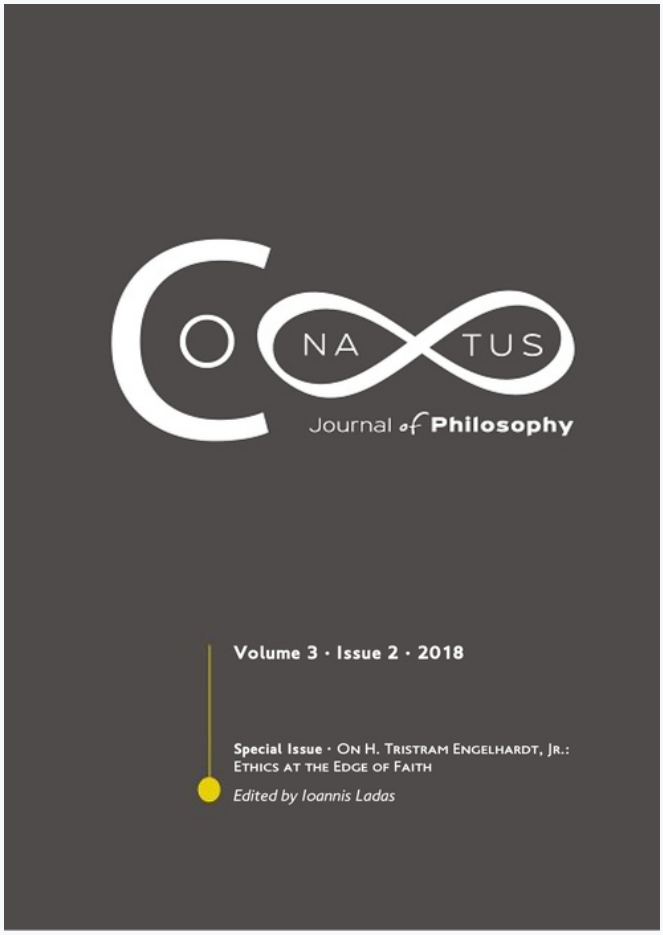
Conatus - Journal of Philosophy

Vol 3, No 2 (2018)

Conatus - Journal of Philosophy SI: On H. Tristram Engelhardt Jr.: Ethics at the Edge of Faith



Engelhardt on the Common Morality in Bioethics

Ana S. Iltis

doi: 10.12681/conatus.19284

To cite this article:

Iltis, A. S. (2018). Engelhardt on the Common Morality in Bioethics. *Conatus - Journal of Philosophy*, *3*(2), 49–59. https://doi.org/10.12681/conatus.19284

A. Iltis/*Conatus* 3, no. 2 (2018): 49-59
DOI: http://dx.doi.org/10.12681/conatus.19284

Engelhardt on the Common Morality in Bioethics

Ana S. Iltis
Wake Forest University, United States of America
E-mail address: iltisas@wfu.edu
ORCID ID: http://orcid.org/0000-0003-0624-3022

Abstract

Contemporary Bioethics is, at least in part, the product of biomedical and sociopolitical changes in the middle to latter part of the 20th century. These changes prompted reflection on deep moral questions at a time when traditional sources of moral guidance no longer were widely respected and, in some cases, were being rejected. In light of this, scholars, policy makers, and clinicians sought to identify a common morality that could be used among persons with different moral commitments to resolve disputes and guide clinical practice and health policy. The concept of the common morality remains important in Bioethics. This essay considers the common morality in light of the work of H. Tristram Engelhardt, Jr.

Key-words: *Bioethics, common morality, Engelhardt, neutrality, moral commitment*

Contemporary Bioethics is, at least in part, the product of biomedical and sociopolitical changes in the middle to latter part of the 20th century. While its history has been described differently and some elements are hotly contested, a number of events and developments were important in the emergence of Bioethics.[1] These include the advent of organ transplantation and the interest in (re)defining death, the introduction of life-saving or life-extending but scarce medical resources such as dialysis, the ability to keep patients who otherwise would have died alive in intensive care units even when there appeared to be no prospect of recovery, the legalization of abortion in the United States, and public revelation of the United

[1] See Albert Jonsen, *The Birth of Bioethics* (New York: Oxford University Press1998); Tina Stevens, *Bioethics in America: Origins and Cultural Politics* (Baltimore: Johns Hopkins University Press, 2000); John Evans, *The History and Future of Bioethics: A Sociological View* (New York: Oxford University Press, 2012); Robert Baker, *Before Bioethics: A History of American Medical Ethics from the Colonial Period to the Bioethics Revolution* (New York: Oxford University Press, 2013); David Rothman, *Strangers at the Bedside* (New Brunswick, NJ: Aldine Transaction, 1991).

States Public Health Service study of untreated syphilis in poor African-American men in Tuskegee, Alabama. These events and practices prompted reflection on deep moral questions at a time when traditional sources of moral guidance no longer were widely respected and in some cases were being rejected. Many were suspicious of authority figures, including physicians and religious leaders, or at best they saw them as irrelevant. The sociopolitical trend of challenging and rejecting authority and traditional sources of moral guidance together with biomedical developments that generated new questions created space for others to engage issues and direct future decisions.

A major theme early in Bioethics (and one that continues today) is the question of who is in authority to make health care decisions. Substantive issues beyond matters of authority included questions about the permissibility of various types of research, whether and when it was permissible to withhold or withdraw medical treatment, and how to allocate scarce resources. These were not merely academic questions to be discussed endlessly. These questions were arising in real life situations and demanded action-guiding answers. While some of these matters seemed intensely private, there was a sense that they were in fact community or public affairs. The state was involved in funding research, defining death, and paying for dialysis and other health care, for instance. Cases were being heard before courts in the United States and the state was deciding whether or not single women should be permitted to access birth control [Griswold v. Connecticut, 381 U.S. 479 (1965)], ventilators could be withdrawn [In re Quinlan, 70 N.J. 10, 355 A.2d 647 (NJ 1976)], and, later, whether artificial nutrition and hydration could be withheld [Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990)]. There was a push for communal reflection and decision making. It was in this context that Bioethics flourished and that a desire to identify neutral, secular, shared grounds for bioethical decision-making took root.

Numerous figures shaped Bioethics as it developed. One of them was H. Tristram Engelhardt, Jr. (1941-2018). As a young philosopher, he wrote:

> "Ethics, as a philosophical enterprise, is best conceived as an attempt to negotiate diverse moral intuitions. Ethics is the logic of a pluralism in the sense that ethics is an attempt to find the most general grounds or bases for judging the rightness and wrongness of conduct. Unlike religious ethics, or particular legal traditions, philosophical ethics hopes for general principles of conduct discoverable by disinterested reflection, apart from either grace or cultural prejudice. Though such a disinterested perspective cannot be attained, one can move towards such a vantage point by attempting to lay out ever more clearly general principles of moral conduct."[2]

[2] Tristram Engelhardt, *In National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research*, Appendix I, Essay 8, 4, 63, 1978.

These principles would be neutral in the sense that they would "not [be] engaged on either side; specifically: not aligned with a political or ideological grouping" (Merriam Webster). They would be secular in that they would not be "overtly or specifically religious" (Merriam Webster). These features would allow persons who held different or no religious convictions as well as different accounts of the good life to share and use the principles to answer moral questions and resolve disputes despite their differences.

Early on, Engelhardt recognized the deep problems associated with pursuing common ethical principles as he had described them, principles that allegedly would allow for moral reflection and decision making despite the loss of foundational sources of morality and in the face of moral disagreement. He dedicated much of his work to demonstrating that the claim to have discovered a common morality that could be used to guide Bioethics was a deception that would be used to harness authority and exert power.[3] Much of his later work was dedicated to two other important ends, which are not the focus of this essay. The first was articulating one particular account of biomedical morality, that of the Orthodox Christian Church.[4] The second was exploring the consequences of living in a world governed by secular ideology.[5] In such a world, Engelhardt argues, the state has become not secular but secularist, meaning that it "seeks to exclude from the public forum and even from public discourse any but a secular ideology."[6] Here, we consider the common morality in light of Engelhardt's assessment of it.

Bioethics and the Hope for the Common Morality

When persons who did not share an account of moral authority or guidance faced urgent questions about health care and biomedical research, an action-guiding morality shared by all was sought. It would have to arise not from religious commitments or other particular views of the good life but from a neutral, secular foundation that could be recognized and applied by and to all persons. This was especially important for the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, which had been tasked with identifying the principles that could govern human research in the wake of revelations of the United States Public Health Service study of untreated syphilis. The National Commission went about

---

[3] See Tristram Engelhardt, *Bioethics and Secular Humanism* (London: SCM Press and Philadelphia: Trinity Press International, 1991), and Tristram Engelhardt, *The Foundations of Bioethics* (New York: Oxford University Press, 1996).

[4] See Tristram Engelhardt, *The Foundations of Christian Bioethics* (Salem: Taylor & Francis, 2000).

[5] See Tristram Engelhardt, *After God: Morality and Bioethics in a Secular Age* (New York: St Vladimir's Seminary Press, 2017).

[6] Tristram Engelhardt, "Christian Bioethics after Christendom: Living in a Secular Fundamentalist Polity and Culture", *Christian Bioethics* 17, no. 1 (2011): 76.

crafting shared moral principles that could be used to govern human research to re-build trust in the research enterprise and avoid future scandals. The National Commission settled on three principles: respect for persons, beneficence, and justice (National Commission 1979). Its description of these principles was largely influenced by influenced by Tom Beauchamp, who had been hired to help with report writing, Engelhardt and others who like him who had been asked to write papers for the Commission's consideration, as well as the Commissioners.[7] Engelhardt would eventually describe the paper he wrote for the National Commission in which he advocated for "general principles of moral conduct" (1978) as one of the "sins of [his] youth."

At the same time that the National Commission was developing a common moral framework for human research and articulating its three principles, Tom Beauchamp and James Childress were working together on a book that would shape the field profoundly. In *The Principles of Biomedical Ethics* (1979), now in its seventh edition, they claimed to have identified some of the common moral principles shared among persons who held different particular accounts of morality. This common morality included four principles that were especially important in the biomedical setting: respect for autonomy, beneficence, nonmaleficence, and justice. For Beauchamp and Childress the common morality consists of "the set of moral norms that all morally serious persons share."[8] Individuals hold more than the common morality; they hold particular moralities and among those particular moralities we see significant differences. But for Beauchamp and Childress, the view that there are some basic moral commitments shared among "all morally serious persons" is significant, and they spend much of *The Principles of Biomedical Ethics* developing an account of the four principles. These principles require specification to yield concrete action-guides, and, as prima facie principles, they must be balanced to determine which obligations will be honored in cases of conflict. Specification and balancing require substantive moral commitments, and herein lies one of the reasons for which the common morality cannot deliver as hoped, as discussed below.

The desire for a common morality is understandable. It would appear to give us a basis for making decisions and developing policy in the face of pluralism without imposing our own particular moralities on others. The allegedly shared commitments of rational agents are seen as an appropriate shared basis for public policy and clinical decision making in a morally pluralistic society.

Engelhardt and the (Implausible) Common Morality

Despite his contribution to the common moral language of principles for

[7] Albert Jonsen, *The Birth of Bioethics* (New York: Oxford University Press1998), 103.

[8] Tom Beauchamp and James Childress, *Principles of Biomedical Ethics (*New York: Oxford University Press, 2009), 3.

research ethics, Engelhardt noticed that the dream of a common morality that could bypass moral pluralism and enable us to draw moral conclusions amidst the loss of moral foundations was not plausible. For the principles to be action-guiding, we must determine what they mean, what they require, and what they prohibit. This process of specification and balancing depends on the moral assumptions or the conceptions of the right and the good of the persons in the privileged position to specify and balance the principles. For example, to understand what it is to respect the principle of justice, we need to know what constitutes justice. In attempting to flesh out that content we find numerous, incompatible accounts of justice. Further, we cannot resolve some of the differences by establishing which account of justice is based on reason alone. All accounts of justice require us to grant certain assumptions, e.g., they require a conception of the good or they require that we have some account of rights. We cannot specify our way to moral content from nowhere; instead, we require a moral starting point, and those starting points can vary dramatically among persons. Insofar as we acknowledge this, it is at best trivially true that we share a common morality. Thus even if we concur that we should adopt just practices and avoid injustice, we might have different conceptions of justice and thus different accounts of which policies and practices promote justice and avoid injustice.

It is for this reason that Engelhardt noted that appeals to mid-level principles might resolve controversies "when individuals with the same or very similar moral visions or thin theories of the good and justice have reconstructed their moral sentiments within divergent theoretical approaches."[9] If people already have the same general views about a moral question, such as the permissibility of allowing for inequalities in the health care system that allow the rich to access better care or to access health care more quickly, then it should come as no surprise that they will be able to come to consensus. They might explain their reasons for reaching to those shared conclusions differently, such as by an appeal to consequences or to deontological right- and wrong-making conditions.[10] But because they already shared a "moral lifeworld", their shared conclusions despite different justifications are no surprise. From that shared moral lifeworld, "it is not at all amazing that their different theoretical apparatuses generally justify similar choices."[11] But the story changes when the persons in question occupy different moral lifeworlds. For instance, if those who have different background conceptions of justice, such as Rawlsians and Nozickians, were to attempt to asses the permissibility of a two-tier system that allows the rich to access better care even if this makes the poor worse off, then no set of mid-level principles will lead them to the same conclusions.[12] Without any

[9] Tristram Engelhardt, *The Foundations of Bioethics* (New York: Oxford University Press, 1996), 56.

[10] Ibid., 57.

[11] Ibid.

[12] Ibid.

established way to judge among particular moralities, it is just one among many and not, as its proponents say, the morality that binds all morally serious persons. In other words, "[t]he appeal to middle-level principles may succeed in bridging the gulf between those who share a moral vision, but who are separated by their theoretical reconstruction of that vision. But it will not bridge the substantive gulf between those separated by different moral visions or different moral senses."[13] The latter gulf is real, not imagined, and it is this gulf that explains the culture wars.[14]

The common morality as described in the Bioethics literature is not actually held in common in any substantive way. It is also not neutral nor is its application neutral in the sense of not favoring or undermining any particular account of morality. Consider the shift in the Bioethics literature toward allowing children more authority over their health care decisions. Many contributors recommend this shift out of respect for the (emerging) autonomy of children or because they think that it will promote the good by producing better health outcomes. Policy and legal changes that grant minors greater legal authority to make their own health care decisions, particularly with respect to contraception and abortion, appear to arise from applications of the common morality principles of respect for autonomy and beneficence. Often they are defended using data that adolescents are able to make decisions comparable to those of adults[15], or that they lead to better health outcomes because they reduce the teen pregnancy rate. To hold that the observation (which has been challenged[16]) that adolescents are approximately as good as adults at making certain kinds of decisions already is to assume that the ability to decide justifies granting decision making authority or is more important than parental authority. To assume that allowing adolescents to make their own decisions advances public health goals and that this justifies granting them this authority is to assume that the ends justify the means (means which some consider illicit). Alternatively, it is to assume that public health officials' conceptions of the good, which involve contraceptive use and extramarital sex, are more important than other conceptions of the good, such as those held by traditional religious believers who recognize the authority of parents over their children. Policies that appear neutral and are defended using common morality principles, such as respect for autonomy or beneficence, rest on assumptions that one way of life is better than another and should be privileged.[17] Rather than being neutral, they are grounded in particular conceptions of the good and a particular ranking of goods.[18]

---

[13] Ibid., 58.

[14] Hunter, 1992.

[15] E.g., Weithorn and Campbell, 1982; Weithorn, 1983.

[16] For a discussion of these challenges, see Partridge, 2010.

[17] Ana Iltis, "Toward a Coherent Account of Pediatric Decision Making", *Journal of Medicine and Philosophy* 35 (2010): 526-552.

[18] For further discussion of the role of the family, see Mark Cherry, *Sex, Family, and the Culture*

A Different Common Morality?

The common morality allegedly is shared among all morally serious persons and does not privilege any of the many possible religious or non-religious beliefs people in a pluralistic society may hold. In this sense it is supposedly neutral, and we can rely upon and apply its principles independent of the way of life or conception of the good we think is best. It is supposed to give us a way of resolving moral controversies when we share space with what Engelhardt calls moral strangers. Because neutral reasons must not favor or presume any particular belief or conception of the good, it is widely held that secular reasons fit the requirements of neutrality. However, many allegedly neutral secular reasons do appeal to particular conceptions of the good life and marginalize other such concepts. As Engelhardt and others have shown, and as discussed above, the way the common morality has been described and applied in Bioethics rests on particular conceptions of morality and favors some ways of life and ideologies over others. The problem is not merely that this particular account of the common morality in Bioethics is implausible. It is that it is impossible to secure the moral guidance necessary to resolve moral controversies from any set of universal principles that operate across particular moralities independently of all non-universal assumptions about the right and the good. Any allegedly secular neutral account of ethics, just like any religious account, will rest on particular conceptions of the right and the good and be partial to some ways of life and ideologies. There is no shared account of the right and the good. And conceptions of the right and the good are essential to resolving moral questions.

Engelhardt was not alone in describing the implausibility of a common morality. For example, Lisa Cahill has argued that there is no "objective, traditionless, secular version of philosophical reasoning" by which one may engage public Bioethics.[19] She continues: even the "preeminent and supposedly neutral vocabulary of public policy debates in the U.S. today (liberty, autonomy, rights, privacy due process) itself comes out of a rather complex but distinct set of political, legal, philosophical, moral and even religious traditions."[20] Gilbert Meilaender argues that it is impossible to eliminate "from public discourse or debate insights and principles that grow out of our deepest religious and normative commitments", and that "those who profess neutrality (or suppose they have 'set aside' all metaphysical underpinnings) often turn out to be committed to views that can hardly be said to be neutral with respect to comprehensive doctrines."[21] Meilaender offers John Rawls' footnote in *Political*

Wars (New York: Routledge, 2016).

[19] Lisa Cahill, "Can Theology Have a Role in 'Public' Bioethical Discourse?", *Hastings Center Report* 20 (1990): 11.

[20] Ibid., 11.

[21] Gilbert Meilaender, "Against Consensus: Christians and Public Bioethics", *Studies in Christian*

Liberalism, where although he professes to exclude comprehensive doctrines from the discussion of justice, he identifies three values relevant to the permissibility of abortion and asserts that "any reasonable balance of these three values will give a woman a duly qualified right to decide whether or not to end her pregnancy."[22] Meilaender demonstrates that Rawls' "view manages to be simultaneously ad hoc and (unwittingly) laden with normative commitments."[23] To hold those values is to hold a particular view of the good life.

The foundational principles of any worldview, including one allegedly based on principles disclosed by reason, depend on substantive assumptions. As Kevin W. Wildes, S. J. has argued:

> "...there are just as many starting points for consideration of secular, content-full Bioethics as there are for religious Bioethics, and scholars have no way to determine which starting point is correct. Yet without some initial set of premises or moral assumptions moral controversies cannot be resolved. Content-full assumptions therefore must be made if fields of applied ethics, such as Bioethics, are to resolve moral controversies. Without any way to know what initial assumptions are correct many different 'Bioethics' – both secular and religious – will result with no way to know which of them is correct."[24]

As a result, he argues, no substantive approach to Bioethics or to moral decision making in general can be neutral:

> "Every systematic approach to Bioethics – theological, philosophical, legal – is particular in some way. Every method needs content... Two key points are worth bearing in mind... First, any attempt to address moral issues involves choices about some particular method in which to frame the issue. The choice of structure represents a particular view of moral reason and a way to view the moral world. Second, even if there is a common agreement about the method and structure to be used, there will still be a need for a content and its specification in order to address issues in Bioethics. The field is not simply an argument about doing good and avoiding evil but an attempt to argue for which evils should be avoided and which goods should be done. Each choice

---

Ethics 18 (2005): 79.

[22] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 243, n. 32; quoted in Gilbert Meilaender, "Against Consensus: Christians and Public Bioethics", *Studies in Christian Ethics* 18 (2005): 79.

[23] Meilaender, "Against Consensus", 79.

[24] Kevin Wildes, "Particularism in Bioethics: Balancing Secular and Religious Concerns", *Maryland Law Review* 53 (1994): 1221.

of content represents a particular point of view."[25]

and

"[a]ny content-full philosophical ethics can be said to be particular."[26]

Others have raised similar concerns. For example, Ruth Groehnout has demonstrated that any approach to Bioethics that will offer substantive directives or evaluation of significant issues cannot be neutral; to do any real work requires, she argues, "a fairly rich conception of the good."[27] Moreover, the inability to extract content from truly neutral secular reasoning has been demonstrated repeatedly by Engelhardt; even allegedly neutral secular moral and political theories are tradition-bound and value-laden.[28] Moral content always must be grounded in some view of the right or the good. Privileging some grounds (e.g., secular reason shaped by particular philosophical traditions) over others (e.g., Orthodox Jewish insights) ignores the fact that all positions share in common epistemic uncertainty – none can be definitively defended as the correct starting point for deliberation and all require us to suspend particular beliefs. We should not find it surprising that we live in the midst of the culture wars because claims to access the morality disclosed by reason alone rely on value-laden assumptions.[29]

The hope of securing a common morality and applying it to Bioethics to resolve differences is a fantasy according to Engelhardt and many others. Allegedly neutral secular reasons rest on moral presuppositions grounded in particular worldviews, including views that require one to explicitly reject other moral positions, accept particular conceptions of the good, or recognize the superiority of some ways of life.

References

Baker, Robert. *Before Bioethics: A History of American Medical Ethics from the Colonial Period to the Bioethics Revolution*. New York: Oxford University Press, 2013.

Beauchamp, Tom, and Childress, James. *Principles of Biomedical Ethics*. New York: Oxford University Press, 2009.

[25] Kevin Wildes, "Religion in Bioethics: A Rebirth", *Christian Bioethics* 8 (2002): 169.

[26] Ibid., 170.

[27] Ruth Groenhout, "Care Theory and the Ideal of Neutrality in Public Moral Discourse", *Journal of Medicine and Philosophy* 23 (1998): 182.

[28] See Tristram Engelhardt, *The Foundations of Bioethics* (New York: Oxford University Press, 1996), 40-65, and 105-8.

[29] Ana Iltis, "The Failed Search for the Neutral in the Secular: Public Bioethics in the Face of the Culture Wars", *Christian Bioethics* 15, no. 3 (2009): 220-233.

Cahill, Lisa. "Can Theology Have a Role in "Public" Bioethical Discourse?". *Hastings Center Report* 20 (1990): 10-14.

Cherry, Mark. *Sex, Family, and the Culture Wars*. New York: Routledge, 2016.

Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990).

Engelhardt Jr. *In National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research*. Appendix I, Essay 8, 4. 63, 1978.

Engelhardt, Tristram. *Bioethics and Secular Humanism*. London: SCM Press and Philadelphia: Trinity Press International, 1991.

Engelhardt, Tristram. *The Foundations of Bioethics*. New York: Oxford University Press, 1996.

Engelhardt, Tristram. *The Foundations of Christian Bioethics*. Salem: Taylor & Francis, 2000.

Engelhardt, H. Tristram, Jr. "Religion, Bioethics and the Secular State: Beyond Religious and Secular Fundamentalism". *Politea* 97 (2010): 59-79.

Engelhardt, Tristram. "Christian Bioethics after Christendom: Living in a Secular Fundamentalist Polity and Culture". *Christian Bioethics* 17, no. 1 (2011): 64-95.

Engelhardt, Tristram. *After God: Morality and Bioethics in a Secular Age*. New York: St Vladimir's Seminary Press, 2017.

Evans, John. *The History and Future of Bioethics: A Sociological View*. New York: Oxford University Press, 2012.

Griswold v. Connecticut, 381 U.S. 479 (1965).

Groenhout, Ruth. "Care Theory and the Ideal of Neutrality in Public Moral Discourse". *Journal of Medicine and Philosophy* 23 (1998): 170-189.

Hunter, J. D. *Culture Wars: The Struggle to Control the Family, Art, Education, Law, and Politics in America*. New York: Basic Books, 1992.

Iltis, Ana. "The Failed Search for the Neutral in the Secular: Public Bioethics in the Face of the Culture Wars". *Christian Bioethics* 15, no. 3 (2009): 220-233.

Iltis, Ana. "Toward a Coherent Account of Pediatric Decision Making". *Journal of Medicine and Philosophy* 35 (2010): 526-552.

In re Quinlan [70 N.J. 10, 355 A.2d 647 (NJ 1976)].

Jonsen, Albert. *The Birth of Bioethics*. New York: Oxford University Press, 1998.

Meilaender, Gilbert. "Against Consensus: Christians and Public Bioethics". *Studies in Christian Ethics* 18 (2005): 75-88.

Partridge, B. C. "Adolescent Psychological Development, Parenting Styles, and Pediatric Decision Making". *Journal of Medicine and Philosophy* 35, no. 5 (2010): 518-525.

Rawls, John. *Political Liberalism*. New York: Columbia University Press, 1993.

Rothman, David. *Strangers at the Bedside*. New Brunswick, NJ: Aldine Transaction, 1991.

Stevens, Tina. *Bioethics in America: Origins and Cultural Politics*. Baltimore: Johns Hopkins University Press, 2000.

Weithorn, L. "Chidlren's Capacities to Decide about Participation in Research". *IRB* 5, no. 2 (1983): 3.

Weithorn, L., and Campbell, S.B. "The Competence of Children and Adolescents to Make Informed Treatment Decisions". *Child Development* 53 (1982): 1589-1598.

Wildes, Kevin. "Particularism in Bioethics: Balancing Secular and Religious Concerns". *Maryland Law Review* 53 (1994): 1220-1237.

Wildes, Kevin. "Religion in Bioethics: A Rebirth". *Christian Bioethics* 8 (2002): 163-174.