearance. The first is a practical consideration. As noted several times in this dissertation, Cahill's early writings are timely reflections of the trends in moral theology. Her range of topics often focuses upon what is lacking in the current moral discourse. This essay anchors an ongoing discussion in a text *about* embodiment and its relationship to medicine. As feminist theologians continued to write about embodiment, it could be said that Cahill simply began to look for other ways to express her theological views.¹³⁷

The second speaks more directly to her methodological shifts during this period. The previous chapter mentioned the reluctance in this dissertation to label Cahill's work as strictly "feminist."¹³⁸ Perhaps this hesitance is related to deeper issues of defining feminism, which is a task far afield of the scope this dissertation. Nonetheless, Cahill has

¹³⁷ Chapter Three already considered Margaret Farley's thought on embodiment. Other feminist scholars were applying the notion of embodiment to various theological inquiries during this time as well. For just a sampling, see Sallie McFague, "Human Beings, Embodiment, and Our Home the Earth," in Rebecca Chopp ed., *Reconstructing Christian Theology* (Minneapolis: Augsburg Fortress Press, 1994), 141-169; Maura A. Ryan, "Feminist Theologies and the New Genetics," in Maureen Junker-Kenny and Lisa Sowle Cahill ed., *The Ethics of Genetic Engineering* (London: SCM Press, 1998), 98-99; and Susan A. Ross, "God's Embodiment and Women: Sacraments," in Catherine Mowry LaCugna ed., *Freeing Theology: The Essentials of Theology in Feminist Perspective* (New York: HarperCollins Publishers, 1993), 185-210.

¹³⁸ I rely on Anne E. Patrick's definition of "feminism" as a diverse "position that involves a solid conviction to the equality of women and men, and a commitment to reform society and to reform the thought systems that legitimate the present social order." See Patrick, "Feminist Theology," in *New Catholic Encyclopedia* 5, 2 Ed. (Detroit: Gale, 2003), 675. Patrick's definition has an enduring status, and is frequently cited by Cahill. See Cahill, "Notes on Moral Theology: 1989," 50; and Cahill, "Feminist Theology and Ethics," in LaCugna ed., *Freeing Theology*, 213. In developing this definition, Patrick draws on the work of Patricia Beattie Jung, "Give Her Justice," *America* 150 (April 14, 1984), 276-278.

described a “nagging relativism” within feminist thought that vexes many thinkers. Her term refers to the increasing reliance on the unique perspective of women and the deconstruction of essentialist (and male-focused) worldviews.¹³⁹ Since she wrote those words, feminism has been divided into categories like “woman-centered” and “inclusive” (or “revolutionary” and “recovery”), and been refined into even more precise classifications like womanist and *mujerista*. These terms reflect the narrowing particularity of feminist thought. Some scholars are even referred to as “new” Catholic feminists, though their theological methods seem quite traditional.¹⁴⁰

This discussion is not meant to criticize feminist theology in general, nor should it be inferred that Cahill does not employ feminist methods in her essays, especially since the previous section highlighted her feminist critique of moral theology. Instead, it might be better stated that Cahill’s methods shift in her later writings to synthesize what she has deconstructed in her previous work, and does not despair (as some feminists do) of finding an objectively-knowable moral order. For instance, ethicist Cristina Traina describes Cahill as an exemplar of “natural law feminism.”¹⁴¹ She finds this claim on Cahill’s argument that Roman Catholicism’s natural law values are reasoned inductively, through “a communal model of reasoned moral insight.”¹⁴² Traina notes elsewhere that

¹³⁹ Cahill, “Notes on Moral Theology: 1989,” 63.

¹⁴⁰ Two very different descriptions of feminism come from the same encyclopedic series: Anne E. Patrick, “Feminist Theology,” in *New Catholic Encyclopedia* 5, 2 Ed., 675-681; and Monica Migliorno Miller, “Feminist Theology, Catholic Responses,” in Robert L. Fastiggi ed., *New Catholic Encyclopedia Supplement 2009* (Detroit: Gale, 2009), 362-365.

¹⁴¹ Cristina Traina, *Feminist Ethics and Natural Law: The End of the Anathemas* (Washington: Georgetown University Press, 1999), 12.

¹⁴² Cahill, *Sex, Gender, and Christian Ethics* (Cambridge: Cambridge University Press, 1996), 12.

experience is both the “most-cited factor and wildest variable” in moral debate.¹⁴³

Reliance upon a relational, embodied appeal to universal moral norms is an essential element to promote public discourse in an epistemologically fractured world, and, “to save feminism from morally debilitating relativism.”¹⁴⁴ If this is the case, then both natural law and feminism are Cahill’s constructive tools with which she build her arguments in later essays. Perhaps, then, a concept of embodiment in Cahill’s work may have been “homogenized” by her integration of these two methods.

Furthermore, this shift may be accounted for by her use of other contemporary philosophical methods. As argued in Chapter One, Cahill’s work (up to this transitional point) has been influenced by the philosophical contributions of Mary Midgley, and Stephen Toulmin and Albert Jonsen; she synthesizes their respective contributions in order to aid her in articulating the objective order of which she writes. Following Midgley, Cahill’s natural law claims are “modest,” insofar as they are derived from induction, rooted in experience, and subject to revision.¹⁴⁵ At the same time, she utilizes the refined casuistry of Jonsen and Toulmin, who approach a moral situation by analogy through paradigm cases. Prudent, dialogical interaction with each case is required. Cahill also expands this discussion beyond act-centered morality to cover the practices of social groups. Instead of providing ready-made solutions to complex public issues, her method encourages a “social and intellectual milieu in which the social priorities of religious

¹⁴³ Traina, “Papal Ideals, Marital Realities: One View from the Ground,” in Patricia Beattie Jung ed., *Sexual Diversity and Catholicism: Toward the Development of Moral Theology* (Collegeville: Liturgical Press, 2001), 270.

¹⁴⁴ Traina, *Feminist Ethics and Natural Law*, 158. Author’s Note: I initially discovered this quote through James Keenan’s discussion of her groundbreaking work in Keenan, *A History of Catholic Moral Theology in the Twentieth Century*, 189-190.

¹⁴⁵ Cahill, “Moral Traditions,” 510.

communities can be recognized sympathetically.”¹⁴⁶ This critical, contextualized engagement with the Catholic tradition has also given Cahill some cause for optimism. She sees signs of a gradual opening of the institutional hierarchy toward greater gender equality, though other scholars do not share her sanguinity.¹⁴⁷

Additionally, through the course of this period, Cahill has yet to interface fully with the Catholic social tradition, which in its earliest form is derived almost exclusively from natural law and in its later forms is also argued from Sacred Scripture. But it is during this time when social justice comes to the surface in some of her writings and remains a constitutive part of her methodology. Now the dissertation turns to see this burgeoning assimilation of CST in Cahill’s writings in social and political thought.

Justice and Social Ethics

Chapter One analyzed Cahill’s arguments in support of increased participation by theological voices in the public forum. These writings appear during this transitional point. In 1990, she begins to make arguments for public involvement, and in 1992, she outlines the content of that contribution as editor of a volume of *Journal of Medicine and Philosophy*. In this interim period, she also applies this participation in various ways. For instance, in the initial debate regarding stem-cell research, Cahill points out that discord

¹⁴⁶ Cahill, *Theological Bioethics*, 45.

¹⁴⁷ In her review of *Sex, Gender, and Christian Ethics*, Christine E. Gudorf comments: “Though [Cahill] has moved inside the boundaries of Christian feminism, many Christian feminists reject her depictions of Christianity as a gradually unfolding liberation movement for (of?) women and other marginalized groups, instead grounding their commitment to Christian faith in the liberative potential of the gospel which has periodically broken through in institutional history. I suspect that one basis for such difference in attitude is whether one approaches the history of Christianity in terms of its theological tradition or its institutional interaction with specific marginalized groups.” *Theological Studies* 58, no.2 (June 1997), 386-387.

over “higher principles” does not discourage substantial consensus on practical solutions.¹⁴⁸ Citing again the work of Jonsen and Toulmin, she takes the position that a “locus of certitude” is not found in universal, general norms, but in “a shared perception of what was *specifically* at stake in particular kinds of human situations.”¹⁴⁹ She claims that committees engaged in such “prudent deliberation” must be not only diverse in their makeup, but also serious about self-criticism in achieving consensus. Implied in this discussion is a sense of equity, which overcomes the “spectre (sic) of interests” which obstructs resolution of public dilemmas.¹⁵⁰ As Cahill’s theological inquiries begin to branch out into other particular issues, this implicit idea of social justice becomes apparent. Unlike embodiment, justice remains an undergirding concept throughout the remainder of her essays, as the final section of this chapter demonstrates. This portion of the chapter describes Cahill’s growing commitment to social justice in two areas: war and family. Because of the shifting context for both situations, CST makes a vital contribution to these complex realms of her moral analysis.

Justice, Pacifism, and Just War

As discussed in Chapter Three, the political landscape of the 1980s was shaped largely by the polarization engendered from the half-century-long Cold War. The promotion of democratic capitalism on the one side and socialist communism on the other defined the strategic and political aims of opposing nations during the period. With

¹⁴⁸ Cahill, “The Embryo and the Fetus: New Moral Contexts,” *Theological Studies* 54, no.1(March 1993), 142.

¹⁴⁹ Jonsen and Toulmin, *The Abuse of Casuistry*, 16-19.

¹⁵⁰ Cahill, “The Embryo and the Fetus,” 142.

the collapse of communism, this polarization quickly subsided, but just war issues did not. Immediately after the Cold War, the United States and its NATO allies found themselves in yet another conflict in the Persian Gulf. Ethicist J. Bryan Hehir believes that this new war changed the face of military intervention in two ways. It first of all highlighted the erosion of national sovereignty for some nations to pursue their own interests within international society. Conversely, it magnified the interdependence and cooperation among other nations in military, economic, and political matters.¹⁵¹

Cahill's published work on the subject of war began in the mid-1980s, with a series of articles in the biblical theology journal *Interpretation*, where she considers both the historical and biblical foundations for Christian pacifism and just war.¹⁵² This groundbreaking work for Cahill lays a foundation for this transitional period of her essays, and also offers a few insights into the adaptation of her work to new circumstances. This section considers two of Cahill's positive contributions to ethical discourse about war and pacifism. The first is her appropriation of the magisterial documents related to justice and peace. The second is the continuation of her theme of community-building. Cahill's initial inquiries into war and pacifism entail a broad historical approach, which includes Sacred Scripture, select Patristic authors (especially Augustine), Thomas Aquinas' philosophy, and the reflections of Christian Reformers.¹⁵³

¹⁵¹ See J. Bryan Hehir, "Just War Theory in a Post-Cold War World," *Journal of Religious Ethics* 20, no.2 (Fall 1992), 254.

¹⁵² Cahill, "Nonresistance, Defense, Violence, and the Kingdom in Christian Tradition," *Interpretation* 38, no.4 (October 1984), 380-397; "The Ethical Implications of the Sermon on the Mount," *Interpretation* 41, no.2 (April 1987), 144-156; and "New Testament Ethics: Communities of Social Change," *Interpretation* 44, no.4 (October 1990), 383-395.

¹⁵³ Cahill, "Nonresistance, Defense, Violence, and the Kingdom," 380-397.

Her research distinguishes those thinkers who understand the Christian community in eschatological terms from those who envision it in political terms. Each camp has difficulty dealing with counterexamples found in the bible, and in turn must resort to justifying their positions with a contrasting interpretation of the troublesome texts. With this diversity of philosophical and biblical views, Cahill concludes her early study with a dividing question: “whether the Kingdom’s peace can characterize history, or whether peace waits upon establishment of justice, even if by coercion and even if by violence.”¹⁵⁴

During the transitional period of her work, Cahill employs social teachings from the United States’ Bishops, who side with the latter part of the issue when they claim that justice is prior to peace.¹⁵⁵ Following the sources of CST, they insist that coercion has its limits and proscriptions in the prosecution of war. For example, the Bishops’ document echoes the condemnation of nuclear warfare, especially when aimed at civilian populations.¹⁵⁶ They also realize that just war involves more than a moral evaluation of weaponry or military strategy, but instead must attend to moral choices that reflect Kingdom living.¹⁵⁷ Their pastoral is set not only within a pluralistic context of the American political community, but also within diverse views about Christian ethics. They

¹⁵⁴ Ibid., 397.

¹⁵⁵ National Conference of Catholic Bishops, *The Challenge of Peace: God’s Promise and our Response* (Washington: United States Catholic Conference, 1983), paragraph 60: “In the kingdom of God, peace and justice will be fully realized. *Justice is always the foundation of peace.* In history, efforts to pursue both peace and justice are at times in tension, and the struggle for justice may threaten certain forms of peace” (emphasis added).

¹⁵⁶ Ibid., 147; cf. *Gaudium et Spes*, 80.

¹⁵⁷ Ibid., 67.

attempt to appeal to the common good, which they understand in the context of Vatican II's *Pastoral Constitution* as a universal, transnational norm.¹⁵⁸

With this pastoral foundation, Cahill picks up the theme of the universal common good in her essays on war and peace during this time. She notes that social teachings have become less explicit in their support for unlimited national sovereignty and “more interested in joining nations together in the common cause of peace under the leadership of a world government.”¹⁵⁹ Justice is another important component. Cahill claims that Aquinas influenced the Catholic tradition regarding justice and peace.¹⁶⁰ Much of his theological reflection is derived from Aristotle's naturalism, and calls for a moral order that is, in principle, knowable to all reasonable agents. But in the Aristotelian tradition, justice was reserved for the members of the community (i.e., of the city-state), while provisional hospitality was afforded to strangers. In envisioning a global, interdependent community, even one that includes a nation's enemies, justice must remain an overarching concern.

In terms of their respective interpretations of Aquinas' thought on justice, there is a clear distinction between Cahill and Jean Porter, whose work was discussed in the previous chapter. As Porter notes, justice can produce conflict because of the attempt to achieve finite human values and ends, and must therefore be supplemented by the virtue of charity.¹⁶¹ By contrast, Cahill sees a Thomistic sense of justice as privileging the common good over individual good. She points to a series of questions from the *Summa*

¹⁵⁸ Ibid., 10-12; cf. GS, 84.

¹⁵⁹ Cahill, *Love Your Enemies: Discipleship, Pacifism, and Just War Theory* (Minneapolis: Fortress Press, 1994), 206.

¹⁶⁰ Ibid., 83.

¹⁶¹ Porter, *The Recovery of Virtue*, 67, 169.

which suggest that that justice must rule *over* individual concerns. For example, Aquinas suggests that public officials, motivated by charity, must seek the public good over that of individuals.¹⁶² Related to this example, Cahill notes that in Aquinas, a judge who issues the death penalty may prefer the common good to that of the individual, but allows that conversion and expiation may also be effected in the criminal by this sentence.¹⁶³

What is more important here is the drastic effect of pacifism upon Cahill's critical appropriation of the natural moral law. She notes that Aquinas wrestled with many of "radical implications" of Jesus' teachings on nonviolence and nonresistance, but did not let them challenge his "essentially philosophical moral perspective." However, Cahill *is* challenged by the idea of pacifism and nonresistance. She demonstrates that Christian pacifism and just war theory are not simply two moral options, but two "fundamentally contrasting evolutions of Christian identity."¹⁶⁴ While both entail a presupposition against violence, she claims that pacifism alone is a "way of life." In other words, only pacifism can be called a "communal practice" in Christian life. She highlights that this shared practice is not monolithic, and discerns two types of pacifism: compassionate and

¹⁶² Cahill, *Love Your Enemies*, 90; cf. Aquinas, *ST II-II*, q.25, a.6.

¹⁶³ *Ibid.*, 90-91; cf. *ST II-II*, q.25, a.6.

¹⁶⁴ Cahill, "Theological Contexts of Just War Theory and Pacifism: A Response to J. Bryan Hehir," *Journal of Religious Ethics* 20, no.2 (Fall 1992), 260. Author's Note: It is important to note here that Cahill does not explicitly endorse pacifism *over* just-war theory. Rather, her comments underscore the sociological reality that there are certainly "peace churches" like the Quakers and Mennonites. These faith communities have rooted their existence in Christ's call to peace. At the same time, there are no "just war" churches, only those traditions (like Roman Catholicism) which look to war only as an extreme, last resort. I gratefully acknowledge Dr. James Bailey, who pointed out this insight to me.

obediential.¹⁶⁵ In fact, it is just this type of discourse that makes pacifism a “practice” in MacIntyre’s use of the term in that it has complexity, internal goods, and standards of excellence.¹⁶⁶ Moreover, it is part of an ongoing debate within the community about the overriding importance of imitating Christ’s actions and teachings.

Just war theory clearly has its roots in the natural moral law. As such it seems reasonable to suppose that a plausible account of the theory could be adapted to the Christian community. However, Cahill makes the startling claim that

Just war theory is not communal in any specific sense (other than that it emerges from Western cultural and moral traditions), precisely because its purpose is to unite different and even antagonistic religious, moral, and cultural communities around a set of excluding or negative and minimal criteria of mutual association in exceptional circumstances. The presupposition of these limiting criteria is positive – peace is a value and is to be sought – but while the just war theory deters infractions against peace, its so functioning does not depend on agreement about a positive, substantive view of peace or justice or even war.¹⁶⁷

Cahill’s strong reluctance about just war considerations can be explained in large part by her suspicions about religious coercion. She notes that the U.S. Bishops’ pastoral letter

¹⁶⁵ Cahill, *Love Your Enemies*, 150: “While empathetic identification with ‘the other’ (friend, stranger, or foe) is key to the first, that theme is subsumed in the second under obediential imitation of Christ’s sacrifice.”

¹⁶⁶ MacIntyre, *After Virtue*, 187: “By practice, I am going to mean any coherent and complex form of socially established cooperative human activity through which goods internal to that form of activity are realized in the course of trying to achieve those standards of excellence which are appropriate to, and partially definitive of, that form of activity, with the result that human powers to achieve excellence, and human conceptions of the ends and goods involved, are systematically extended.”

¹⁶⁷ Cahill, *Love Your Enemies*, 235.

did not question whether a genuine peace can be established coercively.¹⁶⁸ She also highlights the historical use of compulsion in the Catholic and Reformed traditions.¹⁶⁹

In her future essays, though, Cahill is generally less wary of coercive policies. For instance, she envisions appeals to enlightened self-interest as an “indirect and anticipatory form of coercion, in which an agent rationally considers future or potential negative consequences of a certain course of action. Bad press, trade sanctions, and punitive taxation are three examples of these forcible practices. In fact, within a decade, she also seems to reverse her earlier criticism of just war theory.¹⁷⁰ Due to human sinfulness and structural injustices, force is sometimes needed.

Thus, an element to be accentuated in social teaching of the future is the occasional, but still very definite, need for coercion to secure justice in social relations. *Still needed is a principle of forceful intervention that is similar to the principle that undergirded the traditional just war theory.* Once again, though, the structures of social agency have changed in the age of globalization; coercive authority is not limited to the nation-state, a comprehensive public authority, or international institutions. Activist networks and non-governmental organizations, along with dissenting national governments, can challenge and even coerce some aspects of global systems, at least some of the time.¹⁷¹

As Cahill’s work more fully integrated CST, she seems to come to terms with the tradition that coercion is sometimes needed in the face of dehumanizing injustice.¹⁷² CST

¹⁶⁸ Cahill, *Love Your Enemies*, 5.

¹⁶⁹ Ibid, 5. Cahill’s view encompasses a wide historical and ecumenical perspective. For her discussion of Augustine, see 77-78; for her analysis of Aquinas, see 90-91. In John Calvin and Reinhold Niebuhr, see 110-113 and 188-189, respectively.

¹⁷⁰ Cahill, “Just Peacemaking: Theory, Practice, and Prospects,” *Journal of the Society of Christian Ethics* 23, no.1 (March 2003), 202.

¹⁷¹ Cahill, “Globalization and the Common Good,” in John A. Coleman and William F. Ryan ed., *Globalization and Catholic Social Thought* (Maryknoll: Orbis Books, 2005), 52 (emphasis added).

¹⁷² In a 2001 interview, Cahill relates her suspicions about the possibility of just-war in the context of the United States invasion of Afghanistan. However, she also pointed out that there is complementarity between just war and pacifism. By this point in

also evolved during this time of change in Cahill's thought. Since Vatican II, CST, which in its earlier form is grounded in natural law, began to lean more heavily upon Sacred Scripture in order to generate timely, practical solutions to pressing social problems.¹⁷³ Critical interaction with social teachings will become foundational of her later ethical writings, especially bioethics.

Her deeper consideration of CST has even further implications for her ongoing work in sexuality and the family. During this transitional time in her writings, she continues to draw in the social tradition into her essays. Building upon Chapter One's analysis of her use of CST, the next section analyzes Cahill's understanding of justice within the family context.

Justice, Family, and Sexual Ethics

The opening chapter of this dissertation described the importance of the family in CST. For instance, Leo XIII insisted that compensation for labor should provide sufficiently for a worker's family, which is the first natural society.¹⁷⁴ The family is also the narrowest demonstration of the sociality of human beings, one of the three basic affirmations of CST. But the family is more than a basic economic unit, and the family structure is not beyond ethical critique. Even though Cahill's early work in sexual and

her scholarship, she has endorsed just-war theory, when it is truly used as a limited last resort. It is also important to note that her understanding of just-war has been largely informed by Catholic Social Teaching. See Meinrad Scherer-Edmunds, "Is This War Just?" *U.S. Catholic* 66, no.12 (December 2001), 12-16, with an acknowledgement of thanks to Dr. Bailey, who directed me to this article.

¹⁷³ Examples were provided in Chapter Three, with John Paul II's *Laborem Exercens* and Benedict XVI's *Caritas in Veritate*, especially paragraph 2.

¹⁷⁴ Leo XIII, *Rerum Novarum*, 12-13. Later, John Paul II explicitly calls this just recompense and "family wage" (*Laborem Exercens*, 19).

family ethics underscores the communal dimension of both, it did not include any references to CST. Instead, she attempts an inductive and contextualized appropriation of the natural law that moved beyond emphases upon individual acts.¹⁷⁵

In her later work in family ethics, natural law is still a prominent element, as it was in her early work, but she also fully integrates CST into her mature project. At the same time, Cahill's notion of justice evolves beyond the natural law's basic definition as "giving others what is due to them." This commutative and distributive principle remains a part of her work, but it also becomes idealized in concert with the social tradition's understanding of social justice. This section analyzes her work in family and sexual ethics during this transitional period by placing it within the stream of her research, past and future. It includes a brief comparison both to her previous essays, while the next section considers her later thought related to family ethics.

As described in Chapter One, Cahill founds her claims about the family on the biological aspect of human sex. It is vital for the continuation of the species, and thereby is constitutive of the natural order. Family and gender organize reproduction "cooperatively and socially" toward this end. By the same token, justice is a uniquely human notion in the created order, promoting the life of the species beyond mere survival. In order to orient human sexual activity in a proper manner, the common good provides content for justice in its interpersonal and social dimensions. Thus, in humans, the family is the primary conduit through which sex and gender relate to the common good.¹⁷⁶

¹⁷⁵ Cahill, *Sex, Gender, and Christian Ethics*, 14-72.

¹⁷⁶ Cahill, "Sex, Gender, and the Common Good," 145-146.

During this period of Cahill's scholarship, her notion of justice moves beyond the egalitarian and personalist tendencies of her previous work toward a solidaristic and interdependent framework for justice.¹⁷⁷ This conception of justice deemphasizes the moral sense of responsibility *away from* principles and stresses it *toward* persons, especially to those in need. For example, in her discussion of Aquinas' views on marriage and family, she considers the justice aspects of these institutions which are highlighted in his work. She sees his insistence on monogamy as "more naturally just" than polygamous marriage or non-marital childbearing.¹⁷⁸ Monogamy places a clear restraint on men from "indiscriminate insemination," and the responsibility for men to provide material protection to expectant mothers and their children.¹⁷⁹ Moreover, it protects older women who have lost either beauty, fecundity, or both.¹⁸⁰ Cahill's discussion of justice in Aquinas' thought is a new development from *Between the Sexes*, where she looks to the interpersonal dimension of couples in his work.¹⁸¹ In this classical sense, justice is still intrinsically concerned with giving to others what is due to them, and this theme is likewise prominent in Cahill's discussion of honoring parents. However, Christian roots of justice are far deeper than liberal notions of parenthood.

¹⁷⁷ Cahill says so explicitly during a 1995 roundtable on the family. "A lot of recent books on the historical Jesus emphasize that Jesus created a community that transcended some of the status boundaries of the first-century Jewish Palestine and of Greco-Roman culture. Perhaps I am again revealing my background in Catholic social teachings here, but *the issue for me is not pluralism or egalitarianism so much as solidarity* – solidarity with the marginalized, with those who are beyond the social boundaries." David Heim, "Family Values, Christian Values: A Roundtable Discussion," *The Christian Century* 113, no.4 (January 31, 1996), 105, emphasis added.

¹⁷⁸ Cahill, *Sex, Gender, and Christian Ethics*, 90.

¹⁷⁹ Cahill, "Sex, Gender, and the Common Good," 152.

¹⁸⁰ Cahill, *Sex, Gender, and Christian Ethics*, 90.

¹⁸¹ E.g., Cahill, *Between the Sexes*, 106.

Aquinas attributes greater love of humans for their parents to the “honor” and “reverence” they owe them (as contrasted to the “care” owed children). Honor for one’s parents depends both on the memory and foresight necessary to recognize intergenerational relationships, to experience gratitude for past benefits, and to maintain a moral sense of indebtedness for such benefits, even when their prospective utility is past.¹⁸²

This intergenerational portrayal of justice demonstrates her constant rejection of utilitarian and social contract bases for justice, but it also underscores the “interactive reason” which is constitutive of the dialogic nature of Cahill’s developing notion of justice.¹⁸³

The common good gives content to her notions of justice, with solidarity and responsibility as two guiding virtues that help to contribute toward the common good. One example during this period is found in an essay on suffering. While keeping the essential equality of persons intact, Cahill begins to shift the focus away from egalitarianism as such to “solidarity and mutual care.” This “Christian resocialization” penetrated the early community to its core, and disrupted the effects of economic, gender, social and other differences.¹⁸⁴ Contemporary Christian ethics must not only address the

¹⁸² Cahill, “Sex, Gender, and the Common Good,” 152; cf. Jane English, “What Do Grown Children Owe Their Parents?” in Onora O’Neill and William Ruddick ed., *Having Children: Philosophical and Legal Reflections on Parenthood* (New York: Oxford University Press, 1979), 351-356. English answers “nothing,” at least in terms of the parent-child relationship itself.

¹⁸³ The term “interactive reason” comes from David Tracy, “Public Theology, Hope, and the Mass Media: Can the Muses Still Inspire?” In Max Stackhouse and Peter Paris ed., *God and Globalization: Religion and the Powers of the Common Life 1* (Harrisburg: Trinity Press International, 2000), 232-248. It describes the dialogic process through which the normative character of certain practices comes to be theoretically understood. Cahill uses this term for the first time in 2003 (“Just Peacemaking,” 197) but the concept seems to be at work in her scholarship as early as 1990 (“Can Theology Have a Role in ‘Public’ Bioethics?”).

¹⁸⁴ Cahill, “Kingdom and Cross: Christian Moral Community and the Problem of Suffering,” *Interpretation* 50, no.2 (April 1995), 158. In this context, Cahill maintains an egalitarian stance by appropriating Elisabeth Schüssler-Fiorenza’s term “discipleship of

suffering of others but also determine their responsibility for it.¹⁸⁵ On this basis, Cahill claims that CST brings together freedom and responsibility together under the theme of participation in the common good.¹⁸⁶ Family relates to this aspect of CST in two reciprocal ways.

Christian families should not turn inward, nurturing only their own interior relations and spirituality. The family also has social responsibilities, and families, in turn, need social support so that they can participate in the common good and fulfill their responsibilities. My main point is that, taken together, both kinds of responsibility mean that more-advantaged families have an obligation to less-advantaged families, including broken, single-parent, impoverished families and families suffering from racial or ethnic discrimination.¹⁸⁷

On the one hand, the social responsibilities of families are universal, in that they must refrain from turning inward on themselves. Implicit here is that families are both free and dependent at the same time, because they need help to participate fully in society. On the other hand, these social responsibilities often have a particular dimension to them, especially when families are confronted with the suffering of another family. The virtue of solidarity is thereby given a context that concretizes the universal principle of social justice.

Justice considerations also have an influence on sexual and family ethics within a global social context. Contraception as a population-reducing strategy is a very different question from a couple's family planning scheme. Cahill grants that the welfare of a community (local or global) might require limitations on family size, but it must be

equals" in her own discussion of the inclusive Christian community in a spirit of "solidarity and compassion" that is constitutive of such discipleship, *ibid.*, 160.

¹⁸⁵ *Ibid.*, 161.

¹⁸⁶ Cahill, "Sex, Gender, and the Common Good," 159.

¹⁸⁷ Cahill, "Families Offer Way to Transform Society," *National Catholic Reporter* 32, no.19 (March 8, 1996), 10.

considered in relation to economic and political justice, including justice for women. It must also be assessed according to distributive schemes and other justice factors within an interdependent community, with a focus on disadvantaged or vulnerable populations.¹⁸⁸

Conclusion to the Analysis of the “Transitional” Period in Cahill’s Work

This section has attempted to navigate the complex, circuitous development in Cahill’s conception of justice during a transitional period in her scholarship. On the one hand, personal justice as a Thomistic virtue is an enduring component of her work. To call it “personal” does not mean that justice is an isolated or private matter. In her work, “justice for individuals” always implies individuals within a community. At this point, Cahill’s notion of personal justice has to do with equality, especially in her sexual and gender ethics. On the other hand, the community as such becomes the locus for her considerations of justice. Like the twisting of a kaleidoscope, the perspective shifts while the constitutive elements of justice remain the same. Her concept of embodiment gives a social and historical context to the agent, and in turn offers a turn to the social dimensions of justice. This social perspective, which recognizes the universality of mortality and sickness, allows for compassionate care and resurrection hope. However, embodiment disappears as a fundamental concept in her later work. This early social perspective also seems to exclude explicit references to Catholic Social Teaching, but as the third segment of this section demonstrated, she begins to incorporate CST into her scholarship during this time. The affirmations of human dignity, sociality, and the common good – which,

¹⁸⁸ Cahill, *Sex, Gender, and Christian Ethics*, 213-214.

taken together, perhaps imply embodiment – become an indispensable part of these and future essays.

In terms of just war and pacifism, it is clear during this part of her career that Cahill privileges the latter. Against the general view of the social tradition, she sees nonviolence as the only practice that can be emblematic of an authentic Christian community. She later modifies and eventually reverses this position, as she comes to understand that coercion can and at times must be used to thwart deeply entrenched injustices. This shift can be explained by a more complete integration of CST, which demands that Christians maintain responsibility for their part in the evolution of historical events that impact upon the common good.¹⁸⁹ Her growing attention to the common good has enormous influence upon her ethical writings on family. The common good supplies a concrete measure for justice in all human relations, and participation is the first indicator of justice. Participation implies an egalitarian aspect of justice with regard to equal respect and social power. It also requires contribution from all toward the common good, and generates responsibility on the part of society to ensure that all can fully participate. While the family can help to secure the goods required for human flourishing, society must be able to afford their widest possible distribution.

The final section will demonstrate that the social dimensions of Cahill's writings take on a fully global perspective, and it is indeed a rare essay that does not include some ethical import for worldwide society. It analyzes her continuing work on the family and bioethics as she increasingly assimilates CST into her method. Her strategies to achieve both personal and social justice in both of these areas of her research reach out across an

¹⁸⁹ Cahill, *Love Your Enemies*, 205; and "Kingdom and Cross," 161.

array of religious, political, governmental and non-governmental entities. In short, the next section addresses the considerations of Cahill's "collaborative justice."

Collaborative Justice and the Common Good in Global Perspective: 1997 - Present

Cahill's growing attention to justice in the universal church and global society become the overwhelming focus in her later writings, and this theme persists to the present day. Her notion of justice attempts to cover nearly every area of ecclesial and public life. She accomplishes this goal by fully integrating the Catholic social tradition into her work. At the same time, she understands that justice cannot be achieved at local levels as a result of top-down interventions. Outsiders can serve a vital role through public advocacy, material and technological support, and advisory personal, but the responsibility of local improvement must belong to the local polity. Her insistence upon homegrown or grassroots empowerment is an application of the principle of subsidiarity, which is also a component of CST.

This final section analyzes Cahill's application of collaborative justice in family and social ethics, which remains a major part of her scholarship up to the present. In this context, she amplifies many of CST's concepts to buttress the foundation of her earlier work in sexual and family ethics. She also calls for greater participation of the laity, and especially women, in the governance of the Catholic Church. Her critical understanding of CST becomes apparent in her analysis of several challenges to the social tradition. Nonetheless, she remains optimistic that CST is the best way to express Catholic identity in the public forum. The dissertation also summarizes the structure of collaborative justice, and compares Cahill's vision of justice with the philosophical and theological

accounts of justice offered in Chapters Two and Three. The dissertation's conclusion will discuss the possibility of applying Cahill's collaborative justice to future public discourse about genetic enhancement, an issue which she has also considered extensively.

Collaborative Justice in Family and Social Ethics

This section explores Cahill's growing tendency to utilize collaborative strategies in achieving justice throughout her theological project. In doing so, she refines her earlier work in sexual and family ethics, and recommends ways in which diverse family types can serve the common good of society. She also encourages greater participation especially for women in all areas of social life, including the church. She argues that complementarity undermines the church's mission by marginalizing a large number of its members. With regard to social ethics, Cahill continues to insist that religious voices should maintain a leading role in public debate. This persistence is driven by her firm commitment to collaborative justice, which transcends liberal and communitarian approaches to justice.

The first chapter summarized CST's vital influence on Cahill's later work on sex, gender, and family. Cahill's writings on the family have moved from its significance for sustaining today's Christian community to the transformative values of solidarity and responsibility for the larger society in which Christians live. This trend begins in essays during the transitional period of her career, and further evidence is found in her 2000 book, which analyzes the Christian family through the lens of CST. There, she defines family as "an organized network of socioeconomic and reproductive interdependence and support grounded in biological kinship and marriage." Historically, marriage and the

family have been the primary ways in which economic and social structures are managed.¹⁹⁰ Michael Walzer also described marriage as one of the predetermined social arrangements in which humans find themselves.¹⁹¹ Employing John Paul's metaphor of the family as domestic church, Cahill confirms the interdependence of the family and society.¹⁹² She calls on society to provide support for the well-being of families, so that they might thereby contribute effectively toward the common good.

However, Cahill is also concerned that the Christian community has not yet achieved complete participation of its own membership. For example, social encyclicals on the family still insist on a paradigm of complementarity which assigns women to domestic (i.e., private) roles in society. In other later essays, Cahill points out that, even though most non-ordained ministerial positions in local parishes are held by women, there is still no role for women in the Roman Curia, which preserves and perpetuates Catholic teaching.¹⁹³ At the same time, theological perspectives that tend to idealize the nuclear family actually undermine Catholic teaching on the common good.¹⁹⁴ Consequently, Cahill's commitment to justice for all within the community engenders a certain hesitation in her other later essays to utilize fully the metaphor of family as "domestic church."

¹⁹⁰ Cahill, *Family: A Christian Social Perspective* (Minneapolis: Fortress Press, 2000), x-xi.

¹⁹¹ Walzer, *Politics and Passion*, 6-7.

¹⁹² John Paul II, *Familiaris Consortio*, 52.

¹⁹³ Cahill, "Feminist Theology and a Participatory Church," in Stephen J. Pope ed., *Common Calling: The Laity and Governance of the Catholic Church* (Washington: Georgetown University Press, 2004), 142, 144.

¹⁹⁴ Cahill, *Family: A Christian Social Perspective*, xi-xii.

Cahill makes three arguments which attempt to rehabilitate this domestic church imagery by transforming the participatory nature and diverse structures of the family itself. First, she claims that Christian families' internal structure should be based on reciprocity (elsewhere called mutuality) and spirituality rather than complementarity. Moreover, families should turn outward in order to transform society in a manner consistent with CST. Finally, a diverse church should be able to tolerate varied family structures in their struggle.¹⁹⁵ In short, Cahill calls on families to be just, to work toward justice, and to be supported by just institutions, including the church itself.

Furthermore, she offers five recommendations which she believes will give rise to a justice-seeking domestic church.¹⁹⁶ First, the family's internal relationships should embody justice insofar as it is rooted in mutuality, dignity, and respect. In another essay, she employs the concepts mutuality and reciprocity as a "guiding vision" for the church, in hopes that "justice and love can be more fully realized in society and in the church." She also calls for a reinvigoration of the church's teaching on human createdness in order to "preclude any idea that men can imitate Christ more than women."¹⁹⁷ Next, familial roles should promote participation in the common good. Third, kinship should not be placed above discipleship as a "family in Christ," Fourth, the domestic church, like the universal church, should seek justice with a preferential option for the poor. Fifth, the family's internal moral commitments must be contextualized by its relationship with God in all aspects of life – religious and secular. Cahill's five-fold emphases on human

¹⁹⁵ Ibid., 84.

¹⁹⁶ Ibid., 135-137.

¹⁹⁷ Cahill, "Feminist Theology and a Participatory Church," 129, 142.

dignity, common good, firm discipleship, preferential option, and holistic lifestyle all reflect the complete integration of CST into her theological reflections on the family.

Cahill's collaborative justice in family ethics continues to insist on gender equality as its point of departure. Equality within the family "teaches an important lesson for the way we approach those outside our families."¹⁹⁸ To this point, she praises John Paul II's refusal to limit women's roles to the domestic realm in his social encyclicals.¹⁹⁹ Despite the central place the pontiff gives motherhood for women, a position that Cahill believes creates an imbalance in his social thought, she also believes that gender equality can be realized by locating it under the aegis of the Preferential Option for the Poor. The Preferential Option affirms justice through its call for social justice and inclusive participation in the common good. The historic and ongoing exclusion of women from roles in public life warrants their categorization among the world's poor.²⁰⁰

Moving to Cahill's work in social ethics in general, one finds aspects of collaborative justice in nearly all of her essays. Each account of justice presented in Chapter Two clearly proposes certain consequences for participation in the public sphere. It is apparent from the breadth of Cahill's most recent writings that she generally rejects liberal strategies which prefer market forces and autonomous choice as the guiding values for moral deliberation. It is equally clear that she does not intend to call for the church to isolate itself by withdrawing from the public forum. Even though she consistently accepts that CST is the unsurpassed method for Catholics participating in public ethical

¹⁹⁸ Cahill, "Feminist Theology, Catholicism, and the Family," in Magdala Thompson ed. *Full of Hope: Critical Social Perspectives in Theology* (New York: Paulist Press, 2003), 108.

¹⁹⁹ *Ibid.*, 101; cf. John Paul II, *Dignitatis Mulieris* (August 15, 1988), 30-31.

²⁰⁰ *Ibid.*, 104.

discourse, she is also fully aware of the challenges for CST in an age of globalization. This dissertation makes the case that Cahill's notion of collaborative justice, expressed in CST's concepts of solidarity and subsidiarity, effectively answers these troubling questions about CST. The remainder of this chapter section on social ethics summarizes Cahill's response to various challenges to a Catholic understanding of the common good, and the conclusion will demonstrate how she applies collaborative justice to the area of genetics.

Cahill sees that one nagging obstacle for a common good approach to social issues in an age of globalization has to do with world governance. The social encyclicals look hopefully toward the United Nations to become the final arbiter of international conflicts and problems. Even Benedict XVI still seeks a world political entity with the authority to implement proposed solutions to international development.²⁰¹ In the absence of such an entity, Cahill claims that powerful organizations like the World Trade Organization (WTO), the International Monetary Fund, and the World Bank have moved into this vacuum. The WTO's objective is to "guarantee a safe and stable political and financial environment for first world producers and investors."²⁰² Part of this problem is tied directly to CST, especially the social encyclicals, which envision layers of authority in a top-down fashion. While the social tradition accounts for these layers through the principle of subsidiarity, which allows these levels to operate within their respective spheres of operation, it remains committed to a worldwide authority at the top.

²⁰¹ Benedict XVI, *Caritas in Veritate*, 67.

²⁰² Cahill, "The Global Common Good in the Twenty-First Century," in James Keating ed., *Moral Theology: New Directions and Fundamental Issues* (New York: Paulist Press, 2004), 238, 239-240.

By contrast, Cahill perceives in the principle of subsidiarity an implicit notion: there is acceptance of a plurality of social organizations, with overlapping and reciprocal areas of competence. Globalization challenges CST's hierarchical paradigm to include this pluralism which imagines an authority that is "multifaceted, dialogical, flexible, and open-ended." As an alternative, Cahill calls attention to organizations that she refers to as "transnational advocacy networks," groups of activists who share a practical consensus about a certain value or injustice (e.g., the environment, HIV/AIDS, global debt, etc.). Using the same communications and transportation technology that brought about globalization, these networks can work on behalf of the marginalized or against the interests of the powerful.²⁰³

Cahill makes analogous claims in the area of moral theology in general. Utilizing Australian feminist legal scholar Hilary Charlesworth's model of "transversalism," understood as a cross-cultural and empathetic process reaching moral consensus, Cahill insists that there is very little cultural pluralism with regard to the most basic needs of persons and societies. Transversalism has potential "to invigorate our quest for justice."²⁰⁴

Where cultural pluralism makes a huge often negative moral difference is in defining *the systems of access* by which individuals and group either do or do not obtain the goods their welfare and flourishing require. Access to goods is typically restricted. Every culture and institution known to humanity systematizes types of discrimination. Modern terms such as "human dignity," "full humanity," "democracy," "human rights," "equality," "solidarity," and "equal opportunity" are ways of challenging inequitable access patterns. Such language represents a

²⁰³ Ibid., 243, 244.

²⁰⁴ Cahill, "Moral Theology: From Evolutionary to Revolutionary Change," in James Keenan ed. *Catholic Theological Ethics in the World Church* (New York: Continuum, 2007), 224-225. Transversalism refers to a universal understanding of basic needs across cultures. See Hilary Charlesworth, "Martha Nussbaum's Feminist Internationalism," *Ethics* 111, no.1 (October 2000), 64-78; Cahill cites at 76-77.

social, political, and legal ethos in which participation in the common good and access to basic goods of society is universally shared, even though on many possible cultural models. This is the modern definition of social justice, and social justice is an indispensable constituent of contemporary moral theology.²⁰⁵

The natural law tradition, which grounds CST, also offers the warrant for religious voices to dialogue about these and other public moral problems. It is built on the premise that shared humanity will resolve practical threats to the common good.²⁰⁶

In some ways, Cahill's conception of collaborative justice resembles Margaret Farley's notion of "compassionate respect." As described in Chapter Three, Farley envisions the content for justice being provided by compassionate respect, whereas the common good offers meaning for just social relations. In Cahill's work, the common good provides the content, while solidarity and equality help to define justice's meaning. But in both cases aid is not rendered in a top-down, paternalistic manner. The action and activism required to ameliorate an unjust situation is accomplished in a way that respects persons within their particular contexts.

Collaborative justice also demonstrates Cahill's commitment to participation in the political process. In a 2012 essay, she asserts that political participation is one of the most significant activities in which humans can fulfill their human dignity, and it is crucial for sustaining a healthy democracy and justice. But she is also concerned that Catholic citizens, especially in the American context, too often become "single-issue voters."²⁰⁷ She cites the 2008 U.S. Presidential election as evidence of Catholic voters

²⁰⁵ Cahill, "Moral Theology: From Evolutionary to Revolutionary Change," 225.

²⁰⁶ *Ibid.*, 224.

²⁰⁷ Cahill, "Voting and Living the Common Good," in Nicholas P. Cafardi ed., *Voting and Holiness: Catholic Perspectives on Political Participation* (New York: Paulist Press, 2012), 27, 30.

moving away from a tendency to focus myopically on a candidate's stance on abortion while ignoring virtually all other social issues.²⁰⁸ Cahill calls for a further distancing of Catholic voters from what she refers to as the "culture wars," and instead move toward "forging a dynamic vision from constructive debate, respectful criticism, practical commitment, and a hermeneutic of generosity toward others' value priorities."²⁰⁹

In a bipolar world, where twenty percent of the world's developed nations tend toward overconsumption while many in the developing world suffer from malnourishment, greater attention to global justice helps to achieve these urgent political goals.²¹⁰ She is encouraged to see Benedict's *Caritas in Veritate* call for global social reform, which requires a "global solidarity," a public place for religion, and a love which leads to "engagement in the field of justice and peace."²¹¹ He also insists on a world political authority to oversee such policies, a task Cahill believes is no longer a viable solution.²¹²

It warrants repeating here that although Cahill generally rejects the notion of an overarching authority with regard to international development that she does not reject a universally expressible morality. In fact, on this point Cahill differs with Jean Porter, who takes the position that theological ethical norms cannot be expressed to those outside the community. Moreover, Porter claims that a global ethic is neither necessary nor possible.

²⁰⁸ Cahill, "Religion and Politics: U.S.A.," *Theological Studies* 70, no.1 (March 2009), 177-178. See also "Voting and Living the Common Good," 28-31.

²⁰⁹ Cahill, "Voting and Living the Common Good," 31.

²¹⁰ *Ibid.*, 36-37.

²¹¹ Benedict XVI, *Caritas in Veritate*, 56, 1.

²¹² *Ibid.*, 24, 67; cf. Cahill, "*Caritas in Veritate*: Benedict's Global Reorientation," *Theological Studies* 71, no.2 (June 2010), 292.

A universal ethic could only be described at the highest levels of abstraction, emptying them of any actual universal meaning.²¹³ Instead, Cahill has consistently claimed that Catholic ethics is intelligible to larger society to the degree that Catholic theologians can resist proceeding deductively from first principles.²¹⁴ Cahill has maintained this position for over a decade.

Global ethics does not stand or fall with a universal set of specific moral prescriptions, which few today would defend, but with the idea that there are after all some moral nonnegotiables and some clearly identifiable injustices to which all cultures and religions should be responsive for humanistic reasons.²¹⁵

The unprecedented rise of globalization now requires global patterns of morality. Mass communications and rapid transportation technologies have already shaped relationships among human persons and communities across national and cultural lines.²¹⁶ Cahill's attention to unjust situations and structures in global society has oriented her search for a suitable common morality, and collaborative justice seems to be its comprehending principle.

The Elements of Collaborative Justice and Comparison with Other Accounts

What are the contours of Cahill's notion of collaborative justice, then? Four observations can be made. First of all, it is rooted in the Thomistic definition of giving to others what is due to them. This classical understanding has been pronounced in writings

²¹³ Jean Porter, "The Search for a Global Ethic," *Theological Studies* 62, no.1 (March 2001), 105-121.

²¹⁴ Cahill, "Theological Ethics, the Churches, and Global Politics," *Journal of Religious Ethics* 35, no.3 (September 2007), 393.

²¹⁵ Cahill, "Toward Global Ethics," *Theological Studies* 63, no.2 (June 2002), 328.

²¹⁶ *Ibid.*, 335.

which span her entire career. What is most interesting here is how the subject of justice has developed during this time. In Cahill's early writings, justice was subtly and strategically placed within select writings in order to resolve particular issues within a communal context. Individual persons inside the Body of Christ were the subject of justice. Issues like occasional contraception, committed homosexuality, and remarriage after divorce are deeply personal, yet they can also affect others within the larger community.²¹⁷ Her later work tends to portray this communal dimension in broadly-inclusive shades, a perspective that moves beyond Aquinas' conception of "community," as discussed in Chapter Three.

Next, the common good gives content to collaborative justice. Participation in striving for the common good is essential to living out one's human dignity. Justice requires that persons contribute to their fullest capacity. It also demands that society provide each family with what they lack, so that they can fulfill this responsibility to justice. Cahill has noted that the latter part of this mutual arrangement is the "flip side" of social justice.²¹⁸ Thus, there is an interdependent, reciprocal relationship between the individual and society. The final part of this section also describes her "bioethics of the common good," which gives substance to bioethical applications of justice.

Third, Cahill's writings describe collaborative justice as a universal principle. This principle is not logically deduced, but experientially inducted. Induction is also not an isolated intellectual process, but an engaging dialogical one. Occasionally, she has referred to this common morality by way of David Hollenbach's idea of "dialogic universalism," which Cahill describes as premised upon human dignity but articulated in

²¹⁷ Cahill, *Between the Sexes*, 149.

²¹⁸ Cahill, "Sex, Gender, and the Common Good," 162.

a “pluralistic but interdependent world.” Practices of solidarity are vital to the universal scope of collaborative justice, so that the common good may be achieved appropriately and differentially within the “network of crisscrossing communities.”²¹⁹

Finally, as this dissertation concludes with a consideration of Cahill’s writings on genetic enhancement, it is important to preface that analysis with her lengthy description of justice, what this dissertation calls “collaborative justice,” as it applies to germline modification.

The definition of justice upon which I rely, and which *I will apply in the area of germline modification*, is procedural, substantive, social, and global. Justice requires procedures by which all social members can participate in establishing practices and institutions that affect their welfare and that of their communities. Justice requires access to the basic human goods necessary for human life, well-being, and society. Justice refers to and includes patterns of social relationships and institutions that allow individuals and groups to be related to one another consistently at distances of time and space. *Justice as participation, as sharing in basic goods, and as social or political is a global norm or ideal, applying to all peoples or cultures.*²²⁰

Cahill’s depiction of justice here includes the three major aspects of collaborative justice that were described in the preceding paragraphs. It consists in giving to others their due. Justice’s demands are determined by reference to the common good. Likewise, participation is a constitutive element of the common good and, by extension, justice. Furthermore, her definition is global in scope. Further still, Cahill’s definition resonates and contrasts in significant ways with the accounts of justice analyzed in the Chapters Two and Three.

²¹⁹ Cahill, “Theological Ethics, the Churches, and Global Politics,” 393; and *Theological Bioethics*, 253. See also David Hollenbach, *The Global Face of Public Faith: Politics, Human Rights and Christian Ethics* (Washington: Georgetown University Press, 2003), 10-11.

²²⁰ Cahill, “Germline Genetics, Human Nature, and Social Ethics,” in Ronald Cole-Turner ed., *Design and Destiny: Jewish and Christian Perspectives on Human Germline Modification* (Cambridge: The MIT Press, 2008), 149-150 (emphasis added).

Collaborative Justice and the Philosophical Accounts of Justice

For example, Cahill and John Rawls both construe justice in procedural terms. Both express egalitarian tendencies, with regard to respect for individual persons. They are also concerned with the welfare of society's least-favored citizens. Rawls expresses this responsibility in the Difference Principle, while Cahill looks to solidarity as the primary, guiding virtue. The two concepts are similar insofar as both attend to the least well-off in society, but they are quite far apart in practice. On the one hand, Cahill claims that solidarity gives content to the larger practices of justice. Rawls, on the other hand, envisions the Difference Principle *qua* principle, and lexically follows the primacy of liberty. Cahill might reasonably be able to practice solidarity in a manner that resonates with the Difference Principle, but it is only incidentally so. Cahill's solidarity is an application of Rawls' Difference Principle only because Cahill has a foundational sense of the good prior to Rawls' two-fold conception of justice. This good is equality rooted in human dignity, which is related to, but quite distinct from, liberty. As the Epilogue will bear out, solidarity requires that liberty sometimes be constrained, even coercively.

Furthermore, their respective notions of justice imply both cooperation and competition among its constituents, while trying to subtract power from its original position to avoid unfair exploitation of initial advantages. Rawls accomplishes this task intellectually through the veil of ignorance. In reality, however, power differentials are often found in policy debates. By contrast, Cahill employs a participatory bioethics that includes action and activism.²²¹ Several examples were offered in the present chapter as

²²¹ Cahill, *Theological Bioethics*, 20.

well as the first, like Cahill's description of transnational advocacy networks.²²² Cahill's collaborative strategies thereby diffuse these power gradients more effectively than the constant government intervention required by Rawls' Difference Principle.

Ultimately, Cahill rejects Rawls' two-fold political conception of justice, which privileges liberty above all else in its serial ordering. Rawls rules out substantive discussion about the good life for liberty's sake, thereby allowing citizens to pursue their own life plans. Cahill takes the position that, lacking a fuller notion of the good, public discourse becomes ruled by "the values of individualism, science, technology, the market, and profits." Instead, she calls upon theologians to recover its prophetic voice, and join the public forum as "an energetic adversary of the liberal consensus."²²³ Cahill also critiques Rawlsian approaches to genetic medicine on the grounds that unjust patterns of health care access, which already exist, will continue to exclude the marginalized with regard to genetic interventions. Ordinarily worthy values like free choice and tolerance tend to short-circuit serious considerations of the common good.²²⁴ This issue is also addressed further in the conclusion.

As described in Chapter Two, Cahill does not share MacIntyre's pessimism regarding the state of moral discourse. To the contrary, she depends upon cooperation from diverse elements of the community to achieve a higher standard of justice. However, when it comes to justice as such, Cahill and MacIntyre both ground their respective understanding in a Thomistic account of justice. They also agree that there is

²²² Cahill, "The Global Common Good in the Twenty-First Century," 244.

²²³ Cahill, *Theological Bioethics*, 17-18.

²²⁴ *Ibid.*, 32-33.

no concept of a neutral, tradition-free rationality that can give rise to an adequate account of justice.²²⁵

Cahill and MacIntyre both critique globally-significant state activity, though they describe them in different terms. MacIntyre states that particular public cases are adjudicated by employing the concepts of utility and rights through government entities like the courts and legislatures.²²⁶ But in contemporary society, as MacIntyre has shown, the government is not neutral in deciding among competing claims. Powerful interests appoint judges to the courts, and equally formidable lobbies have the ear of legislators. Further still, since governmental power to enforce decisions endangers the stability of local communities, agencies of the state should not be the ones to exclude participation in public discourse. By contrast, Cahill sees some value in collaborating with the government on policy. Lacking such controls, she believes that powerful interests can monopolize the debate, effectively short-circuiting any action that subtracts from their profits.²²⁷

Moving to a comparative analysis with Michael Walzer's conception of justice, one can find many points of similarity. For instance, both critique a conception of public discourse that is couched in terms of strictly-deliberative practices. In deliberative processes, disagreements are negotiated through discourse which is qualified by

²²⁵ MacIntyre, *Whose Justice*, 334; Cahill, "Can Theology Have a Role in 'Public' Bioethics," 13.

²²⁶ MacIntyre, *Whose Justice*, 342.

²²⁷ E.g., Cahill, "Genetics, Theology, and the Common Good," 126. The last section of this chapter will further address this challenging aspect of public bioethical discourse.

reciprocity, transparency, and accountability.²²⁸ Deliberation seeks a practical consensus on individual issues, but it must also have recourse to a “macro level” theory of justice.²²⁹

While Cahill applauds this vision of discourse, she also calls it “ideal.” She also sees such theories of deliberative democracy as illuminating examples of participatory theological bioethics.²³⁰ But in many ways, public discourse is not neutral, and in this sense, she shares a strong connection to Walzer’s view on egalitarian justice. Justice is not a principle, but an end-product. It is also achieved through non-deliberative strategies, including coercion, as the conclusion to this dissertation will demonstrate. As both MacIntyre and Walzer have pointed out in their own ways, public discourse can easily mask the deep-seated powers at work within the debate. Powerful interests can limit the scope of the debate or can extinguish all effective opposition to a proposed course of action. But this is only true if the discourse takes place at the level of deliberation, where activist strategies cannot be accounted for. At the same time, deliberative democracy can lack the tools to question the deeper values at stake in public discourse, like issues which affect notions about the common good. Despite Cahill’s fairly positive appraisal to the theory of deliberative democracy, she tends to reject it in the realm of public discourse about biotechnology, as the Epilogue will make apparent.

Cahill and Walzer also attempt in their respective projects to overcome the dominance of particular social goods like political power or wealth. In Walzer’s view, respectful toleration for religious groups is only good as long as those with beliefs

²²⁸ Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge: Harvard University Press, 1996), 349-350.

²²⁹ Cahill, *Theological Bioethics*, 49; see Gutmann and Thompson, 4-5.

²³⁰ Cahill, *Theological Bioethics*, 50.

requiring such consideration remain at the margins of the political community. But Cahill goes another step further than Walzer with her call for wider inclusive participation. Those groups must be brought into the conversation, even if they remain politically disengaged to some extent.

Both Walzer and Cahill have multifaceted understandings of justice in practical contexts. Because justice is determined by context, Walzer claims that substantive accounts of justice are necessarily local in scope.²³¹ The willingness to debate and negotiate implies that all complicated issues are potentially resolvable. Similarly, Cahill's later work makes deep connections to the complex of social relationships, from which free choice is no mere abstraction.²³² Especially in bioethical applications, Cahill's claims resonate with Walzer's in that justice itself is contextualized.²³³ This is not to say that Cahill has abandoned an attempt at a universal principle. But Rawlsian bioethical principles fall short because they ratify market-based approaches to genetic medicine.²³⁴ As technology drives on, absent a moral or even political compass, it becomes imperative to find a method of engagement that slows its relentless march, or at least steers it toward its least harmful conclusion. As Walzer notes in *Politics and Passion*, activism frequently arouses the negative passions of envy and resentment. But if theological voices engaged in this future public debate are successful, then the inevitable achievement of human germline enhancement still leaves open a possibility of forgiveness and reconciliation.

²³¹ Walzer, *Spheres of Justice*, 314.

²³² E.g., Cahill, *Bioethics and the Common Good*, 76.

²³³ Cahill, "Germline Genetics, Human Nature, and Social Ethics," 150.

²³⁴ Cahill, *Theological Bioethics*, 32-33.

Collaborative Justice and the Theological Accounts of Justice

Compared with her early writings, the Catholic social tradition clearly influences Cahill's later work. CST has enhanced her theological inquiries into family, sexuality, and bioethics. In her earliest writing, Cahill struggles to negotiate the personalist tendencies of Catholic sexual ethics within a larger communal setting. As CST is brought to bear in her later writings, she urges Catholic teaching to become more inclusive in its own understanding of community. She almost always draws from social teaching, especially with regard to participation in the common good. Guided by the virtue of solidarity and practices of subsidiarity, CST has had a telling effect on her conception of justice.

She also maintains CST's roots in the natural law tradition. She perceives natural law ethics as the most coherent language with which to join in public discourse from her Catholic standpoint. However, she also attempts to transform the participants' value systems beyond CST's appeals to human rights. The social tradition tends to avoid suggesting specific solutions to social problems in favor of a more modest appeal to rights language, which is grounded in natural law. CST expresses special concern for the vulnerable members of the world's communities. Cahill upholds these rights, but also suggests concrete ways to increase the participation of the poor and marginalized. She offers many examples of solidaristic activism in cases where powerful elites are reluctant to include others in public discourse.

At the same time, Cahill is also aware of CST's tendency toward idealism and naiveté in at least two ways. As Chapter Three demonstrated, the social encyclical

tradition is often characterized by its search for a global governing authority.²³⁵ They have frequently looked to the United Nations to fill that role, but the U.N.'s legitimacy is not recognized by all of its member states' governments. Instead, Cahill uses CST's own principle of subsidiarity to demonstrate that political power can be multilateral and pluralist in nature. Grassroots activism can be even more effective than a U.N. mandate. The second way is related to the first in her understanding of coercion. Informed by the social writings of Reinhold Niebuhr and others, Cahill understands that good argumentation alone will not bring about substantive social change. Some situations are so unjust and dire that immediate, forcible action is required beyond public deliberation. Cahill reserves her sharpest criticism for the objectifying dangers of biotechnology and against those who exclude the marginalized from any social benefits which it might bring. In a global context which lacks comprehensive oversight, transnational advocacy networks must attempt to secure "equilibrium of power and reciprocal relationships that constitute social justice."²³⁶

Moving to virtue ethics, it is interesting to note at the outset that James Keenan dedicated one of his recent books to Cahill.²³⁷ Like Cahill's methodology, virtue ethics tends to move beyond act-based decision making. Consistent with Keenan's work, Cahill

²³⁵ Most recently, Pope Benedict has joined this chorus of pontiffs. See *Caritas in Veritate*, 67.

²³⁶ Cahill, "Cloning and Sin: A Niebuhrian Analysis and a Catholic, Liberationist Response," in Ronald Cole-Turner ed., *Beyond Cloning: Religion and the Remaking of Humanity* (Harrisburg: Trinity Press International, 2001), 106.

²³⁷ Daniel J. Harrington and James F. Keenan, *Paul and Virtue Ethics* (Lanham: Rowman and Littlefield Publishers, 2010). "We dedicate this book to our beloved friend and colleague at Boston College, Professor Lisa Sowle Cahill. She has written wisely and well on many topics covered in our work and we have learned much from her publications and her personal example," xiii.

shares an inherently relational anthropology. Both also see justice as the overarching virtue of all human action, though they apply them differently in the case of genetic enhancement. Keenan's classification of justice as the operational virtue humanity's general relationships fits well with Cahill's firm adherence to equal personal dignity. Cahill looks more to the social context and worries for the exclusion of marginalized citizens or the dangers of genetic stratification. By contrast, Keenan's relational and teleological anthropology tends toward openness to the "distant horizon of genetic research," and is less pessimistic about the prospects of germline modification. But, like Cahill, Keenan acknowledges that there must also be a negotiation of the short- and long-term conflicts among goods when utilizing enhancement technology.²³⁸

There are also other significant differences between Cahill and Porter on method. First, Cahill does not often use the vocabulary of virtue. Instead, she tends to employ CST's discourse of rights. While Porter's view of justice is hesitant to move beyond the Catholic context, Cahill attempts to recover a sense of dialogic universality in moral reasoning. Just as Cahill's work contrasts with MacIntyre's on public discourse, Cahill differs with Porter in that the former believes that substantive universal consensus about justice can be achieved through public dialogue and collaborative action. Cahill's faith commitment gives rise to this participatory strategy, and shapes the contours of her contribution to such involvement.

Turning to justice in bioethics, the most significant contrasts between Cahill and Margaret Farley have already been noted in Chapter Three. Farley seems to emphasize more the internal ecclesial debates with regard to justice, while Cahill tends to focus upon

²³⁸ Keenan, "What does Virtue Ethics bring to Genetics?" in Cahill ed. *Genetics, Theology, and Ethics*, 106.

the valuable external contribution of theological voices toward public discourse. Cahill envisions the debate within the church as part of a self-critical and self-limiting practice for the community which participates in the discourse. Both Cahill and Farley emphasize the prophetic aspect to the church's participation in the public sphere. They also differ on location of the meaning and content in their respective accounts of the common good. Farley's concept of compassionate respect finds content for justice in the particularity of one's context. The common good illuminates a general *meaning* for justice in social relations. Cahill's collaborative justice receives its content from a notion of the common good. Solidarity, subsidiarity, and equality help to define justice's meaning in different contexts. Cahill differentiates between respect and compassion within the context of CST. Respect corresponds to the dignity of the person, while compassion corresponds to the solidarity of all in pursuit of the common good.²³⁹

Finally, Shannon and Cahill originally developed similar notions of justice during the early part of Cahill's career. In fact, they co-authored a commentary on the Vatican's 1987 *Instruction: Donum Vitae*. Their attempt to demonstrate the interrelated issues of parenthood and sexuality in a contemporary, pluralistic society represents one of Cahill's first attempts at a sustained application of CST in her writings. However, Shannon tends to deny that there is a teleological thrust to "human nature," which is a point of contrast with Cahill.²⁴⁰ Moreover, Shannon's later attempt to "update" the Vatican's *Instruction*

²³⁹ *Bioethics and the Common Good*, 70.

²⁴⁰ For example, see Shannon's critique of Cahill's use of "nature" in her essays on family ethics during the transitional period of her work. Shannon rejects Thomistic notions of nature, except perhaps in a "purely physicalist way." Shannon claims that because nature is evolving it tends toward open-endedness and non-directionality. See Shannon, "Response to Lisa Sowle Cahill, 'Sex, Gender, and the Common Good:'

focuses on issues that illumine the context for personal decision making, while developing a position that is defensible in the public forum.²⁴¹ By contrast, Cahill insists upon the primacy of the social context in the area of assisted procreation. This difference is significant because it demonstrates a shift away from personalist ethics when technological aids enter the discussion. To expand on this difference, the dissertation's exploration of Cahill's later essays now turns to its conclusion, which analyzes her theological inquiry into assisted procreation technologies aimed at cloning and enhancement.

Family,” in James Donahue and M. Theresa Moser ed., *Religion, Ethics, and the Common Good* (Mystic: Twenty-Third Publications, 1996), 169.

²⁴¹ Shannon and Allan B. Wolter, “Reflections on the Moral Status of the Pre-Embryo,” in Shannon ed., *Bioethics*, 55.

EPILOGUE

COLLABORATIVE JUSTICE AND FUTURE PUBLIC MORAL DISCOURSE ABOUT GERMLINE GENETIC ENHANCEMENT

This conclusion to the dissertation explores the possibility of utilizing Cahill's conception of justice – what has been described as “collaborative justice – in future public discourse about human genetic engineering and especially germline enhancement. Since 1998, Cahill has written or edited numerous works related to biotechnology and particularly genetics.¹ Taken together, these writings demonstrate three further aspects regarding

¹ Cahill, “Germline Genetics, Human Nature, and Social Ethics,” in Ronald Cole-Turner ed., *Design and Destiny: Jewish and Christian Perspectives on Human Germline Modification* (Cambridge: The MIT Press, 2008), 145-166; “Aging, Genetics, and Social Justice,” in Catherine Y. Read, Robert C. Green, and Michael A. Smyer ed., *Aging, Biotechnology, and the Future* (Baltimore: Johns Hopkins University Press, 2008), 216-231; (ed.), *Genetics, Theology and Ethics: An Interdisciplinary Conversation* (New York: Crossroads, 2005); “Nature, Sin, and Society,” in Harold W. Baillie and Timothy K. Casey, ed. *Is Human Nature Obsolete? Genetics, Bioengineering, and the Future of the Human Condition* (Cambridge: The MIT Press, 2005), 339-366; *Theological Bioethics* (Washington: Georgetown University Press, 2005), 235-239; “Bioethics, Theology, and Social Change,” *Journal of Religious Ethics* 31, no.3 (Winter 2003), 363-398; “Biotech and Justice: Catching Up with the Real World Order,” *Hastings Center Report* 33, no.4 (September-October 2003), 34-44; “Genetics, Ethics, and Feminist Theology: Some Recent Directions,” *Journal of Feminist Studies in Religion* 18, no.2 (Fall 2002), 53-77; “Cloning and Sin: A Niebuhrian Analysis and a Catholic, Liberationist Response,” in Ronald Cole-Turner ed., *Beyond Cloning: Religion and the Remaking of Humanity* (Harrisburg: Trinity Press International, 2001), 97-110; “Stem Cells and Social Ethics: Some Catholic Contributions,” in Nancy E. Snow ed., *Stem Cell Research: New Frontiers in Science and Ethics* (Notre Dame: University of Notre Dame Press, 2003), 121-142; “Genetics, Commodification, and Social Justice in the Globalization Era,” *Kennedy Institute of Ethics Journal* 11, no.3 (2001), 221-238; and “Genetics, Ethics, and Social Policy: The State of the Question,” in Maureen Junker-Kenney and Lisa Sowle Cahill ed., *The Ethics of Genetic Engineering* (London: SCM Press, 1998), vii-xiii.

Cahill's application of collaborative justice to contemporary bioethics. First, she continues to resist reducing ethical discussion to a consideration of individual acts. This countercultural, "prophetic" facet of her project has been prominent since at least the transitional period of her writing career. Second, she consistently encourages the presence of theological voices in public bioethical discourse about genetic interventions. She claims that the theologians' strongest contribution is their focus on the common good. Third, she perceives several participatory strategies for this participation. Some of these modes of involvement are aimed at policy discussion, others look to social activism, and still others strive for greater inclusion of the marginalized.

This conclusion is constructed in three sections, with each part corresponding to the aforementioned features of Cahill's collaborative justice. It opens with a summary of her analysis on the probable wrongness of the act of germline enhancement. Her emphasis on the common good is an especially powerful component to her argument against human engineering, since human dignity can be used by both sides in the debate. Next, the discussion turns to public discourse about genetic technology. In this context, her prophetic mode of public discourse challenges the participants to imagine the concept of justice at the service of the poor. Finally, the dissertation closes with a consideration of Cahill's approbation for the utilization of transnational activist networks in order to maintain pressure on the governments and corporations who may choose to pursue genetic enhancement technology. Since policy debate ultimately aims toward deliberative consensus, it is vital that opponents of these genetic interventions employ some of the non-deliberative strategies described in Chapters Two and Four of this dissertation. Cahill's examples of coercive tactics drawn from other bioethical issues serve as

analogous illustrations of the shape of future public discourse about germline enhancement.

Germline Enhancement as “Contingently Wrong”

To begin, theological and philosophical arguments about the *act* of germline genetic enhancement tend to break down due to conflicting views with no rational discriminant for resolving them. There is even plurality within Christian assumptions that ground respective arguments for and against enhancement. For example, human createdness is a foundational point for Catholic anthropology. Chapter One discussed creation as the basis for CST’s affirmation of human dignity. Grounding teaching in human dignity can lead to wide, substantive agreement on many issues. But Cahill points out that theological reflection on creation can lead to diverging views about the limits of human action. One view holds that humans are “co-creators” with God. In procreation, biological kinship is secondary to the inclusive love that is part and parcel with the idea of human dignity.² The other view expresses a worry that autonomous freedom is the

² One representative of this view is Lutheran theologian Ted Peters, *For the Love of Children: Genetic Technology and the Future of the Family* (Louisville: Westminster John Knox Press, 1996), 180. Peters praises Cahill’s work as “the most penetrating and edifying analysis of the Christian tradition regarding the relation between baby making and companionship in marriage,” 165. He also offers an extensive critique of her early essays in sexual and family ethics (*ibid.*, 171-177). There, he criticizes her insistence that biological kinship take priority over analogous adoption schemes. He writes, “The Christian social message that Cahill wants to deliver is this: Full reciprocity between women and men in loving marital bonds will create families that will be genuine schools of transforming values for the whole of society. In this school of transforming values, she adds, the Christian family should teach inclusive love for the outsider, for the marginalized, for those beyond our kin connection” (*ibid.*, 177). It is clear that Peters is addressing an era of Cahill’s work that has not incorporated CST, which insists (rather than “adds”) that the family is a “domestic church” which turns outward to strive for the common good.

guiding moral factor in contemporary American culture. It is wary of “playing God” through rash, uncritical, and disproportionate approaches to science. This view balances the dignity that comes from creation with the finitude that arises from sin. Since sin is a “nearly universal religious metaphor,” it has limited value for those outside of the tradition.³

Furthermore, supporters and detractors of genetic interventions tend to focus – too narrowly, in Cahill’s estimation – on the demonstration of the act’s moral goodness or badness. For instance, in the case of cloning, she claims that this possibility is a “virtually unquestioned assumption”

Either because every instance will demonstrably violate the freedom of individuals; or because it involves specific physical or psychological harm or great risk of harm. If neither of these outcomes can be shown beyond reasonable doubt, the cloning should not be prohibited. Individual purveyors and clients should be free to perfect, provide, and purchase cloning. Approaches to values and to society that are more inductive, more affective, more long-range, and less conclusive have much less persuasive power in a culture that values clear evidence and immediate outcomes over gradual consensus-building and incremental social results.⁴

Physical heritability is the distinctive moral feature in both human cloning and germline modification. In both cases, offspring are born with intentionally predetermined traits which can be passed to subsequent generations. At the same time, there is wide disagreement on the issue of whether or not this hereditary factor constitutes harm to potential descendants. Harm which arises from unrefined techniques can be ameliorated

³ Cahill, “Introduction to the Project: Genetics, Theology, and Ethics,” In Cahill ed., *Genetics, Theology, and Ethics: An Interdisciplinary Conversation* (New York: Crossroads, 2005, 2-3).

⁴ Cahill, “Cloning and Sin: A Niebuhrian Analysis and a Catholic, Liberationist Response,” 98-99.

as these interventions become perfected. Moreover, commodification is overcome by informed consent.⁵

Cahill concludes that there are no “lock-down” arguments against genetic manipulation. With regard to reproductive cloning, she admits that it is difficult to locate its immorality on intrinsicist grounds; it is not “just wrong.” Instead, it is significant to point out that cloning generates offspring with only a single genetic parent, who is the “later-born twin” of the parent. If there is anything intrinsic to the argument, it is derived from cloning’s effects on understandings about the family.⁶

Moving to the issue of germline intervention, Cahill admits that she does not believe it is possible to conclude that it is intrinsically immoral. Instead, she insists that germline modification is “contingently wrong.” Personalist concerns like potential harm or commodification are not primary issues, though. On the one hand, if safety and efficacy could be assured, then germline *therapy* could be considered morally permissible and perhaps even obligatory. On the other hand, *enhancement* is far more troubling for two reasons: the definitional problem of “enhancement” and the social control of its benefits.⁷ The former concerns philosophical issues about normal physiological function, and it has implications for understanding the idea of human nature. The latter describes inequalities that can arise from genetic technologies, and it demonstrates the wider social import of Cahill’s analysis of genomic ethics.

Consistent with other examples of Cahill’s later work, justice is at the root of her inquiries into germline enhancement and cloning. Additionally, her criticism is unusually

⁵ Cahill, “Genetics, Ethics, and Social Policy,” xi.

⁶ Cahill, “Nature, Sin, and Society,” 345.

⁷ Cahill, “Germline Genetics, Human Nature, and Social Ethics,” 146.

sharp in these areas as it relates to justice. In the case of cloning, Cahill implies that therapeutic or reproductive cloning is likely to be used strictly by the affluent. To add cloning to the myriad modes of assisted procreation is simply to continue to sidestep questions of how such techniques are part of an “*ethically worthy* society governed by the norms of justice.” The dividing question is whether or not justice is “concerned exclusively or primarily with individual freedom” or if it refers “to responsibility to the common good.” Cahill sees adequate health care access as one of life’s basic necessities.⁸

Regarding germline enhancement, Cahill claims that it is “obvious” that such interventions will be made available only to those who can afford them. She envisions a dire social situation in which the poor will be forced into eugenic abortion in order to compete with wealthy, or risk their children becoming part of a “genetic underclass.”⁹ She uses the pharmaceutical industry as an illustrative warrant for her urgent worry.

Facing an actual downturn in innovation and in the development of new products, pharmaceutical companies are desperate to maintain their incredible profits. They achieve this by maintaining monopolies on drugs, by introducing new drugs that are little more than copies of old ones, by promoting new drugs that may be less effective than old ones, and by spending a huge proportion of their budgets hiring researchers they can control, bribing doctors, and marketing directly to consumers. In the race to the bank these companies abandon unprofitable products with little regard for the consequences for individual or public health.¹⁰

For Cahill, the current behavior of drug manufactures, set within a consumerist society’s social context, provides a bellwether for the prospects of just use of futurist genetic

⁸ Cahill, “Cloning and Sin: A Niebuhrian Analysis and a Catholic, Liberationist Response,” 102-103 (emphasis added).

⁹ Cahill, “Germline Genetics, Human Nature, and Social Ethics,” 159.

¹⁰ *Ibid.*, 159. Here, Cahill cites the investigative reporting of Marcia Angell, former editor of the *New England Journal of Medicine*. See *The Truth about Drug Companies: How They Deceive Us and What to Do about It* (New York: Random House, 2004).

technologies like germline enhancement and cloning. Citing the work of bioethicist Mark Frankel, Cahill envisions a genetic future where eugenics policies will not be forced upon people. Instead, they will be marketed “as something we cannot live without.”¹¹

Cahill’s harsh indictment of biotechnology in the case of germline enhancement is highly unusual when compared to her many other writings represented in this dissertation. Throughout her career, her work has consistently been collegial in their tone, even when it is clear that she is completely at odds with her dialogue partners. For example, she diffused MacIntyre’s rather caustic critique of her 1979 essay in an almost playful manner.¹² In fact, when negotiating her differences of opinion with other scholars, she often affirms the positive aspects or recognizes the similarities before firmly describing their points of disagreement. Moreover, Cahill’s substantive critiques of church teachings and social practices do not reflect the accusatory quality as they do in the case of biotechnology.

This dissertation claims that Cahill’s participatory bioethics accounts for the contrast between the tone of these writings about genetic enhancement and those of other essays. Chapter One described Cahill’s five modes of public discourse: ethical, policy, prophetic, narrative, and participatory.¹³ The first four are drawn from the work of James

¹¹ Ibid., 161. See Mark S. Frankel, “Inheritable Genetic Modification and a Brave New World: Did Huxley Have It Wrong?” *Hastings Center Report* 33, no.2 (January-February 2003), 32.

¹² Cahill, "Theology and Bioethics: Should Religious Traditions Have a Public Voice?" *Journal of Medicine and Philosophy* 17, no. 3 (June 1992), 263. “Alasdair MacIntyre’s critique of the essays ended the volume with cranky *savoir-faire*...The editors, both theologians, and unable to resist a preemptory rebuttal, alluded in their introduction to “that fictional denomination called autonomous rational moral agents to which our colleagues in moral philosophy would seek to evangelize all of us.” Cahill then gently reminds readers how much MacIntyre’s view has evolved since that response.

¹³ Cahill, *Theological Bioethics*, 35-40.

Gustafson, who was influential to Cahill's later essays.¹⁴ Cahill's "participatory discourse" emphasizes the public nature of the moral discourse by attempting to determine the moral and political contours in which public debate is situated. At times, it is also necessary to shift those lines which demarcate the limits of public debate. Prophetic engagement does not attempt to dictate policy in the public forum. Rather, it seeks to expand participants' moral vision.

Like the prophets of the Hebrew Bible, theological prophets today often forward a critique of economic systems that exclude the poor from basic goods such as health care. They combat an overly pragmatic and individualist approach to biomedical decision making and insist that not all human problems can be resolved by more technology. Though their utopia is ultimately eschatological, they hold up a vision of a more equitable society characterized by the virtues of solidarity and compassion and of justice inspired by love of God and neighbor.¹⁵

Also like the prophets of Israel, Cahill's biting words attempt to turn society away from a destructive path. Systematic injustice toward the poor is one of the clearest signposts along this route. Throughout later essays, Cahill documents a litany of inequities in health care access which undermine both the aims of health care and the common good. With a strong prophetic voice, she hopes to deter adding this extreme mode of intervention to that list.

Cahill's tendency to contextualize moral acts beyond individual decision making is an element of her later essays in bioethics. The social context thereby becomes the locus for her entry into public moral discourse. It is also where her notion of collaborative justice develops into one of the most valuable contributions that theologians can make to that discussion. The dissertation now considers Cahill's work in policy discourse about

¹⁴ James M. Gustafson, *Varieties of Moral Discourse* (Grand Rapids: Calvin College, 1988).

¹⁵ Cahill, *Theological Bioethics*, 36.

assisted procreation and especially germline enhancement. In this context, her prophetic mode of public discourse challenges the participants to imagine the concept of justice at the service of the poor.

Public Moral Discourse and Human Genetic Engineering

In assessing the morality of the various forms of assisted procreation, Cahill moves beyond an awareness of the dangers of commodification, that is, the potential for perceiving one's children as a manufactured product. By treating infertility as a disease, for instance, she looks to issues of economic justice. Here, she continues the prophetic aspect of policymaking discussed in the previous section. Participants with strong religious commitments are richly nourished by their narratives, symbols, and communal practices, but it is difficult to express those constitutive elements of their faith in a public forum. Alternatively, a prophetic dimension of her participatory bioethics challenges a worldview that allows special-interest politics to threaten "to pull policies out of alignment with the common good."¹⁶

As with Cahill's treatment of aging discussed in Chapter One, she makes the case that public policy about assisted reproduction technology (ART) should avoid medicalizing social problems. Citing the work of feminist ethicist Maura Ryan, Cahill sees three issues at stake in pursuing ART.¹⁷ First, there ought to be a bias toward utilizing scarce medical resources to address needs which are "truly medical" in scope. Assisted procreation must treat the disease of infertility. Next, there must be serious

¹⁶ Cahill, "Theology's Role in Public Bioethics," in David E. Guinn ed., *Handbook of Religion and Bioethics* (Oxford: Oxford University Press), 50-51.

¹⁷ *Ibid.*, 53-54.

consideration of success rates of ART in light of its considerable expense and dubious efficacy. Finally, social justice must be at the center of policy discussion. ART is not simply a “private” matter between patient and caregiver. Discussion must also attend to the clear reality that wealthy consumers utilize ART far more than less affluent people. One can question whether it is the case that infertility afflicts primarily the economically privileged, or that only the well-off can be treated.

Correlatively, policy discourse aimed at modes of genetic manipulation like reproductive cloning and germline enhancement help to elucidate a more productive analysis than discussions about their intrinsic moral goodness. In her analysis of cloning, Cahill notes three serious shortcomings that warrant its severe regulation or even permanent prohibition.

Commercialized, technology-driven reproduction affects the social institution of the family and parenthood in deleterious ways because it makes basic, intimate human relations and communities subject to individualism, commodification, and exploitation.¹⁸

Cloning ignores ethical and religious resources about family structures in favor of uncritical and “triumphalist” views of biotechnology. At the same time, it uses this know-how to “make profits with little consideration for the common good.” Most importantly, it ignores huge inequalities between the wealthy individuals who would utilize this biomedical technology and many poor who cannot even access basic health care.

This social context for justice has been a constant feature in Cahill’s later work, but it is especially evident in her ethics of genetic technology.¹⁹ As mentioned several

¹⁸ Cahill, “Nature, Sin, and Society,” 346.

¹⁹ In her editorial opening to a 1998 volume of *Concilium*, Cahill writes: “the greatest obstacle to justice in global practices of genetics research and therapy will

times in this dissertation, solidarity is a preeminent virtue that guides action toward justice. In a global, interdependent society, solidarity is essential. John Paul II writes that solidarity is a “firm and preserving determination to commit oneself to the common good.”²⁰ Cahill applies this view to bioethics by demonstrating that solidarity facilitates action toward distant communities.²¹ Echoing John Paul’s view of the communal nature of property from Chapter Three, Cahill argues that there is a “social mortgage” on all private property that requires it to be placed at the service of the common good. Like John Paul, she includes intellectual property and medical technology in this view.²² Thus, solidarity demands that the issue of sharing the benefits of genetic research by wealthy industrialized nations with developing countries must be a focal point of social justice in policy discussions.

Inclusive participation is also a vital component to Cahill’s collaborative justice in its application to genetic technologies. Throughout Cahill’s later work, she is consistently sensitive to the marginalized in the community and around the world. In the context of genetic therapies for the elderly, she argues that the principle of participation requires that allocation for such resources must be reconciled with “basic care needed to maximize social participation.” Like genetic techniques used for assisted procreation, Cahill places such interventions for the elderly within the wider context of the family and local

remain the self-interest of those who retain control over the acquisition of genetic knowledge and its application.” Cahill, “Genetics, Ethics, and Social Policy,” xii.

²⁰ John Paul II, *Sollicitudo Rei Socialis*, 38.

²¹ Cahill, “Bioethics, Relationships, and Participation in the Common Good,” in Carol R. Taylor and Robert Dell-Oro ed. *Health and Human Flourishing: Religion, Medicine, and Moral Anthropology* (Washington: Georgetown University Press, 2006) 214.

²² Cahill, “Genetics, Theology, and the Common Good,” 129. See John Paul II, *Centesimus Annus*, 32.

community, who are charged with their care. Older citizens' participation has been severely limited by what Cahill calls the "privatization and mobility" of the nuclear family. This reality creates an obligation on the part of communities with elderly populations to improve access to health care, income security, adequate housing, and proper nutrition.²³

In the context of genetic enhancement, the question can be raised: who are the marginalized? Cahill claims that the poor in developing nations are those excluded from participation. She sees two ways that marginalization can occur. The first has to do with the vague policies which regulate the development of this technology. Regulation generally permits germline genetic intervention for "therapeutic" reasons but restricts it for "enhancement" purposes. Many of these regulatory entities focus primarily on human cloning, and their actions usually restrict the creation/destruction of embryos for "purely" research purposes.

Since the 1990s, policy-making bodies in North Atlantic nations have endorsed such restraining measures.²⁴ However, many nations have not ratified these policies.²⁵ In

²³ Cahill, "Aging, Genetics, and Social Justice," 219, 222.

²⁴ Francis Fukuyama, *Our Posthuman Future: Consequences of the Biotechnology Revolution* (Baltimore: Johns Hopkins Press, 2002), 191. Since December 1990, Germany's Embryo Protection Act has banned embryonic research and strictly regulates IVF protocols. Similarly, Great Britain has tightly regulated fertility clinics since 1990. In December 2001, British Parliament enacted the Human Reproductive Cloning Act "to prohibit the placing in a woman of a human embryo which has been created otherwise than by fertilization." Additionally, Article 3 of the Charter of Fundamental Rights of the European Union, which was adopted in 2000, bans reproductive cloning and "eugenic practices." The Charter is fully binding to all EU nations as of December 2009.

²⁵ In 1997, The European Convention on Human Rights and Biomedicine amended its protocols to prohibit human reproductive cloning, but the change was not ratified by all nations, including the United Kingdom and Russia. See Convention on Human Rights and Biomedicine, *Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine*

light of this situation, Cahill worries that the United States and European nations will refine their genetic protocols in their home countries, and then move their project to a poor nation, where genetic technology is less-regulated.²⁶ Exploitation arises when these researchers “help” infertile women there with reproductive cloning or genetic enhancement interventions. Injurious or pernicious outcomes can be corrected before the techniques are marketed to “paying customers.” For example, attempts to develop HIV/AIDS vaccines in Africa have left many in the local community to suspect that Western researchers come there with “dirty hands,” as they conduct unsupervised investigations of their drugs.²⁷

The second instance of exploitation has to do with exclusion. Even if the first kind of exploitation is unlikely to result, Cahill is certain that the poor will be shut out from benefits gained from germline interventions or human cloning.²⁸ Her assertion in the genetic sphere can be understood based on similar practices in the pharmaceutical industry, like their HIV/AIDS clinical trials in Africa. After concluding a trial, many researches simply close their laboratories in the study’s host nation. Equity for human subjects does not extend far beyond informed consent. There is little or no compensation after the study’s conclusion. Subjects are also expected to pay full price for the

(Council of Europe, European Treaty Series, no.164, 1997). The United Nations has consistently upheld human rights in the face of advances in genetic research, from the 1997 Universal Declaration on the Human Genome and Human Rights to the 2005 Declaration on Human Cloning. They ban all forms of cloning which are contrary to human dignity, but neither of which are binding.

²⁶ Cahill, “Genetics, Ethics, and Social Policy,” xii.

²⁷ Nicholas A. Christakis, “The Ethical Design of an AIDS Vaccine Trial in Africa,” *Hastings Center Report* 18, no.3 (June-July 1988), 31.

²⁸ Cahill, “Cloning and Sin,” 102: “To approve cloning may well be to threaten individuality, respect for persons, and the family, but it is *most certainly* to ratify vast social inequities already entrenched in the biomedical sphere” (emphasis added).

antiretroviral medication regimen.²⁹ Moreover, other reports indicate that few primary investigators are in-country during the trial. In reality, there are very few HIV/AIDS trials compared with the pandemic nature of the disease in Africa.³⁰ There is little reason to believe that researchers and biotech companies will behave any differently than drug manufacturers.

In her advocacy for the marginalized, Cahill is once again expressing the prophetic dimension of participatory bioethics. She attempts to convert the majority of interlocutors from a worldview that is rooted in self-interested individualism to one built upon the virtues of social justice, like “compassion, altruism, and solidarity.”³¹ From CST, John Paul II has argued that market capitalism is not likely to secure the rights of the poor, and that the participation of all is required for a truly just society. In neither case is the market or society the final purpose of humans.³² With a globalization scheme dominated by corporate investment and other exclusive practices, it is difficult to give guiding virtues like solidarity and altruism a “functional priority” when power interests

²⁹ See D.N. Shaffer, et al., “Equitable Treatment for HIV/AIDS Clinical Trial Participants: A Focus Group Study of Patients, Clinical Researchers, and Administrators in Western Kenya,” *Journal of Medical Ethics* 32, no.1 (January 2006), 55-60; George J. Annas and Michael A. Grodin, “Human Rights and Maternal-Fetal HIV Transmission Prevention Trials in Africa,” *American Journal of Public Health* 88, no.4 (April 1998), 560-563; Marcia Angell, “The Ethics of Clinical Research in the Third World,” *New England Journal of Medicine* 337 (September 18, 1997), 847-849; and Carel B. IJsselmuiden and Ruth Faden, “Research and Informed Consent in Africa: Another Look,” *New England Journal of Medicine* 326 (March 19, 1992), 830-834.

³⁰ Nandi Siegfried, Mike Clarke, and Jimmy Volmink, “Randomised Controlled Trials in Africa of HIV and AIDS: Descriptive Study and Spatial Distribution,” *British Medical Journal* 331 (September 29, 2005), 742.

³¹ Cahill refers to this shifting worldview as a “conversion.” See “Genetics, Theology, and the Common Good,” 130.

³² John Paul II, *Centesimus Annus*, 49.

are threatened.³³ In another work on the common good in global context, she cites moral theologian James Hanigan on the problem of finding the moral and political will to work toward justice. “The human problem is not that we do not know what to do, but that we do not want to know and we do not want to do it.” With a narrow moral vision which considers only short-term benefits expressed in military and economic strength, altruism seems somewhat naïve in the face of realpolitik.³⁴

This “realism” challenges Cahill as she integrates CST into her work in two ways. The first is the “top-down” conception of social change envisioned in papal encyclicals, which have been discussed at different points in this chapter. Cahill calls this approach an “endemic shortcoming,” since its calls for change are primarily for the powerful.³⁵ Religious voices can prioritize solidarity by pointing out that the common good requires participation from all. In laying this claim, they can also present the tangible needs of the poor at the local level, and present a realistic, achievable plan to meet needs and increase participation. In other words, subsidiarity overcomes this challenge to CST.³⁶ The second challenge relates to the first insofar as it engages established hierarchies of power. As the previous section discussed, applications of Cahill’s collaborative justice to bioethical discourse is similar to Michael Walzer’s position, which recognizes that parties can hold contrasting, strongly-held beliefs.

³³ Cahill, “Genetics, Theology, and the Common Good,” 131.

³⁴ Cahill, “The Global Common Good in the Twenty-First Century,” 242. Cahill cites James P. Hanigan, *As I Have Loved You: The Challenge of Christian Ethics* (New York: Paulist Press, 1986), 10. In turn, Hanigan is citing Danish philosopher Søren Kierkegaard.

³⁵ Cahill, “Genetics, Theology, and the Common Good,” 126.

³⁶ *Ibid.*, 132.

Disagreement can be resolved passionately but reasonably settings.³⁷ Cahill takes the position that platitudes about justice will not be compelling unless they can rouse a community's sensibilities to imagine themselves "at the side of the poor."³⁸

Cahill contends that there are two entrenched interests which militate against her claim. The first one comes from biotech companies and their investors, and is more readily apparent.³⁹ For example, fertility clinics have often been reported to implant several embryos in order to increase pregnancy rates.⁴⁰ The previous paragraphs also noted various behaviors of pharmaceutical corporations, who serve largely the same interests in a related industry. One could add to this list: transnational agricultural enterprises which have been introducing genetically-modified foods, clothing manufacturers who have been exploiting poorly-paid workers, and retail stores which have been patronizing those manufacturers. Their primary responsibilities lie with their investors and executives. Thus, their behavior can be explained by their desire to maximize profits. It can also be regulated by government oversight, provided one can form a lobby powerful enough to overcome each industry's own political action group. The second is a bit more subtle, but it is also a sedimented authority in the West. It is the

³⁷ Walzer, *Politics and Passion*, 104.

³⁸ Cahill, "Genetics, Theology, and the Common Good," 131.

³⁹ Presently, there is no representative from these industries who is making this claim. But Cahill seems to be doing more than setting up a "straw man" in order to make her case. As this section demonstrates, she has rooted these concerns in research provided by former representatives and staunch opponents of the practices of these companies.

⁴⁰ A recent report claims that a New York clinic held a contest where the winner receives free treatment, based on the compelling nature of her story. The clinic claims it must do so in order to compete with larger clinics. See Douglas Quenqua, "Clinic Raffles Could Make You a Winner, and Maybe a Mother," *New York Times* (October 20, 2012), Web. <http://www.nytimes.com/2012/10/21/health/ethical-questions-raised-by-in-vitro-raffle.html>, accessed December 27, 2012.

power of the individual in liberal society, who is told to seek his or her own best interests in a world of choices. CST tries to balance rights and obligations on behalf of the poor, but its actions are often framed in terms of curtailing individual (liberal) freedoms. Persons can *choose* to become citizens of the world, so long as it does not conflict with the rights of those who *do not choose* to do so. In turn, it becomes impractical for the “citizen of the world” to achieve the goods internal to that kind of membership if one lives in a neighborhood of “foreigners to the world.” A “realist” understanding of the individual becomes analogous to the short-sighted vision of state politics, which is concerned with one’s social status and economic status. Consequently, it undermines an individual’s efforts toward solidarity in the same way that national interests resist attempts at international cooperation in ways that are not beneficial to the nation.⁴¹

In closing, in the case of genetic engineering, Cahill insists that the common good and inclusive participation are better achieved through cooperative strategies rather than technological solutions. At this point, the prophetic aspect of Cahill’s participatory bioethics is the strongest contribution in public discourse about germline modification. Solidarity with the marginalized remains a constant virtue that helps the practice of collaborative justice. To a lesser degree, government mandates can be helpful insofar as they resist being driven by economic interests and moral individualism. But both of these realities are firmly embedded in many contemporary interpretations of society and the individual. At times, coercion is necessary to break the hold of both types of power. This dissertation now concludes with a consideration Cahill’s assessment of activist strategies which are part of her application of collaborative justice in germline enhancement.

⁴¹ Cahill, “The Global Common Good in the Twenty-First Century,” 242.

Collaborative Justice, Coercion, and Activism

Finally, in order to demonstrate how Cahill's conception of collaborative justice may function in practice, it is necessary to investigate the role of non-deliberative strategies in her work. This closing part analyzes the formation of unjust power structures that stem from the absence of a global authority. At the same time, it describes Cahill's scholarship on appropriate, forceful responses to unjust behavior by those powerful entities. These strategies are applications of her participatory moral discourse, which has been informed by her notion of collaborative justice. This final section has three parts. First, it continues the discussion from previous sections about the problems related to a lack of a global authority to ascertain best policy and to enforce them. Next, Cahill points out that various transnational groups, especially the World Trade Organization (WTO), have moved into the power vacuum. Thus, the second part describes the dominating and at times dehumanizing tendencies that come from this situation. Third, the analysis turns to Cahill's understanding of coercion through social action aimed at justice.

As mentioned previously, the United Nations remains a hopeful center of global governance for CST, especially in the papal encyclicals. UNESCO's 1997 *Universal Declaration on Human Genome and Human Rights* calls for genetic knowledge to benefit all humanity as a whole.⁴² Article 1 pronounces that the genome undergirds "the fundamental unity of all members of the human family," and also grounds human dignity as well as diversity.⁴³ Cahill's research into the *Declaration* leads her to a five-fold understanding of the genome as "property:" "non-appropriation, common management,

⁴² UNESCO, "Universal Declaration on the Human Genome and Human Rights," in *Journal of Medicine and Philosophy* 23, no.3 (September 1998), 335.

⁴³ *Ibid.*, 336.

equitable sharing of benefits, peaceful use, and protection and preservation for future generations.”⁴⁴ However, this dissertation has also addressed the lack of authority with regard to myriad problems which CST addresses. Cahill sees as untenable the social encyclical tradition’s longing for a centralized, top-down authority.⁴⁵ Instead, she perceives some value in governments’ attempts to regulate genomic inquiry. She employs the analogy of just war to illustrate the limits of competent authority to control biotechnology.

Justifying a war requires the engagement and consent of a legitimate authority. Who is that authority in the case of genetics research? Federal and state governments are involved; so are national advisory bodies. Research done with federal funds must also pass the scrutiny of institutional review boards in the host institutions.⁴⁶

While there is some degree of oversight with regard to publicly-funded research, there is virtually no restraint on privately- or corporately-sponsored genetic research. Like the situation with drug companies, profitability will drive allocation decisions in the genomic sphere.⁴⁷ The only accountability is to investors and executives.

Moreover, the legislative and executive branches must stand periodically for election. It is reasonable to expect that the ideological aims of the political parties will view genetic technologies in different ways. For example, in 2001 President George W. Bush permitted federal funding for embryonic stem cell research, but limited backing to cell lines already in development. Many critics on both sides of the issue saw this compromise as unsatisfactory. Those who seek to protect all early human life, including

⁴⁴ Cahill, “Genetics, Commodification, and Social Justice,” 234.

⁴⁵ Cahill, “*Caritas in Veritate*: Benedict’s Global Reorientation,” 292.

⁴⁶ Cahill, *Theological Bioethics*, 233-234.

⁴⁷ Cahill, “Aging, Genetics, and Social Justice,” 227.

embryos, saw this move as a capitulation to those who want to further a “culture of death.” But those who support stem cell research envisioned this settlement as far too narrow, especially after discovering only a small number of usable cell lines. Still others applauded the policy change as a suitable “middle way” that took the convictions both sides into account.⁴⁸ But almost eight years later, newly-inaugurated President Barak Obama promised to “restore science to its rightful place” for an array of scientific fields from the environment to stem cell research.⁴⁹ Less than two months after his inauguration speech, President Obama signed an executive order which effectively allows genetic research to use federal funds to develop new stem cell lines. The order has been contested in federal courts, but in August 2012, the U.S. Court of Appeals unanimously upheld previous rulings that permit the President’s policy.⁵⁰ With these ebbs and flows, it seems that biotechnology regulation, depending on the branch of government in question, is liable for seismic shifts every two to four years.

But powerful economic groups do not wait for a President who is more favorable to their endeavors to enter office. Cahill takes particular aim at the WTO, which provides a forum for nations to negotiate trade agreements. Their stated purpose is

To help trade flow as freely as possible – so long as there are no undesirable side effects – because this is important for economic development and well-being. That partly means removing obstacles. It also means ensuring that individuals,

⁴⁸ Cahill, *Theological Bioethics*, 226-228. See also Cynthia B. Cohen, “Stem Cell Research in the U.S. after the President’s Speech of August 2001,” *Kennedy Institute of Ethics Journal* 14, no.1 (March 2004), 97-98

⁴⁹ Andy Coghlan, “Obama to Restore Science to Its Rightful Place,” *New Scientist*, online edition, (January 20, 2009), <http://www.newscientist.com/article/dn16452-obama-to-restore-science-to-its-rightful-place.html>. Accessed September 4, 2012.

⁵⁰ D.C. Circuit Court of Appeals, *James L. Sherley, et al. v. Kathleen Sibelius, et al.*, No. 12-454 (August 24, 2012), slip opinion yet to be published online.

companies and governments know what the trade rules are around the world, and giving them the confidence that there will be no sudden changes of policy. In other words, the rules have to be “transparent” and predictable.⁵¹

“Fairness” is noticeably absent from this description, though it can be inferred by the WTO’s other two constitutive requirements for trade rules. Cahill is particularly wary of the WTO’s 1995 standardization of property rights called the Trade-Related Aspects of Intellectual Property Rights (TRIPS), which she calls “undemocratic” in character and neglectful of the poor.⁵² TRIPS especially concerns pharmaceutical and genomic patent laws. Cahill calls TRIPS “part of the price of entry into the global economic market.” Non-compliance with TRIPS’ strict policies can cause trade sanctions and discourage capital investment.⁵³ Cahill asserts that the WTO’s objective is to “guarantee a safe and stable political and financial environment for first world producers and investors.”⁵⁴ It does so by protecting drug, food, and genetic patents in a way that privileges corporations. Not only does the agreement tend to privatize scientific knowledge, it also excludes the poor from full social participation “in helping to determine issues that affect their lives.”⁵⁵ While it also allows nations to suspend parts of the agreement during times of national emergency, Cahill claims that few countries are willing to forego TRIPS “out of fear of retaliation by trading partners.”⁵⁶

⁵¹ World Trade Organization, “Who We Are,” online document. http://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm, accessed September 4, 2012.

⁵² Cahill, “Genetics, Theology, and the Common Good,” 128-129; and “Genetics, Commodification, and Social Justice,” 224-225.

⁵³ Cahill, *Theological Bioethics*, 219-220.

⁵⁴ Cahill, “The Global Common Good in the Twenty-First Century,” 239-240.

⁵⁵ Cahill, “Genetics, Theology, and the Common Good,” 128.

⁵⁶ Cahill, “The Global Common Good in the Twenty-First Century,” 246.

Finally, government has sometimes stepped in to check the power of industry, and these instances are clearly example of coercion. However, force does not necessarily have to be applied by government regulation alone. In fact, Cahill states that the solution to effective public policy will “clearly not” be found in establishing a world oversight body.⁵⁷ Here, the dissertation alludes to solidaristic activism, another important aspect of Cahill’s participatory bioethics. She writes that “if concepts like the human person and the common good are to be relevant today, they must be advanced in the public forum in more innovative ways.”⁵⁸ Just as there are current models which can predict social consequences for germline enhancement based on other industries’ behavior, Cahill finds corresponding models of activism in light of various efforts at combating the influence and power of those companies.

One of Cahill’s favorite examples is the International Cooperation for Development and Solidarity (CIDSE), which she describes as “a network of fifteen nongovernmental development organizations from Europe and North America.” With overtones of CST in its public statements, CIDSE asserts that there is no “absolute right” of property ownership, and looks to patent issues within a larger framework of “responsibility and the common good.”⁵⁹

In addition to their solidaristic practices that aim toward advancing the common good, CIDSE and other activists can compete against larger and more powerful interests by

⁵⁷ Cahill, “Genetics, Theology, and the Common Good,” 122.

⁵⁸ Cahill, “Globalization and the Common Good,” in John A. Coleman and William F. Ryan ed., *Globalization and Catholic Social Thought* (Maryknoll: Orbis Books, 2005), 43.

⁵⁹ Cahill, “Genetics, Theology, and the Common Good,” 129.

using the same communications and transportation technologies that brought transnational corporations to global power.

In Cahill's estimation, these strategies represent the new face of CST's principle of subsidiarity. Subsidiarity is a basic practice for collaborative justice, which, in turn, has the common good as its object. Cahill claims that the common good "has always begun from the experienced needs and goods of human beings, and from insights into the sorts of social relationships that promote human welfare."⁶⁰ Collaborative justice is ultimately about an individual's – or, in parts of Cahill's project, a family's – capacity for participation in the common good. In local and global contexts, Cahill describes four aspects of the common good.⁶¹ One, it is substantive in that it must actually enumerate concrete human goods which are necessary to secure participation. As with *Gaudium et Spes* and the social encyclical tradition, there must be a workable schema of positive rights to those goods. Two, the common good is also procedural to the degree that it involves an inclusive decision-making process. This kind of practice is distinctly Western in that participatory democracy is brought into conversation with a consensus-building deliberative process.⁶² Three, there are also necessary virtues that lend themselves to the practices of subsidiarity and the common good. The dissertation has already identified solidarity as a primary virtue, but at times Cahill has also described hope as another important virtue to seeking the common good. The two are connected temporally: solidarity refers to the present, while hope looks largely toward the future.⁶³ In fact, a

⁶⁰ Cahill, "Globalization and the Common Good," 44.

⁶¹ See *ibid.*, 45-46.

⁶² Cahill, *Theological Bioethics*, 6.

⁶³ Cahill, "Introduction to the Project: Genetics, Theology, and Ethics," 3.

case can be made that Cahill's pessimism about the *future* of germline enhancement is brought about by a lack of hope, since the present reality is that solidarity is sorely lacking. Four, there must be efficacy with regard to practices that serve the common good. It must engage with diverse intellectual positions, religious and cultural traditions, and political movements in a way that respects their values and needs.

Transnational advocacy networks begin with a "practical consensus" about an injustice, that is, a policy or practice that excludes individual persons or social classes from participation in the common good.⁶⁴ Cahill depicts as watershed moments in participatory discourse, events like disruptive protests of the 1999 WTO summit in Seattle by anti-globalization organizations and public denunciations of a 2001 lawsuits brought by South Africa drug manufacturers, who claimed royalties were not paid under the TRIPS agreement.⁶⁵ Using press briefings, social media and rapid transportation, these groups can protest a powerful organization's exclusionary practices in the public sphere. Their tactics are significant because these tools and technologies are the same ones that larger, more politically-connected and economically-empowered companies and organizations utilize each day in their drive toward profits.

In a participatory schema, coercion can take many forms. It can simply be a matter of bad press, which many companies often want to avoid in an age of 24-hour news access. It can also encourage a boycott of an individual company's products, which civil- and labor-rights groups have proven an effective tactic in the twentieth century. Most importantly, when private funding is at stake, as it is in the case of genetic research,

⁶⁴ Cahill, "The Global Common Good in the Twenty-First Century," 244.

⁶⁵ Cahill, *Theological Bioethics*, 64. The latter court dispute was denounced by prominent humanitarian organizations like Oxfam and Doctors without Borders. See Cahill, "The Global Common Good in the Twenty-First Century," 245-246.

coercion can target the primary investors and parent companies of genetic enterprises. Activists can plead with and denounce capital investors and fund managers to withdraw their financial support for such industries. They can also use similar tactics to convince large corporate conglomerations to divest themselves of their unjust subsidiaries. In short, activism can “have teeth” in the public sphere of a well-functioning democracy in ways that national and global governments cannot.

In closing, Cahill’s collaborative justice, as it has been described in this dissertation, relies heavily upon a fully-formed integration of the Catholic social tradition, and grounds future public discourse about human germline genetic enhancement. Its balanced attention to personal and social concerns is accomplished by way of the CST’s insistence on inviolable dignity and human sociality. But especially coloring every essay in Cahill’s later body of work, which was analyzed in Chapter Four, is an overriding concern for the common good. To participate in its advancement is the mark of human dignity and the call to contributory justice, as described in Chapter One. To possess the tools which facilitate participation is the “flip side” of that same justice. In public debate about the modification of the human genome, the guiding virtues of solidarity, subsidiarity, and equality of all will help to shape the structure of this future technological achievement. Many of these concerns are also located in the other philosophical and theological accounts of justice as they were described in Chapters Two and Three. Surely, others can be identified as well. But Cahill’s collaborative justice also includes the possibility of forgiveness and reconciliation, which are often seen as beyond the ordinary norms of justice. Restorative justice can make a person whole; collaborative justice can repair a fractured community.

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