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Public Reason in Bioethics[1]

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Abstract

Taking part in secular discussion is difficult for a Christian philosopher. An approach that has often been favoured by Catholic philosophers is to attempt to engage at a level of pure reason using natural law concepts. This paper argues that such an approach sells us short and represents a failure to engage in secular discussion on equal terms and a failure to give adequate witness to the teachings of Christ. The paper seeks to argue that while it is not true that reason has a wax nose, as former Cardial Ratzinger argued, there is a role for faith-derived concepts in secular discussion and for encouraging others to share their view whether faith based or not, and for subjecting those concepts to the scrutiny afforded by rational analysis in an effort to achieve an identified common ground of human goodness that both transcends individual culture and belief but has its individual origins within the disparate cultures and traditions.

Keywords

Public reason, bioethics, natural law, MacIntyre, Aquinas

Introduction

Central to Christian ethics is a concept of human dignity founded on the imago dei, and informed by the incarnation and the teachings of Jesus Christ.

The Church however has many voices: prophetic, academic/professional, humanistic and artistic[2]. In the field of bioethics the proclamation of the Word of God and witness to the person and teachings of Christ are prophetic and essential, but not always the voice that a secular audience is prepared to hear.

[1] The original version of this paper was delivered to a conference at the University of Notre Dame on the theme "Truth and Faith in Ethics", Sydney, June 27th June 2008.

[2] John W. O'Malley, Four Cultures of the West (London: Harvard University Press, 2004) 7.

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Bioethics, as a secular system of regulation of biomedical research and practice, demands a voice other than the prophetic. For a Christian, upholding the dignity of the human person within Bioethics calls us to develop a language and reasoning that belongs to the secular rather than the religious world. This of course may be seen by some as a conflict with the vocation of a Christian. It also means buying into the debate represented by Benedict XVI's comment as Cardinal Ratzinger that "reason has a wax nose", the shape of reason is determined by theological convictions[3]. In his 1996 address to the Congregation of the Doctrine of the Faith, "Current Situation of Faith and Theology" Cardinal Ratzinger agrees with Karl Barth's rejection of philosophy as the foundation of faith independent of faith, but rejects Barth's claim that faith is a pure paradox that can only exist against reason and totally independent from it. He calls for a new dialogue between faith and philosophy. "Reason", he said, "will not be saved without the faith, but the faith without reason will not be human."[4]

My own understanding of the role of philosophy reflects John Paul II's comment:

> "Every people has its own native and seminal wisdom which, as a true cultural treasure, tends to find voice and develop in forms which are genuinely philosophical. One example of this is the basic form of philosophical knowledge which is evident to this day in the postulates which inspire national and international legal systems in regulating the life of society."[5]

The task of a national bioethics committee, such as the one on which I serve, is to seek to be a part of the project of developing and applying those values that can be truly considered a "cultural treasure". In that respect I hope to be giving expression to the concluding word of *Fides et Ratio* to philosophers:

> "They should be open to the impelling questions which arise from the word of God and they should be strong enough to shape their thought and discussion in response to that challenge. Let them always strive for truth, alert to the good which truth contains. Then they will be able to formulate the genuine ethics which humanity needs so urgently at this particular time. The Church follows the work of philosophers with interest and appreciation; and they should rest assured of her respect for the rightful autonomy of their discipline. I would want especially to encourage believers working in the philosophical field to illumine

[3] Tracey Rowland, *Ratzinger's Faith: The Theology of Pope Benedict XVI"* OUP 2008, p. 5.

[4] Cardinal Joseph Ratzinger An address to the Congregation of the Doctrine of the Faith, "Current Situation of Faith and Theology" (1996) http://www.ourladyswarriors.org/dissent/ratzsitu596.htmn Accessed 18th June 2008.

[5] Pope John Paul II *Fides et Ratio* (1998) n. 4.

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> the range of human activity by the exercise of a reason which grows more penetrating and assured because of the support it receives from faith."

In that respect I do not see that there is a dichotomy between faith and reason, or between theology and philosophy. Philosophy would be foolish indeed if it willingly blinded itself to theology and to Scripture and resolved never to consider propositions that emerged from consideration of the nature of the Creator and the relationship between created and Creator. What is different about philosophy is that it resolves to test those propositions against reason and to seek justification, rather than accept them simply as a matter of faith. For a Christian, there is no difficulty in considering the teachings of Christ, and in faith believing them to be true, but, because true, able to withstand the examination of reason.

The danger for us as philosophers is to think that, because in a secular society we cannot expect that others share our faith, we must not introduce Christian notions, and if we do, they must be under some other guise. Such subterfuge is beneath dignity. It is better to go into a committee meeting known for one's faith in Christ Jesus, but also for one's willingness to listen to others and to explore concepts with a view to seeking truth that is broadly recognisable by others. In other words, one seeks, as a matter of mutual respect, common ground between one's own unashamed and obviously Christian beliefs and the beliefs of others, and with a willingness to question and to explore together what is true and good.

Is Natural Law a Matter of Pure Reason?

In his earlier critique of the Vatican document *Gaudium et Spes,* Ratzinger asserts that "....it seemed to many people, especially from German speaking countries, that there was not a radical enough rejection of a doctrine of man divided into philosophy and theology. They were convinced that fundamentally the text was still based on a schematic representation of nature and the supernatural viewed far too much as merely juxtaposed. To their mind it took as its starting point the fiction that it is possible to construct a rational philosophical picture of man intelligible to all and on which all men of goodwill can agree, the actual Christian doctrines being added to this as a sort of crowning conclusion."[6]

He goes on to attribute this error to the Thomists, "It can hardly be disputed that as a consequence of the division between philosophy

[6] Joseph Ratzinger "the Dignity of the Human Person" in Herbert Vorgrimler (ed) *Commentary on the Documents of Vatican II* Vol V (Burns & Oates: London 1969), pp. 115–163.

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and theology established by the Thomists, a juxtaposition has gradually been established which no longer appears adequate. There is, and must be, a human reason *in* faith, yet conversely, every human reason is conditioned by historical standpoint so that reason pure and simple does not exist.[7]

It is worth noting in this respect his emphasis on historical standpoint and thus on culture and tradition is also a basis for much of Alasdair MacIntyre's approach and the latter has drawn criticism on the grounds of relativism for it.

My own experience in working within a secular environment towards an agreed policy on ethical matters is that each of us does bring our own culture and tradition and that is likely to include theological traditions. What is spoken about, however, is not theology as such, but rather the search for a set of agreed and basic values upon which a coherent policy can be formulated. The reasons why we uphold a basic value is not so much discussed as accepted and what then emerges is a position that is both determined by individual culture, but also which transcends individual culture, because it is held in common across cultures and has been made subject to scrutiny and the need for justification on its own propositional terms.

A philosopher thus has more to contribute to that discussion than a theologian precisely because as philosophers we are interested in exploring why a teaching is good for mankind and to justify it in human terms. As Christian philosophers we are informed by our faith but willing to see its propositions tested for their justification, knowing that what God wants for us is good for us because he loves us.

In that respect, the response I wish to make to the claim that reason will not be saved without faith is to claim that independent of faith, goodness is a property that is recognizable even by those are unfamiliar with the Scriptures. In public discussion in a context of participants who belong to a range of faiths and none, it is legitimate and worthwhile to adopt the role of mutually seeking to identify a common understanding of human goodness and what we call the Pauline principle with respect to not doing evil in order to achieve the good. In other words faith is informative and not separate from our experience of the good, but it also appears to be a property which remains recognisable even by those of no apparent faith. Faiths are not to be excluded from that pursuit, for that would be both arrogant and bigoted, but the task is one of seeking to find that which is transcendent of individual faith, culture and tradition.

At the level of discussing virtue, Aquinas himself accepted the division of virtues and saw the cardinal virtues as distinct from the religious virtues, holding that all virtues other than the theological

[7] Ibid.

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are in us by nature, according to aptitude and inchoation, but not according to perfection. The theological virtues, he claims, are from without.[8] From practical experience in consulting in ethics within the practice of psychiatry, I would claim that the cardinal virtues transcend tradition and culture simply because to completely lack any one of them would be a form of mental illness. They are essential to living in community. The religious virtues however presuppose a God, but they are not without philosophical justification independently of faith in the person of Christ who so illuminates them by his personal witness and teaching.

A challenge for us as philosophers is to try to understand the Trinitarian mystery and through it Trinitarian anthropology. I would argue with respect to the latter that such a philosophical understanding of the communion of persons of the Trinity and through that understanding the nature of humanity as designed for communion, does provide a deeper understanding of marriage and human sexuality. In this respect I hold that John Paul II did not replace appeal to what is supposedly 'against nature', with a radically biblical doctrine of nuptiality, as some have claimed[9], but rather he has insisted on understanding sexuality in terms of the communion of persons that is our ultimate vocation and which finds expression in this life in the gifts of marriage and by analogy committed celibacy. In other words far from decrying the "against nature" arguments, he has instead tried to develop the notion of what is a human nature, and that part of that nature is the vocation toward forming a communion of persons. The imago dei is not of a single person but of three persons in a community of persons. The task for philosophy is the task that he gave himself in *The Acting Person,* of understanding human nature in a vocationally relational way. This is far from rendering non-theological ethics redundant. It is important that these developments of an understanding of human nature are challenged and justified on philosophical terms. It is only by doing so, that the Scriptural understanding of the human person which is the basis of the John Paul II Wednesday audiences on *Theology of the Body* can gain credibility through its internal coherence and consistency in philosophical terms.

When we are able to do that, we will then have a conceptual framework that can also be used in the engagement with our society. The greatest distance between Catholic moral understanding and our Western culture occurs at the level of understanding nuptiality. There is an urgent need to try to bridge that gap with a philosophical

[8] "Sic ergo patet quod virtutes in nobis sunt a natura secundum aptitudinem et inchoationem, non autem secundum perfectionem: prater virtutes theologicas, quae sunt totaliter ab extrinseco"S. Thomae Aquinatis *Summa Theologiae* (Marietti: Taurini/ Romae 1952) Prima Secundae Partis Q. 63, Articulus I.

[9] See for instance, Fergus Kerr *Twentieth Century Catholic Theologians* (Blackwell: Oxford 2007) p. 179.

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analysis of human nature that gives substance and justification to giving oneself in love. We need a way of constructing a common ground with others.

Critical analysis and evaluation as I was taught it at as a Philosophy post-graduate was a process that one learned by which the worth of a philosophical work could be judged by the number of distinctions made and defended. This approach has had its detractors. The philosopher Alasdair MacIntyre argues that contemporary philosophy has condemned itself to engaging in irresolvable or more precisely stagnating disputes by virtually making a virtue out of difference and of splintering of positions. (MacIntyre, 1988, p. 3) He claims:

> "Modern academic philosophy turns out by and large to provide means for a more accurate and informed definition of disagreement rather than for progress toward its resolution. Professors of philosophy who concern themselves with questions of justice and of practical rationality turn out to disagree with each other as sharply, as variously and, so it seems, as irremediably upon how such questions are to be answered as anyone else."

In my own experience on ethics committees and shaping policy, the much more important matter is not the fine points of disagreement and difference, but the development of agreement and consensus, for it is upon the latter that policy actually develops. In my own teaching I have come to recognize that an important skill for Bioethics graduates to learn is how to be able to analyse and evaluate toward a resolution, not to achieve more difference.

An aspect I had noted about good graduate student essays is that they had picked up the need to consider a range of views, and to work with the different concepts within those differences, but their method often seemed to be little more than to work to a favoured conclusion by dismissing other views on the basis of identifying some or multiple errors in those positions. Bad student essays did not even get that far and tended to resemble sermons rather than analysis.

My thought on the good student essays is that they have learned a skill, if it can be called that, which will not be particularly useful in policy-making. Instead of seeking resolution, they have learned to identify difference and then to adopt a view, like supporting a football team, and to support that view by decrying other views through seeking to identify error. This is not an approach that is likely to be effective on an ethics committee and would seem in fact to work against the idea of an ethics committee or policy-making being a process by which advice can be developed that is persuasive and broadly acceptable. The skill that they acquired was more suited to tyrants and dictators rather than to a rational democracy.

The much more difficult skill that I think is not well taught is how to use that understanding of difference to work towards consensus.

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The reality of ethical discussion between people who have different higher order beliefs is that they develop neuralgia points at which their basic higher order beliefs or assumptions are challenged. The skill of seeking resolution is to find formulations of words that either avoid or are at least acceptable to the variety of higher order beliefs or assumptions. In that way one can indeed reach a consensus that can be supported from a variety of points of view. Thus there is an active process of analysis that can yield a constructive outcome through the knowledge that that analysis brings. The problem that I referred to in the student essays is that they more or less stopped at identifying difference and error, rather than moving on to seek solutions that were constructive.

This might be seen as condoning relativism, a charge that has been levelled at Alasdair MacIntyre who also holds to respecting a person's culture and tradition. The counter that I would make to a similar charge is that, working on an ethics committee, the task is a very practical one of identifying goodness and goodness is not the preserve of any one culture or tradition, but transcends differences between culture, tradition and religion.

If the autonomy as moral trump approach dominated, then ethics guidelines would be little more than guidelines for providing information, obtaining consent and appointing representatives for those who lack the capacity. But that is not my experience on government committees and in secular bioethics.

In the task of developing ethical guidelines it is interesting that secular bioethics has had to call on notions that approximate to the Christian concepts of dignity and the language of moral imperatives. A moral language has developed to express ideas such as intrinsic evil and the Pauline principle, and, in Australia at least, there is an as yet unarticulated move away from both autonomy as a moral trump and utilitarian concepts and towards a theory of the good. This is most clearly expressed in the various ethical guidelines issues by the National Health and medical Research Council, for which I will give account.

The 1970 & 80's ideas of replacing utilitarianism with principlism[10], and the latter's emphasis on autonomy as a moral trump, has given way to ideas of professional integrity and a taxonomy of acts never to be undertaken. This is in part influenced by virtue ethics but also embodies a thick notion of the human person and the good of the human person. The teleology is lacking in any sense of an explicit final end of the human person, but to some extent the

[10] See for instance the approach taken by Beauchamp T L and Childress J F in successive editions of *their Principles of Biomedical Ethics*, 5th edn. Oxford University Press, 2001, though the latter edition has tended to move away from autonomy as the dominant value toward a virtue approach.

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dialogue is pervaded by an implicit sense of the transcendent nature of humanity.

This experience in secular bioethics regulation raises some pertinent practical questions about natural law reasoning and the internal debates about moral epistemology and whether human goods and the moral law are knowable or deducible in a sufficiently rich way as to give rise to an adequate ethic not based on the Word of God.

Public Reason in Bioethics

Basically the view that I have taken is that in engaging in moral discussion with people who do not share our faith, there is no reason to think that one must resort to pure reason and construct a morality from first principles. One is entitled to explore what each believes and in that context of listening also present the teaching of Christ offered for evaluation according to reason and in that context by reasoning that applies the natural law.

My original approach had been to approach the bioethics issues in the public forum from the perspective that natural law is written in every heart and that we can appeal to natural principles in the public forum. As time has gone on I have been concerned that:

a) the approach is not working and battle after battle is being lost on vital issues. This is no more so the case than in the UK which has rapidly become the most immoral of Western nations; and
b) in doing so we are in danger of not advocating the essential Christian messages. In particular the theological virtues, which Aquinas recognised are not part of our individual heritage outside of revelation, are an important element in Bioethics.

The shift I have made is that the Christian moral message can be offered within the public domain alongside its competitors. Rather than trying to derive it from pure reason in some kind of Kantian way, it is legitimate to offer it and to argue that it is defensible through reason, even if not entirely derived from reason and first principles. We ought not then feel restricted from seeking to promote the theological virtues and the particular human and divine good towards which they are oriented. The approach I advocate is to encourage others to express their views and in listening to them gain the right to express my own. The purpose then of a collaborative secular activity is to identify values and principles that are both widely held and can withstand robust critical analysis.

Secular dialogue does not mean using only a language of pure reason that is likely to be foreign to all parties, but rather listening to each and being willing to explore common ground.

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I recognise the dangers of both positivism and relativism in this approach. Both of the latter, I hope, can be avoided through the robustness of the critical analysis. The difference of the latter however is that I see its function as being constructive rather than to deconstruct. In other words, the approach is to identify virtue and goodness rather than to finish with nothing, which seems to be the result of secular discussion in the Western societies. To that end natural law theory is well adapted, not as a ground up construction of a morality, but as a means of testing and assessing the reasonableness of the concepts offered as a basis for formulating policy and in that way achieving common ground. The role of a Christian philosopher in public policy formation is to encourage others (of all faiths and none) to be willing to put their own view rather than feeling constrained to express a view censored by the need to respect the new faith of atheistic secularism and a Cartesian scepticism or Kantian rationalism that will only allow that which can be derived from first principles through pure reason. In placing our individual cards on the table, so to speak, we can then work together to analyse and synthesise a common moral ground.

The NHMRC Experience

The statutory functions of the Australian Health Ethics Committee, a principal committee of the National Health and Medical Research Council, include providing advice or national guidelines about ethical issues in human research and in health care. In fulfilling those tasks, the members of AHEC are conscious that there is often debate about ethics.

The committee notes that ethics is sometimes said to be merely a matter of individual preference or cultural convention and responds that although ethical judgments may indeed express personal preferences, and may be connected in complicated ways with cultural conventions, AHEC regards ethics as a form of rational inquiry that concerns how we should live and what we should do.[11]

The committee notes further that even the best way of reasoning about ethical issues is a matter of debate. For example, some people emphasise the moral undesirability of certain acts (such as deliberate deception) in and of themselves and the moral desirability of certain standards of conduct (such as integrity in one's relationships with others) in and of themselves. Others emphasise the moral significance of anticipating the likely consequences of proposed acts (for example,

[11] NHMRC *National Statement on Ethical Conduct in Human Research Australian* Government Canberra 2007 pp. 11–13.

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the likely consequences for a woman who gestates a child for another woman).[12]

Similarly, some people emphasise the duties we owe to each other (for example, the duty to respect another's personal autonomy). Others emphasise the moral claims we are entitled to make against each other (for example, a child's moral entitlement to knowledge of his or her genetic parents).

The Committee holds that all of these kinds of considerations matter, even if there can be reasonable disagreement among people about how they are to be balanced. In other words it does not seek to exclude contributions from the various views, but to seek answers to ethical questions based on considering responses from all perspectives. To some extent, that approach is required by the NHMRC Act by which AHEC is established.[13]

The NHMRC Act stipulates the diverse composition of AHEC and the necessity for public consultation in the development of guidelines. AHEC therefore understands that it is the will of the Parliament that AHEC seeks to prepare advice and guidelines that reflect and to some extent define the values of the Australian community.

Accordingly, in developing ethical guidelines it is necessary for AHEC to ask what are the values at stake and what function do those values have in establishing an ethical basis for practice.

A likely answer may be that we wish to preserve what Australians consider essential for the kind of life they (and their children and grand-children perhaps) wish to live as members of a community. Those values should be reflected in the way that medical research and practice develops.

The values and principles of conduct in each context differ because the relationships between people and the responsibilities differ. What is expected of a medical clinician may be different from what is expected of a medical researcher and different again from what may be expected of a manufacturer of therapeutic products.

AHEC's Values in Research

The National Statement on Ethical Conduct in Human Research (NHMRC 2007) describes the relationship between researchers and research participants as the ground on which human research is conducted. The Statement identifies the values of respect for human beings, research merit and integrity, justice, and beneficence as helping to shape that relationship as one of trust, mutual responsibility and ethical equality.

[12] Ibid.
[13] Ibid.

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The Statement also acknowledges that while these values have a long history, there are other values that could inform human research such as altruism, contributing to societal or community goals, and respect for cultural diversity, along with the values that inform *Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research* (NHMRC 2003): spirit and integrity, reciprocity, respect, equality, survival and protection, and responsibility

It is worth noting that the major value in the National Statement is respect for human beings which is a recognition of their intrinsic value. According to AHEC, respect also requires having due regard for the welfare, beliefs, perceptions, customs and cultural heritage, both individual and collective, of those involved in research. From the point of view it is most interesting that a notion of respect for human beings and their intrinsic value is taken as the priority in developing ethical guidelines. This concept is removed from the statements of autonomy and individualism that characterize much of the secular debate.

AHEC goes on to claim that researchers and their institutions should respect the privacy, confidentiality and cultural sensitivities of the participants and, where relevant, of their communities. Any specific agreements made with the participants or the community should be fulfilled.

The committee also doffs its cap to autonomy in asserting that respect for human beings involves giving due scope, throughout the research process, to the capacity of human beings to make their own decisions. Where participants are unable to make their own decisions or have diminished capacity to do so, respect for them involves empowering them where possible and providing for their protection as necessary.

AHEC's Values in Organ and Tissue Transplantation

In Australia, the donation of organs and tissues after death for transplantation relies on the values of altruism and solidarity that has formed the bases of a system of obtaining and using organs and tissue for transplantation. AHEC has recognized that the medical benefits of this approach to organ and tissue donation has provided a strong motivation for such a system and it is now part of Australia's social capital.

The NHMRC[14] has held that organs and tissues for transplantation after death should be obtained in ways that:

[14] Organ and Tissue Donation by Living Donors: Guidelines for Ethical Practice for health Professionals, Endorsed 15 March, 2007; Organ and Tissue Donation after Death,

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- demonstrate respect for all aspects of human dignity, including the worth, welfare, rights, beliefs, perceptions, customs and cultural heritage of all involved;
- respect the wishes, where known, of the deceased;
- give precedence to the needs of the potential donor and the family over the interests of organ procurement;
- as far as possible, protect recipients from harm; and
- recognise the needs of all those directly involved, including the donor, recipient, families, carers, friends and health professionals.

In the context of a system based on altruism and solidarity, it has been possible to have a process of allocation according to just and transparent processes.

The ethical issues in the donation of living organ and tissue donation principally involve concern for the donors: the autonomy and welfare of the donor takes precedence over the needs of the recipient to receive an organ or tissue. The systems in Australia, whether for the blood service, the bone marrow service, the eye bank or solid organ transplantation, have been based on altruism and solidarity and respect for human dignity, including the worth of the person and respect for their wishes.

AHEC and Care of People Who are Severely Brain Damaged

Last week, as chairman of an NHMRC committee on the care of people in post-coma unresponsiveness (Vegetative State) or a minimally responsive state I launched new national ethical guidelines[15]. It is worth noting that the guidelines in reference to the vexed issue of withdrawing nutrition and hydration state:

> **"**A person in PCU or MRS may be affected by other conditions, or his or her condition may deteriorate. Complications may also develop in relation to delivering some elements of maintenance care. For example, tube feeding may cause aspiration and recurrent respiratory infection; or a percutaneous endoscopic gastrostomy tube (PEG) may cause excoriation or gut inflammation. People who are minimally responsive may show signs of discomfort
>
> **"The presumption ought to be in favour of continuing maintenance care.** However, such complications may lead to some aspects

for Transplantation: Guidelines for Ethical Practice by health Professionals Endorsed 15 March, 2007.

[15] National Health and Medical Research Council *Ethical Guidelines for the Care of People in Post Coma Unresponsiveness (Vegetative State) or a Minimally Responsive State*, Australian Government, Canberra, 2008 http://www.nhmrc.gov.au/publications/synopses/e81_82syn.htm.

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> of maintenance care being considered overly burdensome and they may be withdrawn after careful consultation and informing those involved about the reasons for withdrawal. The person's previously expressed wishes are relevant to a judgement of the burdensomeness of a treatment, and should be considered.
>
> "As with any decisions about the treatment of highly dependent patients, **decisions about withholding or withdrawing treatment and the continuing provision of artificial nutrition and hydration should be informed by a consideration of the person's best interests including what, if anything, is known about their wishes; and it should reflect the best contemporary standards of care for people who are highly dependent.** The question is never whether the patient's life is worthwhile, but whether a treatment is worthwhile."

Like all of the recent AHEC documents, these guidelines begin with a statement of ethical principles. In this document that statement contains the following.

The provision of care is an expression of our fundamental humanity and connectedness, and our common sense of obligation to promote good and do no harm. Because of their total dependence on others, people in PCU or MRS are highly vulnerable and, as such, are owed a particular duty of care to promote their interests and protect them from exploitation, abuse and neglect. That duty is likely to extend over a long period of time. Decisions about the care of people in PCU or MRS should:

(a) demonstrate respect for all aspects of human dignity, including the worth, welfare, rights, beliefs, perceptions, customs and cultural heritage of all involved;
(b) respect, where these are known, the values, beliefs and previous wishes of the person in PCU or MRS;
(c) recognise the needs of all those directly involved – including people in PCU or MRS, families, friends, health professionals, and other carers – to be:

    (i) involved in decisions that affect them;
    (ii) given accurate and timely information;
    (iii) realistically educated about the person's situation, care and prospect; and
    (iv) assisted, when necessary, to deal with their own responses in their particular situations;

(d) give due regard to justice, particularly in relation to the responsible use of resources. This includes ensuring so far as possible that there is:

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(i) fair distribution of the benefits of or access to goods and services;
(ii) equality of opportunity;
(iii) no unfair burden on any members of the community or on particular groups; and
(iv) no abuse, neglect, exploitation or discrimination;

(e) respect the basic rights of people in PCU or MRS, including:

(i) the right of individuals to be treated with respect;
(ii) the right of individuals to life, liberty, and security;
(iii) the right of individuals to have their religious and cultural identity respected;
(iv) the right of competent individuals to self-determination;
(v) the right to a standard of care related to individual needs;
(vi) the right of individuals to privacy and confidentiality;
(vii) the recognition that human beings are social beings with social needs;

(f) give due regard to the rights and duties of those who care for people in PCU and MRS, and the duties of the community both to people in PCU or MRS, and to their carers (family, professional and other);
(g) respect the goals and the limits of medical treatment.

AHEC's Moral Language

One of the most interesting experiences of developing national guidelines for ethical conduct in medical practice and research is that AHEC has had to develop a policy about moral language. In the vagaries of committee process, a policy decision was made to use the words "ought" and "must". The latter was to express exceptionless norms and the latter a normative recommendation to which individual ethics committees might seek to justify permitting exceptions.

This experience of seeing a morality expressed in a secular environment has been a most interesting one. The claim I make is that this is good activity, activity that seeks to identify and protect human beings from a viewpoint that listens to the different faiths, cultures and traditions within our society and seeks to reflect the committee's perceptions for what needs to be protected in the conduct of human research and health care clinical practices in the light of values that are derived from the society but transcendent of the cultural and traditional differences. That process does call for reflection on what constitutes a secular society because there are those who want to

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assert something quite different, a society in which faith has no role in public life.

A Secular Society

The judgement that we live in a secular society may reflect an historical aberration, a modern phenomenon, and largely an exclusively Western phenomenon, the recent judicial difficulties of Turkey's ruling AK Party notwithstanding (but I will return to the subject of Turkey later).

The philosopher Charles Taylor in his recent book "A Secular Age"[16] suggests that a secular society may be one in which one can engage fully in politics without ever encountering God. Apart from some vestigial prayers on such an occasion as the opening of Parliament, now to be preceded by a welcome from the original owners of our land, (or an occasional speech from a member of minority religious party who became elected through the vagaries of the system for electing upper chambers and inter party dealing on preferences), Australian politics are basically secular according to Taylor's characterisation.

In another sense though, Australia is even secular than our American counterpart. In 2005, only 40% of Australian marriages took place in the presence of a Minister of religion.[17] America, despite a rigorous separation of Church and State, is the Western society with the highest statistics for religious belief and practice. Religious practice in Australia is in decline. So a secular society may mean a society in which people are predominantly not religious by belief or practice. In that case, though constitutionally secular, one would not describe Turkey as secular, given the vast majority of the population is Muslim, with 95% declaring their belief in a God[18].

Taylor however identifies a third sense of secularism, by which he means to refer to the rise of the alternative of secularism as a form of belief.

A society may be secular in the first sense of religion not being a part of public life, the so-called separation of Church and State. It may be secular in the second sense of declining religious belief and practice. Finally it may be secular in the sense of secularism emerging as an alternative belief form.

[16] Charles Taylor "A Secular Age" Harvard University Press: Cambridge, Massachusetts 2007.

[17] Australian Bureau of Statistics *Marriages Australia 2005* Document No. 3306.0.55.001 http://www.abs.gov.au/ausstats/abs@.nsf/mf/3306.0.55.001 Accessed 1st April 2008.

[18] European Commission "Social values, Science and Technology"Eurobarometer 2005 http://ec.europa.eu/public_opinion/archives/ebs/ebs_225_report_en.pdf Accessed 1st April 2008.

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It seems to me that it is the latter that we are witnessing in Australia, and it appears as a very aggressive exclusionist form of secularism which views religious belief and practice with arrogant intolerance and dismissiveness. This kind of secularist belief is characterised by attempts to exclude contributions to public discussion on the basis of a kind of bigotry that classifies the contributions of persons who are religious in a nominalist way.

A question that every intelligent participant in public debate faces is the question of how to conduct oneself in pluralist debate and what are legitimate personal ambitions for that participation.

To expect to produce public policy to one's liking would be an aspiration to demagoguery or tyranny. More than that, it would offend against basic ideals of freedom.

Human persons do not live in isolation but in community. We do need a public morality, a set of values that underlies our public structures and institutions and guides our conduct. There are then basic norms that are required for persons to live together harmoniously.

To that end, we each have a personal responsibility to seek to know the truth and to adhere to it. That pursuit of truth is best served by protecting each person from external coercion, from anything that would impinge upon his or her psychological freedom. The right to religious freedom ought not to be impeded, provided that just public order is protected.

The search for truth is an inquiry that should be free and informed and developed by dialogue. Free moral discussion is thus a crucial part of that inquiry.

Society also has the right to defend against possible abuses committed on the pretext of freedom of religion (eg genital mutilation of women). But governments should not be arbitrary or unfair in that respect. Government has responsibilities to safeguard the rights of all citizens and for the peaceful settlement of conflicts of rights. Peace comes about when people live together in ways that respect the dignity and rights of each.

There is a thus need for a public morality, a set of norms that govern our relationships with each other based on the fundamental notion of equal respect for persons, our inherent dignity, and our inalienable rights. These notions constitute the basic components of the common good. Outside of these restraints and obligations of the common good, persons have freedom in full range.

A legitimate aim of involvement in public debate is to seek to develop policies that give expression to equal respect for persons. There are many differences of opinion as to what constitutes respect for persons and indeed what is meant by human dignity. That discussion is fruitful and worthwhile, and the contributions of a plurality of approaches deepen and strengthen understanding. Open public debate thus serves important functions.

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The point is not to exclude considered perspectives from discussion, but to listen to each and to gain the insights that each brings. Bigotry is limiting and destructive of community precisely because it is an effort to isolate and exclude contributions from discussion. In recent times we have witnessed the extraordinary bigotry of exclusive secularism that has attempted to exclude religious perspectives from public discussion.

American jurist Ronald Dworkin asserts the essentially *religious* content of respect for the intrinsic value of human life. He argues that State enforcement of responsibilities to protect the intrinsic value of human life would breach the First Amendment and the understanding that a state has no business prescribing what people should think about the ultimate value of human life, about why human life has intrinsic importance, and about how that value is respected or dishonoured in different circumstances.[19]

This argument is linked in Australia to the Australian Constitution. Section 116 provides:

> "The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth."

The meaning of section 116 was determined by the High Court of Australia in the famous "Defence of Government Schools" (DOGS) case in 1981. Barwick CJ: "the establishment of religion must be found to be the object of the making of the law. Further, because the whole expression is "for establishing any religion", the law to satisfy the description must have that objective as its express and, as I think, single purpose.[20]

The purpose of these provisions in the Australian Constitution is, then, to limit the role of the State, not to limit the role of the Church or any other religious grouping. Having come from a society where the King nationalised religion and made the Church a department of State under parliamentary control, persecuting and marginalising those whose religious opinions differed from those of the State, it is not surprising that the founders wanted a Constitution which would allow maximum freedom of religion. Where religion is concerned, it is the Church that needs protection from the hubris of politicians and not vice versa. The Church did not impose religion upon England. England imposed its views on the Church.[21]

[19] Ronald Dworkin, *Life's Dominion* (New York: Knopf, 1993), 164.

[20] *Black v. The Commonwealth*, (1981) HCA 2, (1981) 146 CLR 559 (2 February 1981), at 579, http://www.austlii.edu.au/au/cases/cth/HCA/1981/2.html.

[21] I am indebted to John Fleming in a chapter we co-authored entitled "Seeking a Consensus" in John Fleming and Nicholas Tonti-Filippini (Eds) *Common Ground? Seeking*

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Moreover, the Australian Constitution does not exclude religious arguments, religious people, or the Churches from public debate. The opposite is true. People are not to have their religious freedom infringed by the state and are to be permitted to express their religious opinions in the public square. The Australian Constitution itself recognises the legitimacy of religion in the public square when, in its Preamble, it says that we, the Australian people, are "humbly relying on the blessings of Almighty God". This is further supported by the custom of the Parliament to begin each day with prayer including the "Our Father".[22]

Perhaps it is fairer to say that the Australian Constitution provides for the cooperation between Church and state, religion and state. Michael Hogan, Research Associate in Government and International Relations at The University of Sydney, put it this way:

> Australia does not have a legally entrenched principle, or even a vague set of conventions, of the separation of church and state. From the appointment of Rev. Samuel Marsden as one of the first magistrates in colonial New South Wales, to the adoption of explicit policies of state aid for denominational schools during the 1960s, to the two examples mentioned above, Australia has had a very consistent tradition of cooperation between church and state. "Separation of church and state", along with "the separation of powers" or "pleading the Fifth", are phrases that we have learned from the US, and which merely serve to confuse once they are taken out of the context of the American Constitution.[23]

What Australia does have is a principle of state *neutrality*, or equal treatment, when dealing with churches. This principle dates back at least to Governor Bourke (if not to Macquarie) in colonial NSW, and extends all the way into contemporary Australia where government monies at all levels go quite happily to the churches so that they can run schools, hospitals, employment agencies, social welfare bureaux and even drug injecting rooms. This principle of neutrality is not entrenched in either the State or Federal Constitutions, and has no legal standing. (Constitutionally, State governments could still conceivably nominate an established church; only the Commonwealth is forbidden to do so by Section 116 of its Constitution!) Ultimately, the strength of the principle comes from the conventions hammered out in colonial Australia that saw English and Scottish established churches deprived of their priority in government funding. It survives

an Asutralian Consensus on Abortion and Sex Education St Paul Publications 2007 pp. 312–330.

[22] Ibid.

[23] Ibid.

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into the twenty-first century because no major party could seriously contemplate abandoning it.[24]

The principle of state neutrality has coexisted in Australia with a strong secular tradition in politics. . . . For most of our history most Australians have been quite happy with the principle that governments should not favour one church over another.[25]

Notwithstanding the legal position, many politicians and others have behaved in a way that does not respect the Australian Constitution by demanding that bishops, priests, ministers, churches, and other religious bodies stop "meddling" in politics. Such *ad hominem* attacks represent an egregious appeal to prejudice and unjust discrimination against certain people or institutions. It is also hypocritical in the strict sense because such advice is usually given by, but not expected to apply to, those whose religion is variously described as secular, "humanist", atheistic, or agnostic.

Examples of publicly expressed religious bigotry by significant members of the press, political establishment, and others abound. The views of Christians are associated with fundamentalism, that unenlightened and ignorantly dogmatic religion, which is impervious to science, reason, and compassion.

To make it clear that people should discount views contrary to those held by the elites, media outlets commonly describe dissenters as "devout Catholic" or "fundamentalist." We have yet to see anyone from the elites described as "atheist" or "agnostic". Which begs the question, "Why not?" All human beings are influenced by their personal religious and philosophical commitments. Why is this only to be considered a problem for Christians? The attempt to define out of public debate contributors who come from selected religious viewpoints (but not others) exemplifies how deeply anti-religious and sectarian bigotry goes especially among those who would regard themselves as "enlightened", even "educated".

When Christians, either as individuals or in company with others of similar mind, take part in public discussion, they do so simply as citizens expressing a view about the common good and the principles that are needed to protect the common good. They are behaving responsibly by taking their civic role seriously, provided of course that they conduct themselves properly within the norms of the Australian democratic system. This caveat also applies to those who replace intelligent argument and debate with *ad hominem* attacks which invite people to disregard fellow citizens on the basis of their religion.

The view that human life is to be protected is implied by the simple idea of equal respect for persons. It is legitimate to argue

[24] Ibid.

[25] Michael Hogan, "Separation of Church and State?" (16 May 2001), http://www.australianreview.net/digest/2001/05/hogan.html.

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about who is a person, but that is not essentially a religious debate, even if religious people may be inclined to be more sensitive to the need to protect those who are most vulnerable on the fringes of life.

The Australian Constitution protects religious freedom, including freedom of association and of expression.

The right to be involved in public debate is protected. It is manifestly unjust and extraordinarily bigoted to claim that religious people ought not to be permitted to contribute or that their contribution ought not to be considered.

At the same time, contribution to public debate needs to be aware of the sensitivities of others. Public policy advances through seeking points of agreement and being careful to respect areas of disagreement. There is a role for what John Rawls[26] calls "public reason", this is a discussion that takes place on the basis of agreed fundamental principles.

However it is important that there is also continued discussion of those fundamental principles, as well as on the application of them, and it is appropriate in a pluralist society that all perspectives are brought to bear upon that discussion in a considered way.

The great traditions in every age and culture have tended to identify the very same core values. Our human need for a transcendent reality that is beyond the merely human ultimately outlasts every other alternative belief form both intellectually and emotionally. The task of seeking that reality is, I would argue from my experiences of doing so, a legitimate and worthwhile activity. As an approach it is not a case of "crowning" as the former Cardinal Ratzinger would express it, but rather seeking to draw from the many traditions and cultures within our society, including those that are theological, perceptions of the human goods that are transcendent, and the need to protect them.

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[26] John Rawls, 'The Idea of Public Reason Revisited' in John Rawls, *The Law of Peoples* (1999) Harvard University Press 1999.

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