Christian Ethics and the New Eugenics

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Introduction

This project is concerned with the relation between Christian ethics and what has come to be called "liberal" or the "new" eugenics, shorthand for a cluster of developments in reproductive medicine utilized for the creation of idealized human persons. Mine is perhaps a foolish enterprise. In what follows, I do not presume that the meaning of either of these terms - *Christian ethics* or *liberal eugenics* - is immediately unambiguous to all, much less that we understand their relation to one another. As such, the two primary objectives of the project are clarification and analysis: What is meant by the term *liberal eugenics*, and how does liberal eugenics relate to the various streams of thought that constitute the field of Christian ethics? For important reasons, each aspect of this question requires some acts of synthesis on my part.

It is so because there is, in my view, no liberal eugenics or Christian ethics in some pristine natural state, ready and waiting to be found by the curious mind.¹ Rather, there are thinkers whose thoughts run along certain lines, toward certain conclusions about the nature of reproduction, the moral meaning of human action in relation to new life, and so on; and it is my task to take what seems most important in each of these lines of thought and put them together in such a way as to clarify the meaning of the terms themselves.

To admit that this requires synthesis on my part – maybe even a synthesis to which particular authors would object – is not, I hope, to admit that I am interested in creating a Christian ethics or liberal eugenics *de novo*, one that would be unrecognizable to Christian

¹ On the term *liberal eugenics*, see Nicholas Agar, *Liberal Eugenics: In Defence of Human Enhancement* (Malden, MA: Blackwell, 2004). On the contested nature of Christian ethics (or Moral Theology) as a field of study, any number of theorists question the all-too-crisp definitions theologians employ and the typical manner in which they go about their work. For an interesting contemporary account of what Christian Ethics has often overlooked and its newfound interest in adequate moral description, see Michael Banner's recently

ethicists or liberal eugenicists; it is, however, to frankly acknowledge that the argument I present on the relation of Christian ethicists to the proposals of liberal eugenics depends on a prior and essential act of moral description.²

But why is Christian ethics interested in this topic in the first place? And, perhaps more pertinently, why should bioethicists or, in fact, the general reading public care about what Christian ethicists have, can, and should say about developments within reproductive technology and its use? What, after all, do Christian ethicists contribute to the ongoing debate regarding the ways in which children are produced? Is it anything more than a series of more or less articulate roadblocks to progress?³

² The work of adequate moral description requires patience. To do it well requires more than merely chronicling developments; we must also have some sense of the relation of parts to whole. This is all the more important in a world where each week, it seems, we are greeted with news reports of new technological developments that highlight the merging of increased knowledge and power. In fact, it is precisely this synthesis of knowledge and power that causes such alarm in some and promise in others. Whether it be the use of assisted reproductive technologies to address the conundrum of infertility, expanding coverage for genetic screening intended to identify embryos with genetic abnormalities, CRISPR technologies that promise a kind of "gene-editing," Mitochondrial Replacement Therapies, or endorsing sex-selective abortion, the tools of medical innovation can, increasingly, be put to our ends; and, importantly, we desire these ends to be beneficial to parents, potential parents, and future generations but are, in most instances, ambivalent about such aspirations.

³ One take on this is that of Ronald Green, who clearly states that the reason to discuss the theological responses to new reprogenetic possibilities is simply (and only?) because the notion of "playing God," though incoherent, has such purchase on the common imagination that it cannot be ignored. This concept – playing God – has such purchase due to the fact that, as many will know, the Madisonian compromise regarding religion in United States has led to the flourishing in of religion in America, not the inverse. For evidence of this, see Pew Forum on Religion & Public Life, U.S. *Religious Landscape Survey: Religious Affiliation and Dynamic* (Washington, DC: Pew Research Center, 2008). Green's solution to the problem of playing God, however, is to enact social change slowly and deliberately. In chapter 7 of his *Babies by Design: The Ethics of Genetic Choice* (New Haven: Yale University Press, 2007) we read:

The disagreements about intervening at the genetic level will grow in intensity in the years ahead. During the twenty-first century human gene modification is likely

These questions are best answered indirectly: If Christian ethicists cannot muster the energy and ingenuity required to orient Christians (and possibly others) toward the good within a world of increased control over our reproductive capacities, then their effort has failed in its pastoral task and, as such, deserves the ridicule it so often receives. Though I do not think it deserves this ridicule, this is a matter that cannot be prejudged. Christian moral theologians have to make a case - a case that will make use of the best of the resources available to them in order to address all the complexities inherent in the liberal eugenicists' proposal.⁴

Clarifying Concern

Theorists of many kinds raise grave concerns as well as ambitious social proposals around developments in reproductive technology and their use, particularly as they relate to the prospects of "our post-human future." Consider, for example, Francis Fukuyama's concerns alongside the confidence of British bioethicist John Harris. First, Fukuyama:

to move to the center of religious debates, possibly eclipsing the controversies about abortion, embryonic stem cell research, and cloning. Beginning with more widespread prenatal gene selection and moving on to germline therapies and enhancements, each new manipulation will precipitate a skirmish in the war between differing worldviews. The passions are strong, and the outcome of debates probably depends on how well we implement the new technologies for choosing our genes. If we do so badly, gene modification will come under the shadow of the failed eugenics movement. If we implement it well, gene modification will become a routine and accepted part of our lives, joining anesthesia during childbirth, birth control, and in vitro fertilization on the list of reproductive technologies that religions once opposed. (196)

⁴ It is important to note that my decision not to give much attention to accounts like Joseph Fletcher's *The Ethics of Genetic Control: Ending Reproductive Roulette* (Buffalo: Prometheus Books, 1988) is intentional. Though Fletcher's situationism will come up from time to time, my view is that Fletcher's approach has not been adopted by the major figures who have shaped Christian ethics in the last 50 years. His work will be treated in the chapter on Oliver O'Donovan and Paul Ramsey, particularly as it relates to Ramsey's desire for "decision-oriented" church teachings. The political equality enshrined in the Declaration of Independence rests on the empirical fact of natural human equality. We vary greatly as individuals and by culture, but we share a common humanity that allows every human being to potentially communicate with and enter into a moral relationship with every other human being on the planet. The ultimate question raised by biotechnology is, What will happen to political rights once we are able to, in effect, breed some people with saddles on their backs, and others with boots and spurs?⁵

And then Harris:

In the future there will be no more human beings. This is not something we should worry about . . . Darwinian evolution has taken millions of years to create human beings; the next phase of our evolution, a phase I call "enhancement evolution," could occur before the end of the century. The result may be the emergence of a new species that will initially live alongside us and eventually may entirely replace humankind.⁶

What causes concern (to put it mildly) for Fukuyama causes great hope for Harris

and others. Importantly, Harris's confidence regarding our post-human future does not save him from his fair share of apocalypticism. The difference, however, between theorists like Harris and theorists like Fukuyama is that former's main concern has to do not with the dangers of manipulating human nature to the point of extinction but rather with the quality of that which will replace it.

So the question then becomes, which is it - a world divided into a master genetic

class and its subservient class or a world of infinite and unconstrained possibility for post-

human good? Do we have good reasons to worry about the social and political

implications of the new genetics? Or should we conclude, as Harris does, that the

⁵ Francis Fukuyama, Our Posthuman Future: Consequences of the Biotechnology Revolution (New York: Farrar, Straus, and Giroux, 2002), 10.

⁶ John Harris, "Who's Afraid of a Synthetic Human," *TimesOnline*, May 17, 2008, http://www.thetimes.co.uk/tto/law/columnists/article2047100.ece (accessed April 10, 2015). Harris develops this position most directly in *Enhancing Evolution: The Ethical Case for Making Better People* (Princeton: Princeton University Press, 2007).

evolution of the species requires a certain transformation and development of the species into something bigger, faster, better, smarter, and so on?

This question does not admit easy answers. Moreover, concentrating too heavily on seeking an answer to that question has the twin effects of a) focusing our attention on competing apocalypticisms within the discourse surrounding new reproductive technologies and b) distracting from what Ruth Cowan calls the "gut-wrenching" quality of a number of *actual* decisions people *actually* make.⁷ What Cowan says regarding genetic testing in the opening pages of *Heredity and Hope* could be said of any number of new technologies:

Genetic testing promises us a rose garden – the prevention of devastating diseases and profoundly disabling conditions – but, unfortunately there are precisely few role models to help us make the unprecedented decisions that the testing forces upon us. Our parents and grandparents cannot be our models because these diagnostic tests did not exist when they were having children. The medical experts who give us the results are trained to refuse our requests for advice; they must lay out the options and then leave us, in the name of patient autonomy, to make the decisions. We hesitate to ask our friends for fear that they will think less of us and stop being our friends. Our religious texts say not a word about what it means to be a good person or to serve God's will in these extraordinary situations; our religious advisors, if we speak to them at all, seem to be mouthing platitudes. Few novels we have ever read, or films we have viewed, or television programs we have watched, have been concerned with how best to make these gut-wrenching decisions. And gut-wrenching is precisely what they are.⁸

⁷ Interestingly, the title essay from Barbara Katz Rothman's important work, *The Tentative Pregnancy* addresses this gut-wrenching quality of pre-natal decisions both for those who get "bad" news and "good" news. As she puts it in the opening paragraph of chapter 4, "Prenatal diagnosis changes women's experiences of pregnancy. That is obviously true for women who receive bad diagnoses, but in this and the next chapter, I will show that it is also true when results are normal, when the baby is fine." See chapters four and five of *The Tentative Pregnancy: Prenatal Diagnosis and the Future of Motherhood* (New York: Viking, 1986).

⁸ Ruth Cowan, *Heredity and Hope: The Case for Genetic Screening* (Cambridge: Harvard University Press, 2008), 4.

Hence, the object of analysis for this project is not just the various features of our social imaginary that constitute the reemergence of the language of eugenics; it is also the relative *inattention* of pastoral theologians to address the lived experience of parents and prospective parents in our time. My operating assumption is, therefore, that what Cowan says here about the lack of wise counsel, the sense of being adrift in the face of immensely difficult decisions, deserves sustained attention.⁹

The Argument in Brief

Understood as a mood, the new eugenics is an attempt to respond to the facts of our increased knowledge of the processes of reproduction and our perceived power to control with philosophical justifications for their use. This, I take it, is the heart of what

I mention this encounter as a way of putting some sort of content to the kind of "gut-wrenching" quality attached to reproductive decisions that Cowan mentions above. In those moments of clinical judgment, prospective parents are not concerned with the conclusions Fukuyama or Harris have come to regarding the nature and destiny of a technological society. They are, however, confronted with a moment of decision, and it is precisely what Christian theology says at *this* moment that matters.

⁹ Interestingly, this sentiment is recounted with great poignancy in Rachel Adams' recent memoir, Raising Henry: A Memoir of Motherhood, Disability, and Discovery (New Haven: Yale University Press, 2013). Perhaps the most direct, overwhelming, and prescient writing of the whole book comes when Adams, herself a tenured professor of English at Columbia University, took her son, Henry, to a baby shower. As the memoir recounts, Henry was diagnosed with Downs Syndrome shortly after birth, and much of the narrative arc of the book is committed to Adams' coming to grips with the fact that whether or not she "chose" this life, this life is now, in fact, hers. This point comes into focus when Adams is greeted at the door of this baby shower by one of the co-hosts, none other than Rayna Rapp, a wellknown feminist anthropologist at NYU. Adams herself immediately recognizes Rapp as the author of not just Testing Women, Testing the Fetus, but also one of the seminal first hand testimonials of a second-trimester abortion after a diagnosis of Downs. In her 1984 article for Ms. Magazine, Rapp tells of her decision to terminate, stating that "the realities of raising a child who could never grow to independence called forth more than we could muster." "The Ethics of Choice: Amniocentesis" MS Magazine, April 1984. The tension in this account is heightened even further when Adams tells us that she has read Rapp's account of her post-amniocentesis abortion and also has her child, Henry, with her at this particular baby shower. As Adams has it, the encounter was one of mutual recognition wherein each woman sees a version of herself in the other.

an adequate moral description of the claims of liberal eugenicists requires. But, as the argument of chapter 2 shows, an adequate moral description of ethical proposals requires more (not less) than a responsible historical account that locates our moment within a narrative of antecedent phenomena. What is also required is some sense of how the parts relate to the whole - some sense of the intellectual climate in which particular types of decisions are made in the first place. Following Charles Taylor, then, I name in the first chapter what I take to be the features of our current "reproductive social imaginary," which the liberal eugenic proposal depends on and exploits. Once this is understood, I commit the second chapter to articulating, situating, and evaluating the proposals of the new eugenics within a narrative context regarding shifting reproductive norms in the late 19th and 20th centuries. Put together, these two chapters characterize the mood of liberal eugenics. The proposals of the new eugenics, I argue, depend on and exploit features of our common reproductive social imaginary, leading us all, whether we are parents or not, to the feel the grip of what I describe as the "better baby standard."¹⁰

The argument then moves from cultural description to theological analysis. In the three chapters that constitute "Thinking Alongside Others," I present three particular approaches to the topic from within the Christian moral tradition. Each of these chapters is designed to bring a theological tradition into debate with the liberal eugenic mood. Rather than force each of these theological discourses into a direct and unmediated

¹⁰ Throughout the project I refer at points to the "better baby standard" as a kind of shorthand for Julian Savulescu's notion of procreative beneficence, which, as we'll see, is the proposal that we have a moral obligation to bring into the world the best possible child of the children available to us. The "better baby standard" is an intuition parents and prospective parents have regarding their reproductive obligations. Precisely as an *intuition*, it refers not to a minimum threshold but, rather, to the obligation some parents sense to increase whatever health, talent, beauty, or intelligence their child *may* have.

encounter with the work of thinkers like Harris or Julian Savulescu, I will allow the theologians I discuss in chapters 3, 4, and 5 to both determine their own point of entry into the discussion and, crucially, use whatever conceptual framework they have ready to hand.

In this way, part II of this dissertation delivers a Christian "taxonomy of complaint." The point here is to show how Christian theologians *have met*, *can meet*, and *should meet* the challenge of the new eugenics, making use of their own tradition's concepts, narratives, and practices to guide Christians during our moment. This taxonomy of complaint¹¹ begins in chapter 3 where we'll start with a longstanding debate, largely within the Roman Catholic tradition, about the nature of acts as they relate to the moral character of persons as such. Here, in describing what I'll call "ethics as act-analysis," I'll give a basic account not only of the concepts on which the analysis provided from the magisterium turns, but also a sense of how these concepts co-inhere - that is, how they give shape to a comprehensive reproductive ethic. The main benefits of the ethic of act-analysis, as I describe it, are, first: a kind of conceptual elegance that does not overburden individuals in their moral reasoning and, second, a basic authority structure that provides unambiguous direction for individuals wrestling with multiple ethical dilemmas.

In chapter 4, we will see how the communitarian turn of Stanley Hauerwas, Hans Reinders, and others constitutes what I term an "ethics of embrace." For Hauerwas et al., the real questions presented to the theologian by developments in reproductive medicine in general and prenatal testing in particular are essentially three: (1) What is the nature of

¹¹ For the particular term *taxonomy of complaint*, I am indebted to Charles Mathewes who, like any good teacher, told me what I was doing after I had done it and could no longer understand how I had done what I had done.

disability as such? (2) What is the relation of the individual to the worshipping community? and (3) What virtues are required for faithful medical practice in a technological age such as ours? Underneath and beyond these questions, however, is a deep suspicion regarding the adequacy of the conception of human agency bequeathed to us by modernity, a suspicion we will survey at some length. The essential strength of this approach is its capacity to decenter the individual, placing her within a community of care and trust. In this form of thought, parenting is a species of friendship. Given that, on this picture, the church community is fundamentally defined by friendship, all the virtues required to welcome – that is, *embrace* – deficient forms of human life are present within the community that welcomes and raises such a child.

Chapter 5 treats the high Reformed views of Oliver O'Donovan and Paul Ramsey, surveying their work to develop an account of "theology as counsel." In this chapter, the general shape of O'Donovan's and Ramsey's thought demonstrates what I take to be a way forward for theological ethicists interested in meeting the challenge described in part I. Counsel gathers up and carries forward the strength of the ethic of act-analysis and the ethic of embrace without falling prey to their weaknesses. In the end, then, I do not only describe "counsel" as a comprehensive and often-neglected form of the Christian moral life, I *recommend* it.

In each of these chapters, I am contending that developments within reproductive medicine function as a *challenge* to Christian conceptions of procreation and that they do so in two ways. In the first sense, the liberal eugenic mood challenges Christian conceptions of procreation to the degree that they challenge the plausibility of divine

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agency in reproductive matters. In a very real sense, the work of theorists like Harris and Savulescu depends on a notion of responsibility that leaves little to no room for God's creative and sustaining action. According to this line of thought, whether or not we wish it otherwise, we moderns must shape our future destiny for the simple reason that we can. In this, Savulescu, Harris, and others see notions of divine agency and activity as the "psychological obstacles" zoologist Herman Muller enumerated in 1965 in the concluding essay of *The Control of Human Heredity and Evolution*:

For any group of people who have a rational attitude toward matters of reproduction, and who also have a genuine sense of their own responsibility to the next and subsequent generations, the means exist right now of achieving a much greater, speedier, and more significant genetic improvement of the population, by the use of selection, that could be effected by the most sophisticated methods of treatment of the genetic material that may be available in the twenty-first century. The obstacles to carrying out such an improvement by selection are psychological ones, based on antiquated traditions from which we can emancipate ourselves, but the obstacles to doing so by treatment of the genetic material are substantive ones, rooted in the inherent difficulties of the physic-chemical situation.¹²

I should make plain here that the group of thinkers gathered under the term liberal eugenics is not monolithic. Nor is it obvious that their claims will have staying power within public debate. Nor is liberal eugenics synonymous with "reproductive technology" as such. Within the group who claim the term, are certainly important differences between the new eugenicists, and in chapter 2 I chart these differences on a "continuum of urgency" that begins with a kind of gradualism and ends with the alarmism of Savulescu and Harris. I give the most attention to Savulescu's writings, and I do so for two reasons. First, Savulescu's institutional location as a chaired professor, director of the Uehiro Center for Practical Ethics, and editor of the *Journal of Medical Ethics* lends credibility to the

¹² Herman Muller, "Evaluation of Applications to Man," chapter 5 of *The Control of Human Heredity and Evolution*, ed. T.M. Sonneborn, ed. (New York: Macmillan, 1965), 109-115.

views he espouses. Those views are, of course, subject to the criticism of peers within the academy as well as public audiences, and, as such, are open to criticism on any number of fronts. The point here, however, is that Savulescu's views emanate from within the center of the guild of bioethics. Secondly, the claims Savulescu makes and the manner in which he makes them represent an *ideal type*. While much of what he says may be proved wanting and the willingness of the new eugenicists to make direct predictions about the future runs the very real risk of being proved wrong, the claims Savulescu makes regarding our reproductive obligations – the principle of procreative beneficence, etc. – unveil a form of reasoning that deserves attention, however likely they are to gain purchase within the field of bioethics or the public more generally.

And yet, as I have already intimated, liberal eugenics stands in relation to Christian ethics not simply as a *rival* but also as a *provocation -* an invitation to uncover, clarify, and, in some sense, develop an appropriately Christian reproductive ethic for our time and place. This is precisely how I see the writings of Savulescu, and it is with this sense of challenge in mind that chapters 3, 4, and 5 are composed. *What, in other words, is required to think a Christian thought on reproduction anew?* This I take to be the central task of Christian moral reasoning when it takes on the challenge that the liberal eugenicists pose.¹³

Characterizing the relation of the new eugenics and Christian ethics as a *challenge* does not commit me to the position that innovation in ethics is required or immediately desirable. As O'Donovan has recently put it, "practical reason is not a way of organizing

¹³ One implication of this is that the analysis provided in part II will not be *direct* responses to the claims of the new eugenics. Rather, that analysis will show how particular approaches to the question of reproduction can serve as templates for addressing the myriad developments within reproductive technology as such.

the future." He continues, "The public imagination has a nice way of making fools of moralists who are susceptible to flattery. It casts them in the portentous role of fortune-tellers and clairvoyants, tempts them, instead of advocating courses of action, to forecast the course of future events, and then dismiss them with a breezy, 'They will never do that, though!' as though the whole business of morality lay in weighing probable outcomes."¹⁴ That is to say, acts of practical reason require more than our best attempts to articulate a sentiment of "things must be different, and we can make them so!"¹⁵

For this reason, I am all too aware of novelty's temptation and argue that a properly formed *ambivalence* is the proper register, as it were, of Christian proclamations regarding reproductive ethics. This ambivalence is not blind resignation to the social, technological, and cultural forces that cannot be brought to heel. Nor is it a kind of modernity criticism that is incapable of recognizing the very real goods that come to us through some technological developments. Rather, counsel, as an approach that recognizes this ambivalence for what it is, honors and enlivens individual agency by offering a set of "direction-oriented" church teachings capable of shaping individual agents confronting any number of possible futures.¹⁶

¹⁴ Oliver O'Donovan, Self, World, and Time: Ethics as Theology, volume 1, An Induction (Grand Rapids: Eerdmans, 2013) 17.

¹⁵ To quote the inimitable Marilynne Robinson on this very point: "I think we have not solved the problem of living well, and that we are not on the way to solving it, and that our tendency to insist on noisier and more extreme statements of the new wisdom that has already failed gives us really very little ground for optimism." *The Death of Adam: Essays on Modern Thought* (Boston: Houghton Mifflin, 1998), 88.

¹⁶ The notion of "direction-oriented" church teachings is to be contrasted with "directives of" particular social policies. This position is worked out in relation to John Bennett 1961's presidential address to the Society of Christian Ethics. In the introduction to *Who Speaks for the Church*, Ramsey quotes a passage from that address. The paragraph immediately before the passage states, "My positive proposal is very much like John

In this way, counsel, as I develop and recommend it, resists a kind of collective despair precisely by locating the exercising of judgment within the individual. It does not, however, abandon the individual to, as it were, "make up his or her mind" *carte blanche*. Rather, counsel meets the challenge posed to Christian ethics by the new eugenics by insisting on tethering substantive critical judgments about any given technological development within reproductive medicine to a uniquely pastoral relationship between a wise counselor and the individual. It is in this context, I argue, and perhaps in this context alone, that trust between parties can govern the decision- making process, reasons for or against a particular treatment can be discussed at length, and moments of moral danger can be identified.

The essential premise of this dissertation is the inevitability of technological advancement within the field of reproductive medicine and the cultural change that such developments both represent and accelerate. The question is: what can Christian ethicists contribute to the academic and popular discussions swirling around amidst such changes? Part I of this dissertation is committed to an adequate moral description of this challenge; Part II shows how Christian churches could meet it.

Bennett's in his 1961 presidential address to the American Society of Christian Ethics." In the quotation from Bennett's address, Bennett is gesturing towards what Ramsey describes as a "class of church teachings" that is capable of going beyond a "forced choice of either ethical generalities or prudential specifics," and his preferred language for this is "decision-oriented" or "action-oriented (relevant) social and political analysis." In the footnote to this passage, Ramsey claims that Bennett "disclaims any interest in perpetuating the phrase of "middle axioms." By extension, Ramsey seems to agree with the notion that the language of middle axioms should be retired. Though the majority of Ramsey's ire seems to be focused on the direct quality of the policy claims given by the Geneva Conference, the impression one gets from the remaining analysis in *Who Speaks for the Church* is that "middle-axioms" are closer to what Ramsey has in mind when he speaks of "generalities" on pages 45-57. See pages 14-16 of Paul Ramsey, *Who Speaks for the Church? A Critique of the 1966 Geneva Conference on Church and Society* (Nashville: Abingdon, 1966).

Chapter One

Conceiving Children: Exploring Our Reproductive Social Imaginary

The eugenic impulse is the technologically assisted effort to create idealized human persons. It is, in this way, reducible neither to a set of technologies that assist reproduction nor to a particular set of attitudes and/or convictions that are in place during their use.

The purpose of this chapter is not to address the liberal eugenic proposal head on; rather, it is to pay sustained attention to the *context* – the atmospherics, as I will call them – in which such proposals are made. For only in a context where persons are considered reproductive choosers can the actual proposals of the new eugenics come into further focus. In this way, the principles intended to govern reproductive actions are irreversibly attached to the situations in which they are deemed necessary. This means that we will give our attention to the way in which our current historical and cultural conditions create and sustain a particular type of reproductive *agent* who, when presented with a range of choices, is asked *to choose*.

Though the particular features of the imaginary that I describe here should be readily discernible to the reader, let me address what recommends these particular features for comment in a dissertation on Christian ethics and the eugenic impulse. How did I come to think of these features as worth including? And what of other features that could have been included?

The basic answer is this: The eugenic impulse is an attempt to minimize or eliminate the fact of contingency within processes of reproduction. Like any process (natural or otherwise), reproduction includes multiple agents and multiple factors beyond and between particular agent's control.¹⁷ There are, of course, discrete actions that may lead to the emergence of

¹⁷ And it is precisely this insight that is captured in characterizations of pregnancy that make use of the passive voice. We speak (or at times have spoken) of a woman *falling* or

new life - some of them sexual in nature, others not. But reproduction itself, precisely as a human action, cannot be purged of all contingencies, all moments of chance. Because this is so, the essential task of reproductive ethics is not to decide *whether or not* we are agents; it is to say something coherent and helpful about the *nature* of our agency and, by extension, about the appropriate set of norms and principles that could guide and limit responsible action.

In our day, questions about the nature of our agency emerge at nearly every moment within the process of reproduction. From the method by which a woman falls pregnant, to the debated approaches to prenatal care and the eating and drinking habits of women during pregnancy, to the manner in which children are born, parents and prospective parents are confronted with a series of dizzying decisions, each of which seems to have opposing camps. These camps include various forms of discourse and ritual that legitimate one's decision to join, largely through a strategy of differentiation. This unveils a profound degree of cultural unsettledness, primarily around the fact of contingency as it relates to children, for parents and prospective parents in our time.¹⁸

Take, for example, the last one listed above: the series of decisions foisted upon parents regarding the experience of giving birth to a child. As Robbie Davis-Floyd first characterized this in *Birth as an American Rite of Passage*, the options available to women

¹⁸ This cultural unsettledness is noteworthy for the simple reason that most indicators regarding maternal and fetal health are trending towards health. See, for example, US Department of Health and Human Services, Health Resources and Services Administration, Maternal and Child Health Bureau, *Women's Health USA 2010* (Rockville, MD: US Department of Health and Human Services, 2010), http://mchb.hrsa.gov/whusa10/hstat/mh/pages/237mm.html. Put in historical context, maternal health is much better than bygone eras, as is neonatal health.

becoming pregnant, by which our language honors this contingency, the sense that pregnancy is something that happens more than something we do.

giving birth are, first of all, two in number and, crucially, *rivals*. As she puts it in the introduction to the second edition:

So few nurses and obstetricians have ever seen truly "natural" (as in un-intervenedwith) childbirth that most don't know what birth can be like when it is left to proceed on its own . . . This situation causes particular tension among American midwives, resulting in occasionally bitter dialogues between hospital-based midwives and midwives who attend births at home or in freestanding birth centers. The midwives who have attended only hospital births insist that they understand the birth process, while those who work out-of-hospital (or in both settings) insist that "you cannot know birth if you only see it in the hospital." In 1999, as I gave talks around the U.K., and again in 2002 around Japan, I heard this same discussion replicated over and over by British and Japanese midwives. Midwives with out-of-hospital experience stressed the vast qualitative difference between births in which the woman's own rhythms hold sway and births on which institutional rhythms are constantly superimposed.¹⁹

Here, I have no interest in denying that the experience of having a medicalized birth within a hospital setting differs from having a so-called natural (that is "unintervened-with") birth in a variety of other settings (birthing center, home, etc.). I take it on faith that these are different experiences. What I mean to call attention to with this example is the notion of agency undergirding it and the social imaginary within which it flourishes. Even though, as I have said, contingency cannot be eliminated from procreation (or from the delivery of a child), the net effect of Davis-Floyd's analysis of medicalized birthing is to encourage women not just to make choices Davis-Floyd finds more amenable. Whatever they choose, Davis-Floyd is finally and most fundamentally interested in encouraging women to exercise a greater degree of agency themselves. It is, in other words, not just to make parents (and mothers in particular) better *choosers*, but to

¹⁹ Robbie E. Davis-Floyd, *Birth as an American Rite of Passage*, 2nd ed. (Berkeley: University of California Press, 2004), xv.

convince them that they have choices in the first place. They are agents and therefore need a measure of wisdom as they navigate a series of reproductive decisions.

But, in a full reproductive ethic, a prospective parent's *agency* is always tethered to the child which comes forth. As such, parents and prospective parents are flummoxed by a whole range of decisions they must make not simply due to some confusion about their own tastes, preferences, or ideals, but because they understand themselves to be in a relationship fundamentally marked by *obligation*. While the strength and nature of those obligations differ according to their object (partner, family, society, etc.), they exist most acutely in relation to the child him or herself. In this way, we can begin to understand the grip of what I will call the "better baby standard" – namely, the nascent intuition that prospective parents should use their power to bring into the world the "best possible child."

Having begun with a discussion of the atmospherics surrounding reproductive agency in our day, this present work insists upon coupling explicit *norms* like the better baby standard with the moral cultures from whence those norms arise and in which they are rendered intelligible.²⁰ Parents, prospective parents, loved ones, friends, and family are all caught up in a moment wherein both the nature and scope of our agency is contested, and the claim here is that Christian ethicists will neither understand nor meet the

²⁰ Though the term *atmospherics* has come into our common parlance as a kind of sophisticated shorthand for "context," what I have in mind here is fairly specific. Following the publication of Philip Kotler's important article "Atmospherics as a Marketing Tool," marketing specialists have paid sustained attention to the power of settings to create emotive states that are conducive to the purchasing of products. This, too, has taken hold in our treatment of infertility, a point I take to be central to Amy Laura Hall's important book. *See* Amy Laura Hall, *Conceiving Parenthood* (Grand Rapids: Eerdmans, 2008); and Philip Kotler, "Atmospherics as a Marketing Tool," *Journal of Retailing*, (Winter 1973-74); 48-64.

challenge posed to them by the new eugenics without first rightly characterizing the context in which this challenge emerges.

In what follows, I will highlight the features of our imaginary that display the pressure points in our conceptions of agency, particularly around the phenomena of contingency and control. These points of pressure are also those aspects of our background culture on which the new eugenics depends. Generally speaking, the aspects of our background that I discuss here are characterized with a critical eye. That is to say, I approach them as alterations and/or developments that deserve critical attention, in part, to be certain, due to their capacity to excite or concern. There are many other features of our common reproductive social imaginary that deserve attention; these have been selected precisely because these features bring to the foreground the frequently underplayed conceptual underpinnings of the debates within reproductive ethics.

The argument of this chapter unfolds in five sections before coming to a conclusion. The first section is committed to describing the notion of a "social imaginary." I begin by making use of Charles Taylor's concept of a social imaginary to make the case that a term like *reproductive social imaginary* is not only valuable for ethics in general, but also useful for this project. I then put the concept to work by highlighting four basic features of our current reproductive social imaginary that, in my view, deserve sustained attention. There are others, of course, but the phenomena of what I call the "disaggregation thesis," the process of the "commercialization of reproduction," and the understanding of children as "objects of desire" highlight the key features of the background picture that debates about assisted reproductive technologies trade on. In

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describing these features below (in sections 2, 3, and 4), I am, then, setting aside all pretenses of being comprehensive in nature. Rather, I am making the more modest claim that if we want to understand the grip of the eugenic impulse, then we must get a good picture of what Peter Berger described as "plausibility structures." There are, to state it once more, other features of our reproductive social imaginary, many of which that could be discussed at length. My interest in these features of our current imaginary is due to the importance they play in the proposals that are discussed in chapter 2, particularly as they contribute to the allure of technical rationality undergirding many liberal eugenic proposals.

In the fifth section of the chapter, I add a fourth feature: the turn to genetics within the practice of medicine. While the first three features of our reproductive social imaginary (stated above) may well give us a better picture of why it is we feel the grip of the "building better babies," the turn to genetics fills the concept of "better babies" with material content: We want better babies, and by that we mean something like "genetically amenable" or "genetically superior" babies. This claim in particular prepares the way for the discussion of the new eugenics in chapter 2.

1. On Social Imaginaries

At its most basic level, a social imaginary refers to "that common understanding that makes possible common practices and a widely shared sense of legitimacy."²¹ More expansively, Taylor defines a social imaginary as

²¹Charles Taylor, Modern Social Imaginaries. (Durham, NC: Duke University Press, 2004), 23.

something much broader and deeper than the intellectual schemes people may entertain when they think about social reality in a disengaged mode. I am thinking, rather, of the ways people imagine their social existence, how they fit together with others, how things go on between them and their fellows, the expectations that are normally met, and the deeper normative notions and images that underlie these expectations.²²

Importantly, when Taylor develops the notion of a social imaginary as the essential element of the cultural background in which any particular action becomes intelligible, he is referring both to the conditions that mark particular actions and to the framework in which any particular action could be performed. There is, in other words, a *phenomenological* angle to the notion of social imaginaries as well as a *prospective* angle. Insofar as certain conditions are required for an action to "make sense," this is the phenomenological feature of a social imaginary; insofar as certain actions are deemed possible, this is the prospective.

When searching for a way to illustrate the concept, Taylor often instinctively reaches for political metaphors. This is particularly revealing. "Let's say we organize a demonstration," Taylor suggests. Since this type of act is "already in our repertory," we, therefore, "know how to assemble, pick up banners, and march."²³ That we all know this "ritual," as he calls it, reveals what Taylor describes as "a picture of ourselves as speaking to others to whom we are related in a certain way – say, compatriots, or the human race."²⁴ It is not just the *practice* of political rallies, in other words, that reveals something about the nature of our social relations but, importantly, that *everyone observing the demonstration shares in some sort of common knowledge regarding those social relations*. This is not to say that social

²² Ibid.

²³ Ibid, 26.

²⁴ Ibid.

imaginaries are impervious to change. On the contrary, Taylor is often most interested in the dynamics not of social change as such, but of the social imaginaries that make social change possible.²⁵ It is to say, however, that the most important feature of the knowledge expressed by a social practice is that it is *shared* - a sense of "how things go around here" or something to that effect.

This insight is highlighted in Taylor's extension of Ludwig Wittgenstein's notion of "following a rule." In his important essay on "To Follow a Rule," Taylor highlights the importance of mutual understanding for our collaborative efforts:

Understanding is always against a background what is taken for granted, just relied on. Someone can always come along who lacks this background, and so the plainest things can be misunderstood, particularly if we let our imagination roam, and imagine people who never even heard of arrows. But at the same time, the background, as what is just relied on, isn't the locus of resolved questions. When the misunderstanding comes from a difference of background, what needs to be said to clear it up articulates a bit of the explainer's background which may never have been articulated before.²⁶

This background, as Taylor goes on to describe, is not intellectualized in the sense of being disembodied knowledge; rather, it is a kind of understanding (or *know-how*) that is almost fully unarticulated right up until to the moment wherein some sort of misunderstanding like the one described in the passage above occurs. The background features of a social imaginary come into better view in the face of the recognition that some sort of common understanding regarding both a sequence of actions (he held a sign and then screamed, "No more taxes!" while angrily denouncing the folks on the other side of

²⁵ Taylor's reflections on Tiananmen Square are important here. Utopian demands are not demands at all but, rather, signs of desperation and despair. Hence, Taylor interprets so-called radical events like Tiananmen as representative of shifts in the moral order that give rise to new possibilities rather than utopian dreams.

²⁶ Charles Taylor, "To Follow a Rule," in *Philosophical Arguments* (Cambridge, MA: Harvard University Press, 1995), 167.

the street) and their actual *moral significance* (he was protesting government policies) *does not exist*. This is why misunderstanding, rather than true disagreement, can be so culturally significant.²⁷

In recent years, Taylor's work has focused on the intersection of two longstanding points of interest: the nature and constraints on human agency, on one hand, and the nature of religious belief, on another. With the former, Taylor has focused most directly on the nature of modern individualism and what he calls the "ethics of authenticity," a topic addressed in his book by that title and related essays.²⁸ In a chapter titled "The Slide to Subjectivism," Taylor makes a crucial point regarding our contemporary understanding of human agency:

The notion that each one of us has an original way of being human entails that each of us has to discover what it is to be ourselves. But the discovery can't be made by consulting pre-existing models, by hypothesis. So it can be made only by articulating it afresh. We discover what we have it in us to be by becoming that mode of life, by giving expression in our speech and action to what is original in us. The notion that revelation comes through expression is what I want to capture in speaking of the "expressivism" of the modern notion of the individual.²⁹

What is important to note here is both the claim regarding original ways of being human

and the role of self-expression in determining how it is that we are human. For Taylor, the

²⁹ Ibid., 61.

²⁷ This is what Taylor will call a "foul," something that will feature in the main body of the text below. An important passage on the embodied and unarticulated nature of this from "To Follow a Rule" states, "Background understanding, which underlies our ability to grasp directions and follow rules, is to a large degree embodied. This helps to explain the combination of features it exhibits: it is a form of understanding, a making sense of things and actions; at the same time, it is entirely unarticulated; and third, it can be the basis of fresh articulation. As long as we think of understanding in the old intellectualist fashion, as residing in thoughts or representations, it is hard to explain how we can know how to follow a rule, or in any way behave rightly, without having the thoughts to justify this behavior as right." Ibid., 173.

²⁸ Charles Taylor, *The Ethics of Authenticity* (Cambridge, MA: Harvard University Press, 1992).

constellation of these is an essential feature of what he frequently calls the "malaise of modernity." Crucial to this is his understanding of the contemporary dynamics of religious belief.³⁰

When applying the notion of a social imaginary to our contemporary reproductive lives, it is crucial to keep in mind Taylor's emphasis on the inter-subjective nature of each of these points. Furthermore, each of the foci addressed below are irreducible in some important sense: They each work together in order to form a background culture that renders certain practices intelligible. For this reason, rather than drawing a straight line from any particular concept – say, reproductive autonomy – to the morality of a particular practice – say, genetic screening for Down syndrome – what I am after in this section is something that approximates an adequate description of the intellectual and social climate in which these phenomena could be intelligible for a significant proportion of society. I want to understand, in other words, how it is that some in our society feel the grip of the arguments in favor of liberal eugenics while others find them contestable. What sorts of cultural forms of agreement would need to be in place, in other words, for such *dis*agreements to exist?

2. The Disaggregation Thesis

As historian Daniel Rodgers has recently argued, ours is an "age of fracture." The thesis of his recent book reads:

Across the multiple fronts of ideational battle, from the speeches of presidents to the books of social and cultural theory, conceptions of human nature that in the

³⁰ See Charles Taylor, A Secular Age (Cambridge, MA: Belknap Press of Harvard University Press, 2007).

post-World War II had been thick with context, social circumstance, institutions, and history gave way to conceptions of human nature that stressed choice, agency, performance, and desire. Strong metaphors of society were supplanted by weaker ones. Imagined collectivities shrank; notions of structure and power thinned out. Viewed by its acts of mind, the last quarter of the century was an era of disaggregation, a great age of fracture.³¹

Though assisted reproductive technologies are not central to the story Rodgers tells, it is hard to deny that they have had a hand to play in this basic narrative. When Rodgers suggests that emergent conceptions of human nature foreground "choice, agency, performance, and desire," the degree to which the practice of desiring and having children has undergone just this sort of journey is plain to see. While the vast majority of children come into being as a result of sexual union, the mere possibility of "having" children without recourse to such lends credence to the notion that Rodgers's thesis can be tested by viewing shifts in our reproductive patterns and beliefs.³²

The disaggregation thesis, as I'm developing the term, claims that in order to understand our reproductive social imaginary one must understand the degree to which the introduction of assisted reproductive technologies (hereafter ARTs) represents and accelerates fragmentation in two senses: first, the detachment of "reproduction" from "sexual union" and, second, the establishment of the "reproductive self" that is composed of "reproductive materials." By the first of these, I simply mean to call attention to the way in which ARTs further allow for the possibility of separating conjugal acts from

³¹ Daniel T. Rodgers, Age of Fracture (Cambridge, MA: Belknap Press of Harvard University Press, 2011), 3.

³² In her work on the matter, Elaine Tyler May has tracked these shifting norms. See, particularly, Elaine Tyler May, *Barren in the Promised Land: Childless Americans and the Pursuit of Happiness* (Cambridge, MA: Harvard University Press, 1996).

reproductive acts, *thereby altering our concept of each.*³³ In the second, I mean to highlight the way in which new processes of assisted reproduction envision a mode of reproductive agency that could be seen, ironically perhaps, as more *depersonalized*. It is more depersonalized insofar as the practice of reproductive medicine in a technological age encourages us to think of ourselves as composite rather than integral beings. What we are as reproductive beings, in other words, is not necessarily more than the sum of our reproductive parts: possessors of reproductive materials – sperm, ovum, and so on – that may or may not be of sufficient quality to reproduce in a manner to our liking. We will take these in turn.

To present some basic facts on reproduction and modes of assisted reproduction, according to the Center for Disease Control's latest data, 176,247 ART cycles were performed in 2012, resulting in 51,267 live births.³⁴ This totals roughly 1.5 percent of births in the United States. Given estimates that somewhere between 10 and 15 percent of the population suffers some form of infertility, this number is, all things considered, fairly small. Important for my purposes, however, is the way in which the CDC circumscribes the definition of "assistance" in the process of reproduction. Interventions that handle only sperm are not included in the CDC's definition of "assisted reproductive technology,"

³³ Of course, the attempt to sever procreative acts from conjugal acts did not begin with the introduction of Assisted Reproductive Technologies. I am simply claiming here that the presence of ARTs accelerates the fragmentation under discussion.

³⁴ The CDC publishes an annual Assisted Reproductive Technology National Summary Report on ART success rates. See Centers for Disease Control and Prevention, American Society for Reproductive Medicine, Society for Assisted Reproductive Technology. 2012 Assisted Reproductive Technology National Summary Report (Atlanta: US Department of Health and Human Services, 2014), available at

<u>http://www.cdc.gov/art/reports/2012/national-summary.html</u> (last accessed February 12, 2015).

leaving the practices of artificial insemination (hereinafter AI), whether by spouse or donor, outside the bounds of ART - as is the widespread use of stimulants like Clomid.

That speaks to the speed with which practices like AI have become so commonplace as to no longer need counting under the rubric of assisted reproduction. For the CDC's documentation purposes, the technology used most often in this category is that of in vitro fertilization (hereafter IVF) and various surrogacy arrangements. Within the United States, these roughly 176,000 technologically assisted cycles of treatment took place in 486 fertility clinics, which, according to the Hastings Center, "operate without any regulation of cost, access, or scope and quality of treatments."³⁵

Crucially, while histories of the development of ARTs are legion, there is broad consensus that the emergence of IVF both as a viable technology *and* as a culturally acceptable means of reproduction fundamentally altered the nature of reproduction itself, even for the majority of the population that neither struggles with infertility nor makes use of this form of reproduction. And yet, as the introduction to Peter Singer and Deanne Wells's widely influential work from the mid-1980's makes plain,

On 25 July 1978, in Kershaw's Cottage Hospital in Oldham, Lancashire, Louise Brown was born. With her was born a new era in making babies. Until then, every human being had begun her or his existence deep inside a female body. There, unseen by human eyes and protected from any kind of outside interference, egg and sperm had fused and the fertilized egg had begun the process of dividing and growing that leads, if all goes well, to the birth of a baby nine months later.

³⁵ For a useful overview of the issues surrounding ARTs, see: Adrienne Asch and Rebecca Marmor, "Assisted Reproduction," in *From Birth to Death and Bench to Clinic: The Hastings Center Bioethics Briefing Book for Journalists, Policymakers, and Campaigns*, ed. Mary Crowley (Garrison, NY: The Hastings Center, 2008), 5-10, available at

http://www.thehastingscenter.org/Publications/BriefingBook/Detail.aspx?id=2210 (last accessed February 12, 2015).

Louise Brown was different. Not different in her appearance, which was just like any other healthy newborn girl. Nor was this normal appearance in any way deceptive. Beneath the surface, too, there was nothing different about her. Louise Brown was a normal baby and is now a normal child. It is her history that is different.³⁶

When Singer and Wells declare Louise Brown's "history" to be different, they are

highlighting the degree to which IVF (and other ARTs as well) alters the public's

perception regarding the relation of sexual union to the phenomenon of pregnancy. Here,

with the emergence of IVF, was a child - born like all others, but brought forth in a

fundamentally different, new manner.

Importantly, this constitutes an epistemological shift as much as a technological

development. In John Robertson's evocative image,

The conclusion is unavoidable that the character and nature of human reproduction have irreversibly changed, even if only a small percentage of persons ever use these techniques. Like Caesar crossing the Rubicon, there is no turning back from the technical control that we now have over human reproduction. The decision to have or not have children is, at some important level, no longer a matter of God or nature, but has been made subject to human will and technical expertise. It has become a matter of choice whether persons reproduce now or later, whether they overcome infertility, whether their children have certain genetic characteristics, or whether they use their reproductive capacity to produce tissue for transplant or embryos and fetuses for research.³⁷

³⁶ This passage opens Singer and Wells's account, published under different titles in the UK and the US. In 1984 it was published by Oxford University Press under the title of *The Reproductive Revolution: New Ways of Making Babies:* in 1985, a slightly revised version was published in the United States by Scribner's under the title of *Making Babies: The New Science and Ethics of Conception.* See Peter Singer and Deanne Wells, *The Reproductive Revolution: New Ways of Making Babies* (Oxford: Oxford University Press, 1984), and Peter Singer and Deanne Wells, *Making Babies: The New Science and Ethics of Conception* (New York: C. Scribner's Sons, 1984).

³⁷ John A. Robertson, Children of Choice (Princeton: Princeton University Press, 1994), 5.

This passage highlights the first feature of the disaggregation thesis – namely, that with the emergence of reproductive technologies, children can be produced in multiple ways, which is to say, *with various points of proximity to sexual acts*.

While, of course, there was and continues to be disagreement about the morality of such acts, what I am calling attention to here is not the question of whether producing children via IVF is "natural" but, rather, the way in which the introduction of IVF and other technologies opens space for understanding ourselves as "reproductive decision-makers," wherein reproductive decisions and sexual decisions are conceptually distinct. In this way, "modern freedom," as Taylor has put it, "was won by our breaking loose from older moral horizons."³⁸

The second feature of this thesis depends on the first; by describing our reproductive practices now as disembodied in nature, I am referring not merely to the severing of sexual acts from reproductive acts, but rather, to the ways in which the emergence of reproductive technologies renders concepts like "reproductive materials" intelligible. The process by which children emerge within the world is, in a sense, *demystified* – that is, understood as the product of scientific processes wherein gametes merge, an egg is fertilized at conception, an embryo gestates to maturity, and a child comes forth.

Pointing out both the subtlety and profundity of this shift has been a central feature of the feminist discussion of reproductive technologies in general and IVF in particular. Take, for example, Karen Throsby's observations:

³⁸ Taylor, The Ethics of Authenticity, 3.

The reproductive technologies are a site of profound, ethical, legal and political debate, generating "ubiquitous public fascination and horror." However, one of the most striking features of these debates is the absence of women. In parliamentary debates which established the legislative framework for fertility treatment in the UK, it was embryos, eggs and sperm, and not women, that remained the central focus. . . . With the embryo firmly positioned at centre stage in the debates against a backdrop of promised medical and scientific advances in the fight against disease, women are easily instrumentalised as foetal containers for the precocious embryo protagonist, or as the suppliers of eggs and embryos. Indeed, as Sarah Franklin notes, the IVF procedure itself *is named after the one element of the treatment process that takes place outside the woman's body.*³⁹

In this, then, we see what can be described as the *depersonalization of reproduction*. It is *people*, of course, that suffer infertility, seek to become parents, are bearers of reproductive rights, make use of reproductive technologies, and so on; and they do so precisely as whole, integral beings. And it is women in particular who bear the multiple burdens of pregnancy, labor, and delivery. Yet throughout the whole of treatment, the interests of patients are served through technological practices that constantly find new ways to treat and enhance the "reproductive capacities" of parents and prospective parents. It is in this way that the entire *industry* of reproductive services can succeed.

3. The Economics of Reproduction

As already evidenced, to talk of developments in reproductive technologies and their potential for eugenic use is most frequently to talk of interventions responding to

³⁹ Karen Throsby, *When IVF Fails: Feminism, Infertility, and the Negotiation of Normality* (Basingstoke, UK: Palgrave Macmillan, 2004), 21-22. Throsby's project comprises a series of interviews with couples who have failed to conceive after making use of IVF. She characterizes the project as recognizably feminist in four ways: it "takes the experience of women as its central (but not exclusive) focus; it characterizes the technologies themselves not "as neutral artifacts" but rather as both "contingent" and "dynamic"; it makes plain that "women are not passive" in relation to IVF; and, finally, it maintains that IVF is a form of what she calls "disciplinary power," a term that designates the capacity of technologies to discipline the female body. See chapter 2 (esp. 46-47), for more on this.

infertility; and to talk of infertility is to talk of a pathological medical condition, defined as the inability to conceive after a full calendar year of non-contracepted sex.⁴⁰ But it is not just this: To talk of infertility and its treatment is also, as Debora Spar's work has shown, to talk of a growing *industry* established to provide the percentage of the population committed to overcoming such a condition through medical intervention with the object of their desire – namely, a baby. And it is the economics of this industry – that is, the untapped potential of reproductive technologies to produce babies for those previously unwilling to use ARTs – that drives research and development and that alters the plausibility structures of our social imagination.⁴¹

Quantifying the *costs* of this pursuit strikes most people suffering from infertility as simultaneously crass and necessary. It seems unnatural to ask, *how much, after all, is a human life worth?* Yet for all of us – that is, for those who are struggling against medical infertility and for those who are not – the basic economic facts regarding reproduction are unavoidable.

Spar suggests that "the fertility trade is a wide and disparate market defined by clusters of providers specializing in distinctive competencies" and, moreover, that there are "component suppliers in the trade: assembly operators and manufacturing centers, surgical experts, and diagnosticians," not to mention the myriad counselors, reproductive lawyers, marketers, and consultants involved. It becomes clear that the industry she describes as

⁴⁰ Not all uses of ARTs are the direct result of a diagnosis of infertility, of course.
⁴¹ In addition to Spar's analysis, see Maura Ryan's *Ethics and Economics of Assisted Reproduction: The Cost of Longing* (Washington: Georgetown University Press, 2001). For a fairly popular account of the market for reproductive products, see Rene Almeling's Sex *Cells: The Medical Market for Eggs and Sperm* (Berkeley, University of California Press, 2011).

selling "a product that is simultaneously hope and medicine" involves a wide range of economic actors.⁴²

In Spar's description, we can see obvious points of connection to the relation of self to procreation described in the previous section: The economics of infertility, as she describes it, is made of constitutive parts – namely, the markets that exist for reproductive materials (sperm, hormones, and eggs) and for reproductive services (intrauterine insemination, Clomid, IVF, preimplantation genetic diagnosis, and so on).⁴³

But what of the moral significance of these markets? This is not Spar's task. In a refreshingly honest assessment, Spar sets to one side the question of whether or not there *should* be markets for either of these "products" (that is, gametes or technologies of

Representative of the latter are the myriad fertility clinics that, as Spar notes, are often housed within established medical facilities while, importantly, operating as independent financial actors. Importantly, Spar notes in her research how urban these facilities are, how many of the specialists hold appointments within prestigious medical schools, and interestingly, how geographically centralized the top clinics are. Ranked by the number of IVF cycles performed (in 2002), 13 out of the top 20 serve the northeast corridor between Washington DC and Boston, while the rest are clustered around the major metropolitan centers of Chicago, Los Angeles, Atlanta, and Dallas. *See* ibid., 54, table 2-1.

⁴² Debora L. Spar, The Baby Business: How Money, Science, and Politics Drive the Commerce of Conception (Boston: Harvard University Press, 2006), 35.

⁴³ Viewed from this angle, we can see just how reproductive medicine involves what we could call "centers of producers" that contribute gametes on the one hand and "production centers" that provide reproductive services on the other. Representative of the former is the Cryos International Sperm Bank, the global leader in the international sperm trade, centered in Aarhus, Denmark:

Launched in 1991 by a soft-spoken economist named Ole Schou, Cryos began as a local firm, soliciting donations from Danish university students and subjecting them – and their sperm – to a rigorous process of testing and evaluation. In April 1991, the company delivered its first samples to the Mermaid Hospital, a private Danish hospital. Two weeks later, the hospital reported five pregnancies, and word of the "Danish stuff" began to spread. . . . By 2002, Cryos was exporting sperm to more than fifty countries and realizing a contribution margin – the percent of revenues left to cover fixed costs and profit – of roughly 80 percent. (Ibid., 38)

reproduction like IVF) and then asks: Given that there are markets for these things, how do they

work? What, in other words, is the political economy of reproduction? In one prescient passage,

she describes this political economy well:

Consider, for example, the conundrum that occurs every time a client fails to become pregnant. The client – let's call her Sally – is determined to conceive a child. The doctor – we'll call him Dr. Welby – wants to help Sally and earn revenue at the same time. He also has some knowledge about Sally's statistical chances of achieving pregnancy, knowledge that presumably is accurate in the aggregate although not necessarily relevant to her situation. In many cases, these three dimensions work perfectly well together. Dr. Welby uses his medical expertise to diagnose Sally's problem and prescribe an appropriate course of treatment; Sally undergoes the treatment and pays Dr. Welby; and some months later, the proud mother carries her infant home.

When the treatment doesn't work, however, this happy equilibrium can fall seriously out of balance. Imagine that Sally is forty-two years old and her eggs are only marginally viable. Dr. Welby prescribes an initial course of treatment with Gonal-F (a leading brand of FSH) at about \$3,000 a cycle. Sally undergoes three cycles without becoming pregnant. Commercially, this state of affairs is rather beneficial to both Dr. Welby and Ares-Serono, the producer of Gonal-F. They earn revenues from each cycle, and Sally is unlikely to complain about what, to be blunt, is a repeated purchase of a service that doesn't work. In fact, even if Dr. Welby were to advise Sally to stop the treatment, using his professional judgment to conclude that Gonal-F isn't going to help in her case, she might very well insist on trying again. And again, and again, and again. Indeed, fertility specialists regularly describe women who continue with treatment well after the chances of success have declined.⁴⁴

This is no bizarre hypothetical. Since the middle of the 20th century, the market for

reproductive services has grown exponentially.⁴⁵ While it is still the case that the overall

percentage of the populace experiencing infertility is not dependent on the ease with which

reproductive services can circumvent or augment typical patterns of reproduction, the area

⁴⁴ Ibid., 53.

⁴⁵ So too has the market for neo-natal intensive care units (NICUs). For one take on the growth of the NICU as it relates to developments in hospital care, see John D. Lantos and William L. Meadow, *Neonatal Bioethics: The Moral Challenges of Medical Innovation* (Baltimore: Johns Hopkins University Press, 2006).

of growth resides in the segment of the infertile population who, in years past, would have accepted their fate, choosing to either adopt children or accept a childless existence. The promise of reproductive medicine for an increasing percentage of the infertile is that this need not be so.

And yet, due to dramatically divergent standards of care, the fluctuation of coverage from insurance providers, and the sheer facts of fertility that make it increasingly difficult to conceive with age, two basic facts have worn their way into the practice of reproductive medicine. The first of these is hinted at above and aptly described in Karey Harwood's ethnographic account of "the infertility treadmill": in short, an increasing number of infertile patients who are highly unlikely to conceive even with the assistance of reproductive technologies continue to pursue treatment after treatment, often at great personal cost.⁴⁶ In Harwood's account of her year spent observing gatherings of RESOLVE, a national organization that runs support groups for those struggling with infertility, many of the couples who endured multiple invasive and expensive procedures long after the chances of conception were favorable were fundamentally dealing with issues *of control.*⁴⁷ How could it be, they asked themselves and others, that their best efforts could be thwarted, particularly when they were accustomed to so much success in other areas of life? As Harwood recounts,

⁴⁶ Karey Harwood, The Infertility Treadmill: Feminist Ethics, Personal Choice, and the Use of Reproductive Technologies (Chapel Hill: University of North Carolina Press, 2007).
⁴⁷ RESOLVE describes its mission in the following fashion: "RESOLVE: The National Infertility Association, established in 1974, is a non-profit organization with the only established, nationwide network mandated to promote reproductive health and to ensure equal access to all family building options for men and women experiencing infertility or other reproductive disorders. RESOLVE improves the lives of women and men living with infertility." For more, see http://www.resolve.org (accessed February 12, 2015).

Infertility treatments seemed to compound rather than alleviate the feeling of loss of control, in part because such treatments, especially ART, are invasive, exhausting, and expensive and do not work most of the time. In addition, decision-making about reproduction now involves a team of authoritative experts, not just the individual couple. However, the most important reason may be that people seemed to approach infertility treatments with the expectation that hard work and financial sacrifice would eventually bring about the desired outcome, and they were tremendously disappointed when the problem of infertility did not yield to this approach. For example, a woman I interviewed told me, "The anger came I think from a lack of control. I definitely am a person who likes to be in control. I was raised that way. Where other times in my life when I had problems, there have been ways to – if I just put enough effort, if I just put enough of something into it, I'll fix it. And it couldn't be done with this." I encountered many similar expressions of shock at this reversal of normal expectations that good outcomes follow inexorably from good efforts.⁴⁸

Secondly, Spar's analysis highlights the degree to which these patients are,

economically speaking, ideal customers. Returning to Spar's just-so story of Dr. Welby and Sally, let us imagine that after repeated cycles of follicle stimulating hormones, Sally opts for IVF.⁴⁹ If she does so, she will likely evaluate Dr. Welby's practice over and against other service providers, most likely paying serious attention to the "success rates" of competing clinics. Here, she'll have a great deal of consumer choice, as fertility clinics market their services direct to their consumers in an increasingly straightforward fashion.

"Dr. Welby again faces a dilemma," writes Spar:

⁴⁸ Harwood, Infertility Treadmill, 134.

⁴⁹ Recall, however, that if a physician intuits that a patient is of the means to pursue IVF but would not like to do so without giving hormonal therapies "a good shot," however that is defined, the physician has no financial incentive to cease treatment. As Spar says, again, in an uncharacteristically frank, economic approach:

Where fertility treatments are concerned, however, there are few incentives to stop treatment. Sally is determined to keep trying, the state has no guidelines, and the business side of Dr. Welby would be foolish to say no. The only constraint comes from price: at roughly \$3,000 a month, Sally will eventually run out of money. If Sally is wealthy, however, or has devoted all her savings to pursue a child, "eventually" may not come for quite some time. And during that period, Dr. Welby can continue to sell multiple rounds of a product that probably won't work. (Spar, *Baby Business*, 53).

Commercially, he has every interest in encouraging Sally to proceed: depending on where he is located, Dr. Welby charges between \$6,000 and \$14,000 for each round of in vitro fertilization, and most women undergo an average of three cycles before either conceiving or giving up. Financially, therefore, IVF is a great boon to Dr. Welby. Indeed it is IVF that provides infertility centers with the bulk of their profits. Most centers, according to industry experts, try to perform between three hundred and four hundred cycles of IVF per year just to break even...

Whenever Dr. Welby dons his marketing hat, therefore, he faces a statistical and moral conundrum. On the one hand, he dearly wants to convince Sally that the likelihood of success in her case is high. He wants her to believe that his practice is particularly good at producing babies and that IVF is a particularly attractive path for her to pursue. All these arguments are easy to make, because most women in Sally's position desperately want to believe that fertility treatments will cure their condition. In fact, they tend to overestimate their chances of conception by an extremely wide margin. So, Dr. Welby will not have a hard time convincing Sally about the benefits of treatment. Moreover, his own preferred method of treatment -IVF—is indeed increasingly successful: on average in vitro fertilization results in live birth more than 25 percent of the time. And so again, what makes financial sense for Dr. Welby will also strike a happy chord with Sally.

Clinic-specific success rates, on the other hand, pose a more complicated issue. For "success" is a tough thing to measure in the fertility trade, and the numbers that might look best to Sally are not necessarily those that will either enhance her own chances or generate a healthy revenue stream for Dr. Welby. For example, in 2001, 27 percent of all IVF cycles performed in the United States resulted in a live birth. This suggests that a woman like Sally has a roughly 1-in-4 chance of becoming pregnant using IVF: Yet if Sally is, say, twenty-six years old, aggregate statistics suggest that having a baby through IVF are actually more like 38 percent. If she is forty-two, they plummet to 9 percent.⁵⁰

Importantly, physicians like the fictitious Dr. Welby have almost no incentive to

reveal to patients like the fictitious Sally this last set of statistics, particularly the facts

regarding the massively diminished chances of "success" in older patients. In fact, Dr.

Welby is only legally obligated to report the pregnancy and birth rates of his clinic to the

Centers for Disease Control, an obligation that is ignored by some of the nation's largest

⁵⁰ Ibid., 55.

clinics.⁵¹ When this lack of transparency is combined with the desire for control identified by Harwood, above, and a patient with deep pockets, it is not hard to see how physicians could alter their practices in such a way as to attract "high yield" patients - that is, patients willing and able to pursue all routes to parenthood at any and all costs.

In the most proximate context, these economic facts help us understand one of the fairly novel features of our contemporary reproductive social imaginary: We seem increasingly unable to reckon with the concept of *barrenness*, a term that has, for better or worse, receded out of our collective self-understanding.⁵² As numerous ethnographic accounts indicate and an unflinching look at the economics of infertility reveals, an entire industry now surrounds the phenomenon of infertility.

The presence of that industry *renders the inability to conceive a temporary and malleable condition*. It views infertility more as a challenge to be surmounted, or as a new opportunity to achieve control over biological limitations, than as an often unalterable personal predicament. Increasingly, and not insignificantly, this capacity to overcome biological limitations has been commercialized, packaged and sold with only the most minimal regulation.

We must also contend with the degree to which the industry surrounding infertility accentuates and depends on the *mode of disaggregation* described in the previous section. More than merely disaggregating the act of sexual union from the coming-forth of offspring, what it means to say that the fertility industry is increasingly *specialized* is that the

⁵¹ Ibid., 56.

⁵² May makes a similar point in the opening chapters of the previously cited book, *Barren in the Promised Land.*

generation of a child becomes a process of amalgamating various parts. There is, in other words, an unavoidable aspect of "reification" within the market for reproductive services.⁵³

4. Children as Objects of Desire

Acknowledging the commercialization of reproduction is important insofar as it shows the economic component of the disaggregation thesis. But in addition it also unveils the conceptual shift that sociologist Vivian Zelizer has called "pricing the priceless child."⁵⁴ Many have critiqued the commercial component coordinate with the emergence of reproductive technologies. Sometimes those criticisms have focused on the question of the commodification and exploitation of children, particularly if those children are used as a means of healing another child or family member. Zelizer's account, by contrast,

⁵³ The historicity of reification as a concept is worth considering at length. My own thoughts on the matter have benefited greatly from Axel Honneth's Tanner Lectures on the matter: See Axel Honneth with Judith Butler, Raymond Geuss, and Jonathan Lear, Reification: A New Look at an Old Idea, ed. Martin Jay (Oxford: Oxford University Press, 2007). Nowhere is this logic more plainly seen than in the practice of gestational surrogacy, a practice Spar describes as a "godsend" for those viewing the infertility industry in crass market terms. As Spar makes plain, the economic genius of gestational surrogacy is not only its capacity to use both donor gametes and a "donor" womb, but also the way in which separating these markets leads to growth in each. Whereas prior to the emergence of gestational surrogacy, potential surrogates were asked to contribute both their genetic material, in the form of their eggs, and the hardships of pregnancy, labor, and delivery, gestational surrogacy makes it possible for willing women to be compensated for providing one, the other, or both. One byproduct of this disaggregation was growth in the surrogacy market as a whole, in large part because women interested in selling their eggs but not carrying a pregnancy to birth were able to do so, and vice versa. It also led, as Spar makes clear, the surrogacy market to "go global," allowing for possibilities of harvesting the best possible vendor gametes from a particular society before implanting an embryo in the best possible gestational surrogate from another society. For an important discussion of the ethics of surrogacy from a feminist perspective, see chapter 11 of Laura Martha Purdy, Reproducing Persons: Issues in Feminist Bioethics (Ithaca, NY: Cornell University Press, 1996). ⁵⁴ Viviana A. Zelizer, Pricing the Priceless Child: The Changing Social Value of Children (Princeton, N.J.: Princeton University Press, 1985).

demonstrates that the commercialization of reproduction is not radically new but, rather, the extension of a broader shift in our reproductive social imaginary that dates back to the post-Industrial period.

The question Zelizer presses is, How do we account for the fact that children now considered "priceless" were once considered *economically* valuable? Understood in purely economic terms, this is undoubtedly the case: Children, as Zelizer puts it, are "simply not expected to be useful."⁵⁵ In chapters on topics such as changing attitudes over child labor and the emergence of "child insurance," Zelizer concludes that "the twentieth-century economically useless but emotionally priceless child displaced the nineteenth-century useful child."⁵⁶ What is unique in our moment, Zelizer argues, is the heightened cultural status given to the parent's desire for the child.

Zelizer's analysis, if it holds, makes sense of the dramatic lengths that some prospective parents are willing to go in order to procure a child. The child is now considered an object of parental affection and, as the aforementioned book by Harwood and Spar's economic analysis both show, there is, for some, such a strong desire to have "one's own" child that even financial ruin is risked. In accordance with the nature of a social imaginary, these two observable facts in the world reveal to us the paradox residing at the heart of economic relation to the having of children: We are repulsed by the notion that the worth of a child's life could be captured with a monetary figure even as we cannot avoid the fact that having children is an economic enterprise.

⁵⁵ Ibid., 4.

⁵⁶ Ibid., 209.

The dynamics of this phenomenon – of the *economically useless but emotionally priceless child -* are described at length in the opening chapters of Michael Banner's recent *Ethics of Everyday Life.*⁵⁷ Attending to the immense literature on ARTs and the changing nature of kinship, Banner makes use of numerous anthropological studies not as a way of highlighting his own normative account of the goods of procreation but, rather, as a means of encouraging moral theology to succeed in its "therapeutic" and "evangelical" tasks.⁵⁸

In an important section on "conception amidst the anthropologists," Banner surveys the vast literature produced by anthropologists in recent years on the question of how ARTs have altered the relation of parents to children. As he has it, two phenomena have emerged simultaneously: first, that of "chasing the blood tie," and second, the emergence of a response to "folk kinship" theories of the family.⁵⁹ The first of these concepts refers to the kind of quasi pathological quest for "a child of one's own," as is evidenced in the narrative Harwood provides, in Gay Becker's *The Elusive Embryo*, and in other accounts of the nearly insatiable desire for children. Here, the desire for children not only becomes a kind of compulsion, but it is the desire for a child of one's own – that is, biologically one's own – that overwhelms prospective parents, leading to a form of relationship that makes it very difficult to avoid characterizing the parent-child relation as one of "asset management."⁶⁰ That this objectification of the child comes at great cost is captured by Baker in the first-hand testimony of a woman immediately after her first round

⁵⁷ Banner, Ethics Of Everyday Life, 35-82.

⁵⁸ The kind of moral theology Banner is against is most clearly aligned with the approach developed in chapter 3, which I call the "ethics of act-analysis." See ibid.

⁵⁹ The term *chasing the bloodline* is taken is from Helena Ragoné, "Chasing the Blood Tie: Surrogate Mothers, Adoptive Mothers and Fathers," *American Ethnologist* 23, no. 2 (May 1996); 352-65, doi:10.1525/ae.1996.23.2.02a00090.

⁶⁰ Asset management is Banner's own term. See, Banner, Ethics of Everyday Life, 78.

of infertility treatments had failed: "After acknowledging that it was the worst experience of

my life," a woman named Noreen tells Becker, "I decided to do it again."⁶¹

Banner also attends to anthropological research on the way assisted reproduction makes the familiar strange by highlighting a new notion of non-biological kinship. On the emergence and importance of "folk kinship," Banner writes:

According to Schneider, the folk theory expresses what everyone knows (or thinks they know): at its core it holds that we are related to one another in two main ways, either by blood or by marriage - which is to say, through sexual intercourse. Thus any child will know that amongst his or her uncles, for example, there are those to whom he or she is related through his or her mother, let's say, and that these can be distinguished as between the mother's brothers and any husbands of the mother's sisters (to whom one is not "really" related, as it might be said, though they are still likely to be termed 'relatives', as opposed say, to parents' adult male friends or neighbours, who may themselves also be addressed as "uncle", but are certainly not relatives). What Schneider argued is just that the biogenetic grounding of kinship in the Western folk theory is culturally specific and further that this cultural specificity was occluded from the view even of social anthropologists, who assumed the folk theory in encountering with non-Western peoples – most egregiously, perhaps, in Malinowski's translation of a native term as "father," thereby projecting a Western view of fatherhood on to a people who did not think of fatherhood as resulting from sexual intercourse alone or even at all.⁶²

In Banner's view, what can be concluded from a survey of the anthropological literature on

the nature of kinship is most decidedly not that the concept of kinship has been

obliterated. Rather, Banner says that "certain varieties" of kinship have been

"overthrown." This "new kinship" is not "biogenetic" in nature and "no longer takes

seriously the supposed natural facts of relatedness of the traditional accounts."63

If the first feature of Banner's analysis has to do with the desire for a child of one's

own, the second feature addresses what happens to the public perception of the family

⁶¹ Gaylene Becker, The Elusive Embryo: How Men and Women Approach New Reproductive Technologies (Berkeley: University of California Press, 2000), 132.

⁶² Banner, Ethics of Everyday Life, 49.

⁶³ Ibid., 50.

when this desire is honored through technological means. Each of these components of Banner's account express something of what I mean here with the phrase *children as objects of desire*. In the first place, with the term *object*, I am consciously reintroducing the language of reification in order to demonstrate something important about the characterization of what the infertile desire. They desire a child, but the processes of artificial reproduction encourage - as Banner has it - a form of thought that runs some very real risks regarding objectification.

These risks must be set alongside a coordinate fact of our experience – namely, that an increasing percentage of the children born are, in fact, *desired*. While the question of abortion and its morality is not my direct concern here - and, in fact, the question of the moral status of the embryo is only tangentially related to my concern to analyze the "better baby standard" - mapping our reproductive social imaginary without some reference to the abortion rate's downward trend in recent years would be irresponsible. According to the Guttmacher Institute, both the raw number and rate of abortions in the United States are steadily decreasing. Moreover, over 90 percent of all abortions take place within the first trimester of pregnancy. These facts do not, of course, give us a full picture of all the moral complexity that goes with welcoming a child; they do, however illustrate the point regarding the relation of children and parental emotion: An increasing percentage of children born in our midst are welcomed with some degree of parental satisfaction.⁶⁴

⁶⁴ It is, as can be evidenced in the Guttmacher Institute's own statistics here: <u>http://www.guttmacher.org/presentations/trends.pdf</u> (last accessed February 12, 2015)

5. Reproduction and the Turn to Genetics

The final feature of our current reproductive social imaginary that deserves our attention is what I will call the "turn to genetics," a term that is intended to capture both a very real shift in the practice of medicine and a kind of capturing of the public imagination. "We used to think our fate was in the stars," James Watson has put it. "Now we know, in large measure, our fate is in our genes."⁶⁵

This sentiment is largely captured in the term *functional genomics*, which, in the main, refers not merely to a type of information regarding our molecular composition, but, in its stead, some sort of *actionable knowledge* regarding pathological conditions. The prevalence of this term simply reinforces the central point made by a variety of geneticists over an extended period of time.⁶⁶

There is, however, an important breach separating theorists advocating the use of medical genetics towards liberal eugenic ends and hard scientists working in the field of medical genetics. Consider, for example, a recent publication by Leslie G. Biesecker of the National Institutes of Health's Genetic Disease Research Branch and its Health Intramural Sequencing Center. In a paper titled, "Opportunities and Challenges for the Integration of Massively Parallel Genomic Sequencing into Clinical Practice: Lessons from the ClinSeq

⁶⁵ Dorothy Nelkin, and M. Susan Lindee, *The DNA Mystique: The Gene as Cultural Icon* (New York: Freeman, 1995).

⁶⁶ Take, for example Herman Muller who famously argued for genetic selection on the grounds that a "genuine sense of responsibility" to future generations required "greater, speedier, and more significant genetic improvements of the population." This comes in chapter 5 of *The Control of Human Heredity and Evolution*, published in 1965. Sonneborn, Tracy Morton. 1965. The Control of Human Heredity and Evolution. Edited by T.M. Sonneborn. (*The Record Of A Symposium Held on April 6, 1963, At Ohio Wesleyan University.*). Macmillan Co.: New York: Collier.

Project," Biesecker gives voice to the ethical difficulties facing the turn to genetics.⁶⁷ Aside from his brief interaction with the oft-cited problem of "incidental findings" and the cluster of proposals regarding disclosure, what is particularly illuminating about Biesecker's piece is the epistemic humility he shows regarding the science itself. When discussing the cost-cutting revolution in next-generation sequencing (also known as massively parallel sequencing, or MPS), Biesecker addresses the ubiquitous "variants of uncertain significance."

Here, some technical definitions are required. The first distinction to be drawn is that between the practices of whole genome sequencing (WGS) and whole exome sequencing (WES). According to Biesecker and others, the future of clinical genetics resides in WES, due to the fact that WES is "a variation of EGS [effective genome size] that is based on the fact that protein-coding gene sequences comprise only about 1.5% of the genome yet most (probably >85%) of DNA variations that cause highly penetrant genetic disease lie in this small fraction of DNA."⁶⁸ Biesecker then describes how, once the exome is "mapped," the process of discerning, first, genetic aberrations or variations and, second, just how those aberrations comport with known pathogenic sequences must take place. "Nearly 40 years of human genetics research," he tells us, "has generated more than 100,000 genetic variations that are known to cause or contribute to human disease."⁶⁹ From this, a further distinction between "high-penetrance" and "low-penetrance" variants

⁶⁷ Leslie G. Biesecker, "Opportunities and Challenges for the Integration of Massively Parallel Genomic Sequencing Into Clinical Practice: Lessons From the ClinSeq Project," *Genetics in Medicine* 14, no. 4 (2012): 393-98.

⁶⁸ Margaret W. Thompson, Roderick R McInnes, Huntington F. Willard, and James S Thompson, Thompson & Thompson Genetics in Medicine, 5th ed. (Philadelphia: W.B. Saunders, 1991), 394

⁶⁹ Biesecker, "Opportunities and Challenges."

is drawn in order to determine both the likelihood of a variant's pathogenicity and its probability. In all this, the objective is, in part, the establishment of "medically actionable knowledge" — that is, knowledge of one's genetic composition that will lead to probable or conclusive evidence of one's future state.

However, among the variants that are expected to cause human disease, Biesecker refers to the aforementioned "variants of uncertain significance." Due to its ethical significance, I quote from Biesecker's account at length:

Although it is clear that one can derive from an exome sequence results that are highly likely to be valid and medically actionable, this is not the case for the great majority of variants. Among the 30,000-40,000 variants, the typical subject will have three to eight actionable variants. In most subjects, most of these variants will relate to reproductive risks (I.e., heterozygous carrier alleles). But the remaining thoughts are either highly likely to be completely benign, or of uncertain clinical significance. It can be as challenging to prove that a variant is benign as it is to prove it is pathogenic. Currently, nearly all of the variants among these tens of thousands must be considered to be of uncertain significance. Over time, clinical and molecular research will push many of these variants toward the end of the causality spectrum (either convincingly benign or pathogenic), but it should be anticipated that there will remain a substantial number of variants in this category, including many novel variants, that will continue to be discovered with each additional exome or genome that is sequenced. In the future, as more MPS sequences are performed, the fraction of variants that are novel will decline. However, this will never go to zero as the normal mutation rate will continue to generate a nearly infinite spectrum of genomic variation. We should therefore anticipate that the challenge of variants of uncertain significance will persist for the foreseeable future.⁷⁰

With this, Biesecker is both pointing to the importance of epigenetics (that our genetic make-up is not, in fact, fixed, but "develops" in yet unknown patterns) and simply noticing the extreme complexity of our genetic compositions as they relate to others'. When, in the last sentence of that paragraph, he states that the "challenge of variants of uncertain significance will persist," he is pointing to the fact that each individual's genomic

⁷⁰ Ibid.

make-up contains within it massively substantial portions of unique genetic material – that is, variations that cannot, at this point in time, be described as anything other than *enigmatic*.⁷¹ And so, we come to the major point at which the lines between research ethics and clinical ethics become nonexistent. How, given this, can any interaction between a medical geneticist and an individual fit neatly into either a clinical or research setting if, in fact, each individual may share some genetic variants with other individuals that are known to be pathogenic or benign while also retaining a substantial amount of utterly unique genetic material?⁷²

⁷¹ On this, one of the interesting features of the recommendations for reporting on incidental findings issued by the American College of Medical Genetics and Genomics (ACMG) in March 2013 is that the ACMG felt the need to limit the number of genes surveyed for mutation in the report given to patients. In creating a table of 57 genes that should be isolated, surveyed, and reported to physicians who could then convey the results to patients, the ACMG is not intending to prevent the march of full exome sequencing but, rather, advising physicians as to the limits of useful knowledge at this point in time. In assembling the list of 57 genes, some have criticized the ACMG for violating a patient's right (based in a robust account of respect for patient autonomy) not to know certain information, but, to my mind, this is not the most important ethical issue at stake in the ACMG's recommendations. What is more interesting to me is the frank acknowledgment of how partial our knowledge of our genetic make-up really is. To have and give (somewhat) actionable information on the probability of pathogenic mutations in 57 genes is to have and give a great deal of advice; and yet it is also to recognize the paucity of actionable information currently at our disposal in relation to the amount of information we know to be "out there," as it were. For a brief report on the recommendations, see http://www.genomicslawreport.com/index.php/2013/07/30/the-amcg-gene-screeningrecommendations/ (accessed February 12, 2015). For the report itself, see Robert C. Green et al., ACMG Recommendations For Reporting Of Incidental Findings In Clinical Exome And Genome Sequencing (Bethesda, MD: American College of Medical Genetics and Genomics, 2015), https://www.acmg.net/docs/ACMG_Releases_Highly-Anticipated Recommendations on Incidental Findings in Clinical Exome and Geno me_Sequencing.pdf (accessed February 13, 2015).

⁷² Interestingly, very few theorists begin the discussion of reproogenetics with anything less than apocalypticisms. Consider, for example, the opening paragraph of Lee Silver's popular work, *Remaking Eden*: "I'm about to take you on an incredible journey into the future of humankind. It is a future that was unthinkable just a few years ago, beyond the reach of mortal men and women. But all that has changed, forever. We, as human beings,

Though not necessarily for the inability to distinguish between research and clinical settings, increasingly, medical geneticists themselves are rebuking moral philosophers for their all too quick embrace of genetic explanations, particularly when character traits like criminality or empathy are said to be genetically determined.⁷³ Take, for a further example, the notion of a "genetic horoscope," understood as a variation on the theme of "genetic determinism," described by Carlos Sonenschein and Ana Soto as "a fallen theory." In their view:

Genetic determinism and gene-centric reductionism have dominated biological thought for more than half a century, particularly since the publication in 1945 of Erwin Schrodinger's book *What is Life?* This view reached its uncontested zenith with the publication in 1971 of *Chance and Necessity* by Jacques Monod. The paradigm articulated by Schrodinger, Monod, and many others placed the gene in the metaphoric "driver's seat" of an organism's development. Introducing the concept of DNA as a "developmental program" predisposed generations of students and researchers to believe that development was the mere unfolding of a "script" or a "program" that was "written" in our genes. This deterministic view is now challenged on numerous grounds.⁷⁴

This amounts to a sustained rebuttal to genetic determinism. But, importantly,

some challenges to the deterministic view stay broadly within the "turn to genetics"

described here. There is, then, a critique of genetic determinism that can work within a

have tamed the fire of life. And in so doing, we have gained the power to control the destiny of our species." For more, see Lee M. Silver, *Remaking Eden: How Genetic Engineering and Cloning Will Transform the American Family* (New York: Avon, 1998).

As we will see in the discussion of Paul Ramsey in chapter 5, this worry about "fabricating man" and a concomitant worry about erasing the line between research ethics and clinical ethics have theological proponents as well.

⁷³ Take, for example, the work legal scholars such as Nita Farahany have done to sort out the proposal that the law acknowledge the genetic basis of criminality. See William Bernet, Cindy L. Vnencak-Jones, Nita Farahany, and Stephen A. Montgomery, "Bad Nature, Bad Nurture, And Testimony Regarding MAOA and SLC6A4 Genotyping at Murder Trials," *Journal of Forensic Sciences*, 52, no. 6 (2007).

⁷⁴ Carlos Sonnenschein and Ana Soto, "Cancer Genes: The Vestigial Remains of a Fallen Theory," in *Genetic Explanations: Sense and Nonsense*, ed. Sheldon Krimsky and Jeremy Gruber (Cambridge, MA: Harvard University Press, 2013), 82.

cultural frame that looks to medical genetics for an account of "better" or "worse" forms of life. That critique amounts to a worry about *haste* – namely, that what is promised cannot be delivered, at least at the scale or pace that the cheerleaders of medical genetics seem to suggest. And this critique often points to the problem of epigenetics for hardline determinists. This is the claim put forward by Eva Jablonka, Marion Lamb, and their associates regarding the importance of the widely accepted distinction between "monogenetic" diseases, such as Tay-Sachs, and other diseases thought to have a genetic component.⁷⁵

When this fact is coupled with the primacy of the aforementioned "findings of unknown significance," what comes into view is the fact that many of the traits we would most like to manipulate and/or enhance fall just outside our grasp. In a brief but important essay published in the *New England Journal of Medicine*, David Goldstein, director of Duke's Center for Human Genome Variation, summarizes the state of current research regarding the genetic basis of height and the contraction of type 2 diabetes. Though Goldstein has points of disagreement with critics of the turn to genetics and describes "efforts to represent common variation and relate it to common diseases" as "strikingly

⁷⁵ As Eva Jablonka and Marion Lamb have argued, the fact that monogenetic disorders are thought to comprise only 2 per cent of diseases known to have a genetic origin or significant genetic component is often ignored by commercial enterprises intent on selling individuals a less complex view. When operating as hard scientists rather than theorists, Jablonka and Lamb have demonstrated that what we mean when we say that a disease is "genetic in origin" is the emergence of genotypes that make possible disease, where the passive construction of "make possible" leaves room for the as-yet-unknown dynamics of epigenetics in complex (rather than monogenetic) abnormalities. On this, see Eva Jablonka and Marion J. Lamb, *Evolution in Four Dimensions: Genetic, Epigenetic, Behavorial, and Symbolic Variation in the History of Life*, second edition (Cambridge MA: The MIT Press, 2014).

successful," the dominant theme of his short essay is a cautionary tale to his fellow geneticists regarding the enthusiasm that undergirds their basic research:

Unfortunately, most common gene variants that are implicated by such studies are responsible for only a small fraction of the genetic variation that we know exists. This observation is particularly troubling because the studies are largely comprehensive in terms of common single-nucleotide-polymorphisms (SNPs), the genomic markers that are genotyped and with which disease associations are tested. We're finding the biggest effects that exist for this class of genetic variant, and common variation is packing much less of a phenotypic punch than expected.⁷⁶

Carried within the statement, "packing much less of a phenotypic punch than expected" is the frank scientific admission of the poverty of our knowledge regarding the genetic basis of a great deal of human characteristics.

But this is not the essential feature of the turn to genetics. As a social fact, the "turn to genetics" is about the expectations we place on genetics – expectations to explain our condition and, in the end, console and/or heal us. Hence, the cautionary tale: Behind and before all our discussions of genetic manipulation is the need to recognize the centrality of the distinction between knowledge and information, wherein the former refers presumes some notion of utility, some sense of how a piece of information is connected to others, while the latter does not.

What I mean to indicate here in describing the turn to genetics as a major feature our contemporary reproductive social imaginary is what Nathaniel Comfort and others have argued regarding the most persistent and powerful force of genetics in its explanatory power and potential therapeutic benefit. Comfort's historical account is both searching and important. In recounting the process by which genetics moved to the center of

⁷⁶David B. Goldstein, "Common Genetic Variation and Human Traits," *New England Journal Of Medicine* 360, no. 17 (2009): 1696-98.

American medical practice, Comfort charts the way in which the basic premises of early eugenicists like Charles Davenport were carried forward into the post-war period, professionalized, and normalized as a central feature of contemporary medical practice. Take, for example, Comfort's claim that

Although much had changed institutionally in the 1940s, technically the work was much the same as it ever had been. At the dawn of the atomic age, American human genetics research would have been easily comprehensible to Charles Davenport, Henry Goddard, or David Starr Jordan decades before. Researchers were comparing twins, collecting pedigrees, seeking Mendelian patterns, and trying to calculate the proportion of heterozygotes in a population. The prewar optimism over human genetics stemmed mainly from two things: the field's institutional growth and the explosion of knowledge of the genetics of blood groups.⁷⁷

The substance of Comfort's historical analysis of the turn to genetics is one that legitimates the claim I've made that what is meant by "better" in the idea of making better babies is something like "more genetically amenable." Even amongst the critics, there is, then, a repeated desire to see medical genetics pack a bigger "phenotypic punch" that can, if all goes well, assist medicine in the completion of its basic tasks.

6. Conclusion, or, What Does It All Amount To?

So what have I established? In section 1, I made use of Taylor's notion of a "social imaginary" in order to forward the claim that attending to the background picture of having children is crucial for understanding the reemergence of the language of eugenics within the field of bioethics. And then, in sections 2, 3, 4, and 5, I presented four features of our current reproductive social imaginary. Those are the disaggregation thesis, the commercialization of pregnancy, children as objects of desire, and the turn to genetics.

⁷⁷ Nathaniel Comfort, The Science of Human Perfection: How Genes Became the Heart of American Medicine (New Haven, CT: Yale University Press, 2012), 135.

Giving sustained attention to these features of contemporary life is decidedly not my attempt to make any arguments regarding the morality of particular reproductive acts, but rather my attempt to uncover what one would have to think about the processes of reproduction in order to render intelligible a statement akin to Julian Savulescu's notion of procreative beneficence. That concept is defined, morally, as the claim that:

Couples (or single reproducers) should select the child, of the possible children they could have, who is expected to have the best life, or at least as good a life as the others, based on the relevant, available information.⁷⁸

What has to be in place for something like this to be intelligible? I have argued that, for this to be intelligible, one must see oneself as a bearer of certain reproductive capacities that can be conceptually detached from one's sexual activities and, as such, as a distinct reproductive decision-maker. And secondly, one must live in a time and place wherein the reproductive technologies are available in such a way as to make those decisions meaningful – that is, one must live in a commercial society wherein one can at least *envision* availing oneself of reproductive technologies capable of *expressing* and *enacting* logically prior reproductive choices. Moreover, one must have an account of what constitutes best in the phrase, "the best life."

As we'll see in the following chapter, advocates of the new eugenics often depend upon intuitions born of just-so stories. Consider two from the opening of Savulescu's defense of procreative beneficence:

Imagine you are having in-vitro fertilization and you produce four embryos. One is to be implanted. You are told that there is a genetic test for predisposition to scoring well on IQ tests (let's call this intelligence). If an embryo has gene subtypes (alleles) A, B there is a greater than 50% chance it will score more than 140 if given

⁷⁸ Julian Savulescu, "Procreative Beneficence: Why We Should Select The Best Children," *Bioethics* 15, no. 5-6 (October 2001): 414

an ordinary education and upbringing. If it has subtypes C, D there is a much lower chance it will score over 140. Would you test the four embryos for these gene subtypes and use this information in selecting which embryo to implant?

Imagine now you are invited to play the Wheel of Fortune. A giant wheel exist with marks on it from 0 ~\$1,000,000 in \$100 increments. The wheel is spun in a secret room. It stops randomly on an amount. That amount is put into Box A. The wheel is spun again. The amount which comes up is put into Box B. You can choose Box A or B. You are also told that, in addition to the sum already put in the boxes, if you choose B, a dice will be thrown and you will lose \$100 if it comes up 6.⁷⁹

For Savulescu, the meaning of these just-so stories is found not simply in their ability to *demonstrate* his principle of Procreative Beneficence – namely, that one has a moral (but not legal) obligation to select the child, of all the possible children that one could produce, that is expected to have the best life, based on all relevant and available information – but also to advocate an immediately understood and undeniable wisdom. In response to the question Savulescu poses, Which box should you choose?, we are told that "the rational answer is Box A." Moreover, "choosing genes for non-disease states is like playing the Wheel of Fortune. You should use all the available information and choose the option most likely to bring about the best outcome."⁸⁰

If this chapter has succeeded, it has at least given us some language to grapple with our immediate intuitions regarding what Savulescu means here by "the best outcome." However, the importance of attending to atmospherics is not limited to elucidating the inner logic of the proposals of the new eugenics. In the introduction, I made plain that the new eugenics comes to Christian ethicists as a challenge. I also said that the description and analysis provided in chapters 3, 4, and 5 comprises a "taxonomy of complaint"

⁷⁹ Ibid.

⁸⁰ Ibid.

wherein traditions of Christian moral reasoning provide their own entry points into the discussion of our reproductive agency.

What was not said yet but should be clear at the conclusion of the next chapter is that an adequate contemporary Christian reproductive ethic must attend both to stated proposals and the atmospherics surrounding those proposals. This is, in part, the substance of my recommendation of counsel as a useful moral language for meeting the challenge posed to Christian ethicists in our day. Counsel, as I describe it at length in chapter 5, retains a principled degree of linguistic dexterity that allows it to deploy a variety of concepts in accordance with prudential judgment. This means that counsel attends to the dynamic interplay between text and context as well as between atmospherics and proposals. In so doing, it is more appropriately therapeutic. As I said in the opening to this chapter, the array of reproductive decisions we face is dizzying in nature, and the claim of the project as a whole is that counsel holds the greatest degree of promise for attending to this complexity. Chapter 2

Liberal Eugenics: The Proposals

This chapter is committed to situating, articulating, specifying, and sorting the claims of the group of theorists grouped under the moniker of "liberal eugenics." To do so, however, it is incumbent upon me to give something of a narrative that highlights major conceptual shifts within reproductive ethics in America. The narrative begins with what I call *vintage eugenics*, by which I mean the Galtonian era of eugenics in America. During this era, the theoretical notion of improving the nation's stock moved into the political mainstream through the scientific endorsement of the new science of heritability. This movement, however, was not *merely* medical; it was also a social, legal and, crucially, ecclesial movement.

This ensured that there were multiple strands of justification and legitimation for the early American eugenic regime. Its main technique, however, was forced sterilization, rendering our common recollection of this period largely one of *negative* rather than *positive* eugenics. The importance of beginning here resides in the fact that the new eugenics is both indebted to and distanced from this particular social, medical, and legal movement. To understand just where these debts lie and how far the new eugenics can be distanced from the old, we must begin, as ever, at the beginning.

The narrative then turns in section two to the emergence of "reproductive autonomy" as the central category that governed bioethical debate in the wake of the American eugenics project. My argument here is not that there is widespread agreement upon the content of the concept of reproductive autonomy (or liberty), but that the fact that this concept becomes a site of contestation shows a marked shift in public discourse and imagination. I illustrate this point through a discussion of *Davis v Davis*, an important

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Tennessee case that makes use of the concept within the emerging culture that responds to the conclusion of the American vintage eugenics project. The third section is a bridge of sorts. In it, I introduce the early 2000s case of the "Deaf Lesbians" as a way of further illustrating the claim of section two regarding the importance of the concept for the shift in public imagination. In this case, two prospective parents sought to make use of assisted reproductive technologies with the goal of producing a child – preferably a deaf child. In so doing, they raise a basic question of the relation of reproductive rights to obligations. How should that relation be characterized? The details of the case are not as important as the response it has received and the debate it has provoked. Here, the claim is that there is a general and widely-held sense that procreative autonomy should be limited by some degree of care towards the child. But there is little to no consensus as to what should characterize that care. Concepts like Julian Savulescu's "procreative beneficence" begin to introduce and give shape to the liberal eugenic mood in our day, albeit as they are balanced with concepts like "procreative altruism."

In the final section of the chapter, I map out the thinkers that defend liberal eugenic proposals along a continuum that begins with ambivalent gradualism and continues to a kind of techno-utopian alarmism. These thinkers have a very explicit answer to the question of our procreative obligations: in their view, we should use our powers to create idealized human beings.

This narrative sets the stage for part II of the dissertation on the responses available to Christian theologians regarding our growing power over the processes of reproduction.

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1. Vintage Eugenics: The American Eugenics Project

One of the most striking features of any review of the contemporary literature on liberal eugenics is how little attention is paid to the social and intellectual roots of eugenics in its original form. And yet, as I have also said, one of the basic features of the new eugenics is that it is conceptually distinct from the constellation of theoretical, legal, moral, and medical power that produced the American eugenics project in particular.⁸¹

In their important appropriation of a basic Rawlsian picture of justice to the question of genetic technologies, Buchanan, Brock, Daniels, and Wikler nod to the importance of providing an "ethical autopsy" to what I am here calling vintage eugenics. They, like most advocates of new genetic technologies, center their analysis on the place of the state in what we now believe should be properly individual decisions regarding reproduction. In this, they locate the wrong present in the practice of forced sterilization in the fact that it is *forced* rather then *chosen*, and in so doing, they highlight a basic feature of a great deal of literature in the new eugenics, namely, a sense that the primary thing that

⁸¹ To recall, as I am using the term here, "liberal eugenics" is used to denote any technologically assisted form of reproduction free of state coercion that is ordered to the creation of an idealized human person. Histories of what I am here calling vintage eugenics are multiple. For a concentration on the work of Cold Harbor Springs and Charles Davenport in particular, see J.A. Witkowski and J.R. Inglis, eds Davenport's Dream: 21st Century Reflections on Heredity and Eugenics (Cold Spring Harbor: Cold Spring Harbor Laboratory Press, 2008). For an accessible and exhaustive account see Edwin Black, War Against the Weak: Eugenics and America's Campaign to Create a Master Race, (New York: Four Walls Eight Windows, 2003). For the authoritative history from within the guild, see Daniel Kevles' In the Name of Eugenics (New York: Knopf, 1985). For a philosophically attuned history of forced sterilization in particular, see Philip Reilly's The Surgical Solution: A History of Involuntary Sterilization in the United States (Baltimore: Johns Hopkins, 1991). For a special attention to the legal components of Buck vs. Bell in particular, see Paul Lombardo's Three Generations, No Imbeciles (Baltimore: Johns Hopkins, 2008) as well as the edited volume A Century of Eugenics in America (Bloomington: Indiana, 2011). For a sociological view, see Troy Duster's Backdoor to Eugenics (New York: Routledge, 1990).

separates the new eugenics from the old is the place of coercion and force. But this is far too easy; what we need is something far more specific. In an introductory section of their widely cited *From Chance to Choice: Genetics and Justice* they write:

At present, neither those who assert that the new genetics is infected by the evils of the old eugenics nor those who indignantly defend the new genetics' moral purity have made a convincing case. Two things are needed for the satisfactory resolution of this controversy: an ethical autopsy on the old eugenics and an examination of the ethical presuppositions and implications of the new genetics ... To evaluate the charge that the new genetics is infected by the evils of eugenics, it is necessary to unearth the ethical assumptions that provide the best justifications currently available for pursuing genetic knowledge and for attempting to use this knowledge to intervene in human lives.⁸²

With this image of an "ethical autopsy," I take Buchanan et al. to be calling for an account that describes both the parts and the whole: the distinct philosophical positions that fueled the eugenic mind as well as the cultural fabric that held them all together. This, they suggest, is all too often lacking on both sides of the debate – with historically minded theorists invoking the "specter of eugenics" without adequate conceptual clarity and the more theoretical moralists making use of categories like the "fitness" of human beings with seemingly no knowledge of the concept's sordid past. What we need, then, is not simply a historical account but, rather, a full *understanding* of the past that could at least posit points of overlap between a prior moment and our own, if not generate rules to guide and limit present-day actions.

⁸² Allen E. Buchanan, et al., *From Chance to Choice* (Cambridge: Cambridge University Press, 2000), 10. In a later article by Allen Buchanan, we learn that Buchanan was not the lead author on this chapter and, moreover, that he thinks the argument linking current iterations of eugenics to its historical predecessor fail to the degree that they don't recognize what he calls differing social moral epistemologies, defined as "the role of social practices and institutions in the creation and transmission of factual beliefs that facilitate or impair the proper functioning of the moral sentiments ad the application of moral principles." Allen E. Buchanan, "Institutions, Beliefs and Ethics: Eugenics As A Case Study," J Political Philosophy 15 (2007): 22-23.

So how should we understand America's eugenics project? What are the

constitutive features of what I am here calling vintage eugenics? My view is that vintage

eugenics was marked by seven basic features; it had theoretical, medical, legal, cultural,

political, theological, economic, and institutional components. These components can be stated

briefly and illustrated with brief attention to the most famous legal case in vintage

eugenics, Buck vs. Bell.

1) *Theoretically*, vintage eugenics began with a theory of heritability wherein particular features of human persons are passed from one generation to the next through reproduction. Here, vintage eugenics was largely indebted to Mendelian laws of inheritance.

2) *Medically*, vintage eugenics depended upon developments in medical technologies to sterilize individuals, thereby eliminating the chance of passing on defective traits.

3) *Legally*, vintage eugenics traded upon developments in American jurisprudence towards the establishment of public health as a category that establishes the right of the state to regulate medical procedures.

4) *Culturally*, vintage eugenics emerges within a moment of social instability wherein Industrialization and major waves of immigration both energize and reorganize forms of social differentiation.

5) *Politically*, vintage eugenics had the power of an interventionist state behind it. Coordinate with the era of the criminalization of vice, this particular moment in American history included a strong and interventionist state.

6) *Theologically*, vintage eugenics included a legitimation narrative by the majority of ecclesial bodies within the largest demographic of the population at the time: Protestant Christianity.⁸³ In this time, the logic of sin and redemption was mapped onto a social understanding of disease.

7) *Institutionally*, the success of vintage eugenics was due, in part at least, to overlapping networks of institutional leaders working in common cause. The institutional force did not emerge, as it were, out of medicine alone, but also from the worlds of politics, the church, the academy, and the judiciary.

⁸³ The important work of Christine Rosen in *Preaching Eugenics* is unparalleled on this point. Christine Rosen, *Preaching Eugenics* (Oxford: Oxford University Press, 2004).

An adequate ethical autopsy, as Buchanan et al. put it, has to begin with the theoretical underpinnings of Francis Galton's famed definition of eugenics as

the science of improving stock, which is by no means confined to questions of judicious mating, but which, especially in the case of man, takes cognizance of all influences that tend in however remote a degree to give to the more suitable races or strains of blood a better chance of prevailing speedily over the less suitable than they otherwise would have had.⁸⁴

The idea is as intuitive as it is straightforward: in order to increase the overall health of a polity, those of "good stock" should reproduce while those of deficient powers should not. This is the theoretical ground floor of eugenics: a newfound trust in the science of heritability to discern the attributes that constitute "fitness" and guide reproduction accordingly.⁸⁵ This guidance takes shape both positively and negatively: the "fit" should reproduce with each other while the feeble-minded, the degenerate, in short, the "unfit" should be prevented from procreation altogether.⁸⁶

⁸⁴ Francis Galton, Inquiries Into Human Faculty And Its Development (New York: AMS Press, 1973).

⁸⁵ In fact, what has made eugenics such a fruitful topic for discussion is both its simplicity and evasiveness: on some level, a great deal of what passes simply as good medical sense – the taking of prenatal vitamins while pregnant, the avoidance of known pathogens to the fetus, the continuation of a balanced diet, etc. – *could* be understood as "eugenic" if we take a wide view of Galton's language regarding the effort to give one's progeny "a better chance." And yet, it is clear that Galton has something more in mind than a mother's willingness to consider her progeny when making decisions regarding aspects of her own health during pregnancy.

⁸⁶ For an important account of how the concept of the "feebleminded" came into public consciousness, see James W. Trent's *Inventing the Feeble Mind: A History of Mental Retardation in the United States* (Berkeley: University of California Press, 1994). One of the great strengths of Trent's narrative is the way in which it highlights the degree to which the period of the late 19th and early 20th centuries was one of institution building – both for the well-born and those deemed deficient. Trent does not shy away, however, from the basic thesis that "feeblemindedness" was a category applied disproportionately upon lower social classes. On this, see chapter 6 in particular.

What is of interest here is how Galton's equation of "science with progress", as Daniel Kevles notes, made it plausible to ask, "could not the undesirables be got rid of and the desirables multiplied?"⁸⁷ It is the movement from the theoretical to the political through the scientific that is of such interest in the vintage eugenics. To state it slightly differently, one distinguishing feature of eugenic practice is the correlation of individuated reproductive decisions (meaning, decisions of couples regarding having children) and *social goods* – that is, some sense of the responsibility parents or potential parents have to their political communities. Understood in properly political terms, then, the Galtonian objective was clearly to "increase the contributions of the more valuable classes of the population and to diminish the converse."⁸⁸

To state it again, there was both a *positive* and *negative* aspiration to the American eugenics project. These aspirations, though, were not equally realizable due to the crude technology available, namely, forced sterilization. Through the proliferation of cultural messages most clearly seen in the "fitter family" contests prevalent throughout the era, the well-born were encouraged to demonstrate their superiority in a fashion not unlike the prizes awarded to local farmers raising superior livestock or produce. These cultural forms of encouragement – not limited to one racial group, crucially – were intended to sanction

⁸⁷ Kevles, In The Name Of Eugenics, 3.

⁸⁸ Nathaniel C. Comfort, *The Science Of Human Perfection: How Genes Became the Heart of American Medicine* (New Haven: Yale University Press, 2012), 10. It is precisely this cultural and political element of the early American eugenics program that has led Troy Duster to argue that the best way to understand America's fascination with "building better babies" is by seeing it as a cycle of warming and freezing. Rather than clean and decisive breaking moments, ever since Francis Galton's thought first gained a hearing in the American context, the eugenic impulse has been with us – sometimes fended off, often regarded with some degree of ambivalence, occasionally embraced with fervor, but with us all the same.

and endorse particular persons in their procreative endeavors.⁸⁹ But there was no technology of enhancement available to facilitate vintage eugenics' positive aspirations.

What *was* available was the legal, cultural, and political will to enact statutory endorsements of *forced sterilization* as an appropriate and fitting medical solution to the admittedly social problem of vagrancy, feeblemindedness, and, in many cases, loose moral character and sexual deviance. Extending forms of "degeneracy theory," developed during and after the Industrial Revolution within American cities, the state eugenics programs, beginning with the "Indiana Experiment" and extending to a variety of states in the 1910s, built upon both the medical theories of Mendel, Galton, and Davenport and the widespread acceptance of the social theories emerging from longitudinal studies of "shiftlessness" like Richard Dugdales's landmark study of the "Jukes" that reportedly populated an inordinate percentage of New York's jail cells.⁹⁰

This, in fact, is one of the central themes of Daniel Kevles' authoritative history of eugenics in America. In chapter VII, "Eugenic Enactments," we read,

In the United States during the opening decades of the century, it came to be a hallmark of good reform government to shape public policy with the aid of scientific experts. In many states the practice was modeled after the "Wisconsin idea," advanced by the progressive governor Robert La Follette, of drawing upon experts in the state university for advice in complicated policy areas like taxes, agriculture, regulation, and public health. Eugenics experts aplenty were to be found in the biology, psychology, and sociology departments of universities or colleges, and among superintendents of state mental institutions... The field workers, the professors, and the institution superintendents not only could provide expert advice on eugenic issues to state legislative committees and commissions;

⁸⁹ For an account of Fitter Family contests within the Black community, see Gregory Michael Dorr and Angela Logan, "'Quality, Not Mere Quantity, Counts': Black Eugenics and the NAACP Baby Contests," in A *Century of Eugenics in America, ed. Paul A. Lombardo* (Bloomington: Indiana University Press, 2011).

⁹⁰ This study was recorded in R. L. Dugdale, "'The Jukes": A Study In Crime, Pauperism, Disease, And Heredity (1877).

together they might form a small yet influential lobby for eugenic legislation, particularly under the reformist state administrations, and usually in the absence of equally expert opposition.⁹¹

This description of the dynamics of enacting shifting reproductive norms from the theoretical to the political by way of the scientific rings true not just in general, but in particular cases as well. As Paul Lombardo has gone to great lengths to argue, the establishment of Charles Davenport's Eugenics Record Office in Cold Spring Harbor in 1910 may well have afforded the notion of "better breeding" intellectual credibility, but it was the important work within individual states and, more directly, networks of elites within those states, that produced the conditions under which landmark cases like *Buck vs. Bell* could be adjudicated successfully – that is, in favor of legal support for forced sterilization practices.

This is not to say that Davenport or the Cold Spring Harbor office was unimportant. It lended scientific credibility to policy makers within the states and led the explicitly moral charge towards building fitter families. It was the support of both the medical establishment and some major financiers (including railroad magnate E.H. Harriman) however, that fueled Davenport's eugenic aims, including his purportedly *philanthropic* ends – namely, the degree to which eugenic principles would "replace palliative philanthropy."⁹² This established the explicitly economic aims of vintage eugenics that would come through so clearly in the penultimate paragraph of Oliver Wendell Holmes' famous opinion in *Buck v. Bell*:

⁹¹ Kevles, In The Name Of Eugenics, 101.

⁹² On this, see Paul A. Lombardo, *Three Generations*, *No Imbeciles* (Baltimore: Johns Hopkins University Press, 2008), 31-33.

We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind.⁹³

Though this represents an economic and social argument, the American vintage eugenics project also had substantial theological backing. Galton, as is well known, aspired to have eugenics replace religious belief within modern Western societies. That has led us to forget, though, an important coalition between some religious believers and the Galtonian eugenicists that emerged during the concluding decades of the 19th century and the early years of the 20th century.

In her important and detailed historical study, Christine Rosen makes plain just how entrenched the eugenic impulse was within the Christian community, first within the mainline liberal Protestant churches but extending into all aspects of the churches. Take, for example, Rosen's account of ecclesial support of the various forms of health certificate legislation that aimed to prevent the marriages of persons deemed unfit:

The zeal with which social service groups in the Protestant churches were pursuing marriage regulation in 1912 and 1913 prompted one newspaper to point out that "the State is lagging behind the Church in its recognition of eugenic truths." In fact, before Sumner's declaration, a number of states had laws on the books prohibiting or regulating the marriage of the insane, feeble minded, and epileptic. The clear intent of these statutes was not to prevent the marriage of these groups, but to thwart their reproduction; a few of the laws allowed marriage of a feebleminded woman if she was over the age of 45 on the presumption that she was past childbearing age and hence no longer a threat to society.⁹⁴

⁹³ Paul Lombardo's *Three Generations*, *No Imbeciles* puts this statement into vivid cultural, legal, medical, and social context.

⁹⁴ Rosen, *Preaching Eugenics*, 67. See also Amy Laura Hall, "To Form A More Perfect Union: Mainline Protestantism And The Popularization Of Eugenics" in *Theology, Disability*

What this shows is the degree to which the original eugenicist vision was a normative political vision. It was committed to the notion that one consideration within reproductive decision-making – if not the *decisive* consideration – is a perceived responsibility to *society as a whole.* Whatever an individual parent's wishes may be for the welfare of their own family, the primary locus of moral concern is *society's* interest, most obviously in the "fitness" of potential children. This notion of society's interest has, no doubt, particularly economic overtones. To prohibit the unfit from procreating is to also exclude the unfit from public resources. While society has a legitimate interest in matters of public health- that is, after all, the grounds upon which Justice Holmes' famed declaration that "three generations of imbeciles are enough" rested – we must understand "public health" in a more expansive sense than its current iteration. This is the only way to fully understand how the forced sterilization programs – present in some states until the late 1970's – were rendered even remotely plausible.

2. Reproductive Autonomy: The Point of Broad Agreement

That the vintage eugenics program in America extends into the 1970s is surprising. It came to an end, however, with the emergence of the concept of Reproductive Autonomy which, stated plainly, is the notion that consenting adults are free to reproduce with whomever they wish and, increasingly, through the use of Assisted Reproductive Technologies, those same adults can reproduce "with" people with whom they have no relationship and from whom nothing beyond one's reproductive materials is requested.

And The New Genetics, ed. John Swinton and Brian Brock (New York: Bloomsbury T&T Clark, 2007).

Here, the notion of reproductive autonomy joins the disaggregation thesis

described in the previous chapter. And, crucially, in the wake of the eugenics movement of the 20th century and its dependence upon the crude medical procedure of forced sterilization, a concept like reproductive liberty is intended to authorize and empower individual parents to make decisions regarding the life and well being of their progeny.⁹⁵ Sometimes described as "procreative liberty," the *liberal* eugenic impulse is built upon a strong notion of parents' and prospective parents' basic right to control when and how they reproduce.

Under the heading of "What is Procreative Liberty?" in John Robertson's Children of Choice we read:

At the most general level, procreative liberty is the freedom either to have children or avoid having them. Although often expressed or realized in the context of a couple, it is first and foremost an individual interest. It is to be distinguished from freedom in the ancillary aspects of reproduction, such as liberty in the conduct of pregnancy or choice of place or mode of childbirth.⁹⁶

Further to the point, Robertson is clear to say that "procreative liberty should enjoy presumptive primacy when conflicts about its exercise arise because control over whether one reproduces or not is central to personal identity, to dignity, and to the meaning of one's life."⁹⁷ Given this importance, however, Robertson is quick to acknowledge the deep tension between the positive and negative aspects of the concept. In an obscure yet revealing passage, Robertson says:

⁹⁵ Discussions of forced sterilization often come up in defenses of reproductive liberty. See, for example, the first chapter of Carson Strong, *Ethics in Reproductive and Perinatal Medicine*. (New Haven: Yale University Press, 1997).

⁹⁶ Robertson, Children of Choice, 22.

⁹⁷ Ibid., 24.

...Procreative liberty is not unitary, but consists of strands of varying interests in the conception and gestation of offspring ... An essential distinction is between the freedom to avoid reproduction and the freedom to reproduce. When people talk of reproductive rights, they usually have one or the other aspect in mind. Because different interests and justifications underlie each and countervailing interests for limiting each aspect vary, recognition of one aspect does not necessarily mean that the other will also be respected; nor does the limitation of one mean that the other can also be denied. However, there is a mirroring or reciprocal relationship here. Denial of one type of reproductive liberty necessarily implicates the other. If a woman is not able to avoid reproduction through contraception or abortion, she may end up reproducing, with all the burdens that unwanted reproduction entails. Similarly, if one is denied the liberty to reproduce through forced sterilization, one is forced to avoid reproductive options, new reproductive technologies present challenges to both aspects of procreative choice.⁹⁸

It is in this last sentence – "By extending reproductive options, new reproductive technologies present challenges to both aspects of procreative choice" – that we are confronted with both the promise and difficulty of a technologically-enhanced mode of reproduction that depends upon a prior process of disaggregation. The point here, however, is simply to state that something approximating Robertson's notion of reproductive autonomy gained widespread social approval in the wake of the vintage eugenics of the early to mid twentieth century. There are, of course, ongoing debates regarding the *scope* and *nature* of reproductive autonomy⁹⁹, but little to no debate that it is

⁹⁸ Ibid., 25-26.

⁹⁹ A particularly good example of the range of options in response to Robertson can be found in Volume 52:1 of the *Washington and Lee Law Review* (1995). There, Robertson's book was discussed by philosophers, legal scholars, and at least one theologian. Particularly compelling is Gilbert Meilaender's effort to get Robertson to jettison the language of "procreation" given his account, as well as Laura Purdy's challenge to Robertson on how essential childbearing is to the identity of women. Robertson's response is also published in this particular edition of the *W&L Law Review*.

reproductive autonomy that is the concept in the "moral background," that is up for debate.¹⁰⁰

Illustrating the Point: Davis vs. Davis

After meeting and courting while stationed in the US Army in Germany, Mary Sue and Junior Davis were married in the spring of 1980. After sustained infertility, six unsuccessful rounds of IVF between 1985 and 1988, and frank acknowledgment of the degree to which their marriage was strained by the constant pressures of treatment, the Davises decided to engage in a new therapy: cryogenic freezing of embryos created with Mary Sue's ova and Junior's sperm. Sadly, after fertilization and a final failed attempt at implantation, Junior Davis filed for divorce in February of 1989.¹⁰¹

The *legal* question surrounding the termination of the Davis marriage was essentially this: how are the remaining pre-embryos to be characterized?¹⁰² Are they persons in any sense, and therefore due certain basic rights? Or are they property, and therefore beholden to basic disputes regarding rival claims to ownership? While these issues are now largely dealt with through detailed procedures intended to establish clear proprietary claims in the case of conflict, what makes the case interesting for our purposes is precisely the fact that it was decided before either legal architecture to decide these cases was in place or fertility clinics put robust policies into place. This case, in other words, and the manner in

¹⁰⁰ For further information on a "moral background," see chapter one of Gabriel Abend, *The Moral Background* (Princeton: Princeton University Press, 2014).

¹⁰¹ *Davis v. Davis*, 842 S.W.2d 588, 597 (Tenn. 1992). The account of this case I am providing here is derived both from Robertson's discussion of the case and the actual legal opinion.

¹⁰² The use of "pre-embryos" here is intended simply to mirror the language of the decision.

which it was decided, is a window into the emerging importance of reproductive autonomy as a social and legal ideal.

During divorce proceedings it became clear that, whereas Junior Davis wanted the pre-embryos destroyed – and, in fact, would feel a degree of financial responsibility to any potential children brought into the world with his genetic material – Mary Sue's explicit desire was to donate them to a couple engaged in their own struggle against infertility. Harking back to Karey Harwood's helpful notion of the "infertility treadmill" described in chapter 1, it is not too much to say that Mary Sue's desire was to do all she could to alleviate the very real stress of other couples. To her mind, this was an attempt at generous and altruistic behavior.

The question of how to characterize the pre-embryos gained critical importance during litigation. If the pre-embryos were considered property and Mary Sue was able to demonstrate a more convincing case regarding her interests in such property, she would be at liberty to assist another third party (a couple, presumably) in their attempt to bring a child into the world. The sticky issue here, of course, was that this child would be genetically linked to Junior Davis. If, however, as a lower court determined, the preembryo is given the moral status of "person," then certain rights – even the right to birth – must be granted such persons.

Seen in one way, this was really an argument about Robertson's two-fold nature of procreative liberty. Is the right to *suppress or avoid* reproduction stronger than the right to technologically-enhanced reproduction? If pre-embryos do *not* retain full moral status as persons, as the Tennessee State Supreme Court ruled, is there not at least a *presumption*

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towards implantation, given the extreme medical, social, and material lengths endured for their creation?

In what Robertson describes as an "eminently sound" opinion, the Tennessee State Supreme Court addressed the question of who had the authority to dispose of the preembryos created during a period of infertility treatment but now no longer desired for that treatment; and, in so doing, the court addressed the heart of what constitutes reproductive autonomy. In a brief set of paragraphs the court affirms the judgment of the lower court's ruling regarding the legal status of the fetus and pushes the analysis regarding preembryonic life into the province of property.¹⁰³

Once this is done, however, the court then begins to evaluate the competing property interests of Mary Sue and Junior Davis, now each married to new spouses. Due to the highly idiosyncratic nature of the details of the court's reasoning and the fact that the court's determination that (against most cases regarding the right to privacy and its relation to procreative liberty) *both* parties in this dispute are essentially "equivalent" in their status as potential gamete-providers, I quote from the opinion here at length:

Resolving disputes over conflicting interests of constitutional import is a task familiar to the courts. One way of resolving these disputes is to consider the positions of the parties, the significance of their interests, and the relative burdens that will be imposed by differing resolutions. In this case, the issue centers on the two aspects of procreational autonomy – the right to procreate and the right to avoid procreation. We start by considering the burdens imposed on the parties by solutions that would have the effect of disallowing the exercise of individual procreational autonomy with respect to these particular pre-embryos.

Beginning with the burden imposed on Junior Davis, we note that the consequences are obvious. Any disposition which results in the gestation of the preembryos would impose unwanted parenthood on him, with all of its possible

¹⁰³ Cited in support of this judgment are Tennessee statutes regarding wrongful deaths of viable fetuses as well as the federally protected right to privacy articulated in *Roe vs. Wade*.

financial and psychological consequences. The impact that this unwanted parenthood would have on Junior Davis can only be understood by considering his particular circumstances, as revealed in the record.

Junior Davis testified that he was the fifth youngest of six children. When he was five years old, his parents divorced, his mother had a nervous breakdown, and he and three of his brothers went to live at a home for boys run by the Lutheran Church. Another brother was taken in by an aunt, and his sister stayed with their mother. From that day forward, he had monthly visits with his mother but saw his father only three more times before he died in 1976. Junior Davis testified that, as a boy, he had severe problems caused by separation from his parents. He said that it was especially hard to leave his mother after each monthly visit. He clearly feels that he has suffered because of his lack of opportunity to establish a relationship with his parents and particularly because of the absence of his father.

In light of his boyhood experiences, Junior Davis is vehemently opposed to fathering a child that would not live with both parents. Regardless of whether he or Mary Sue had custody, he feels that the child's bond with the non-custodial parent would not be satisfactory. He testified very clearly that his concern was for the psychological obstacles a child in such a situation would face, as well as the burdens it would impose on him. Likewise, he is opposed to donation because the recipient couple might divorce, leaving the child (*which he definitely would consider his own*) in a single-parent setting.

Balanced against Junior Davis's interest in avoiding parenthood is Mary Sue Davis's interest in donating the pre-embryos to another couple for implantation. Refusal to permit donation of the pre-embryos would impose on her the burden of knowing that the lengthy IVF procedures she underwent were futile, and that the pre-embryos to which she contributed genetic material would never become children. While this is not an insubstantial emotional burden, we can only conclude that Mary Sue Davis's interest in donation is not as significant as the interest Junior Davis has in avoiding parenthood. If she were allowed to donate these pre-embryos, he would face a lifetime of either wondering about his parental status or knowing about his parental status but having no control over it. He testified quite clearly that if these pre-embryos were brought to term he would fight for custody of his child or children. Donation, if a child came of it, would rob him twice ~ his procreational autonomy would be defeated and his relationship with his offspring would be prohibited.¹⁰⁴

Interestingly, the court goes on to say that the case "would be closer" if Mary Sue

were actually seeking to use the pre-embryos herself (or were unable to engage in further rounds

¹⁰⁴ Davis, 842 S.W.2d at 597 (Tenn. 1992)

of IVF due to age or financial restriction). Given that each of these conditions are not met, the court determines that Junior Davis' interest in *not* procreating overrides Mary Sue's interest in altruistically donating the pre-embryos to others suffering from infertility. "Ordinarily," the court says, "the party wishing to avoid procreation should prevail, assuming that the other party has a reasonable possibility of achieving parenthood by means other than the use of the pre-embryos in question." As such, the court determines that the Knoxville Fertility Clinic is free to dispose of the pre-embryos in accordance to their policies and procedures.

As I have said above, *Davis v Davis* can be seen as a window into the second phase of the narrative I am sketching here. In response to the obvious and widespread horror at the abuses committed in vintage eugenics, the concept of reproductive autonomy came to prominence in the middle to late period of the 20th century, giving rise to a new reproductive *ethos* focusing on the individual as the bearer of reproductive rights and liberties.

That the notion of reproductive autonomy proved decisive in *Davis vs. Davis* illustrates this point well. From that point, the question raised by the ubiquity of this concept, in its negative and positive formulations, becomes: If we grant that the reproductive autonomy of parents must, in the first instance, be respected, *are there uniquely moral constraints to parental choice*? In other words, if the moral background, to make use of Gabriel Abend's phrase once more, is decidedly one that places reproductive autonomy at its center, does such a concept entail a concomitant ethic that may well constrain this concept? Are there limits to reproductive autonomy? Or, conversely, if developments in

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science grant us powers to enhance particular features of humanity and prevent the birth of children with attributes deemed "defective," do we have moral obligations to assume them? And if so, by what criteria do we determine what deserves to be enhanced, and what deserves to be, as it were, weeded out?¹⁰⁵

3. Rights and Obligations: The Emergent Moral Background

In 2002 Candy McCullough and Sharon Duchesneau, a deaf couple living outside Washington D.C., decided to create a deaf child. After consulting various fertility clinics unwilling to screen potential sperm donors for deafness, McCullough and Duchesneau found, within their network of friends, a sperm donor with a long family history of hereditary deafness. In their own account, McCullough and Duchesneau were of the view that any baby would be "a blessing," but a deaf baby would be a "special blessing." And a

¹⁰⁵ And so, if Robertson's claim regarding the role of procreative autonomy in the shift in our reproductive self-understanding is even remotely plausible, we must recognize that what was true of the Davis' experience in the 1980s has only increased in the intervening years: assisted reproductive technologies like IVF are, by all accounts, less stigmatized within reproductive medicine and society more generally. The second point to make, however, is that our increased technological control of the processes of reproduction does not, in and of itself, reduce the difficulties or potential difficulties couples face. In fact, the very fact that we can *treat* infertility – through assisted reproductive technologies, gamete donors and surrogacy arrangements, and so on - may put added pressure on fragile social relations, resulting in some relational demise even after treatments are "successful". In fact, one of the most interesting developments in reproductive medicine in the both the UK and the US in recent years is the public debate regarding the propriety of post-IVF abortions, either for "family balancing" purposes or due to the failure of a stable relationship *after* pregnancy has begun. For an account of this in the UK, see the news brief from the UK Health Centre: http://www.healthcentre.org.uk/abortion/news/ivfabortion-figures-shock-6002.html (last accessed February 12, 2015).

special blessing he was; Candy and Sharon welcomed Gauvin into the world with the welcome news that he was fully deaf in one ear and nearly fully deaf in the other.¹⁰⁶

More than a decade after Gauvin's birth, Candy and Sharon's decision has become the occasion for a number of important debates regarding the use of new reproductive technologies. How, some have asked, does a reinvigorated interest in John Stuart Mill's harm principle relate to the decision to utilized reproductive technologies to bring forth children *with* disabilities? Indeed, what is the nature of disability itself? Are there limits to the concept of "reproductive liberty?" If so, what are they? Does reproductive liberty protect the rights of parents (or single persons) to create children with more severe conditions? Or do parents have moral obligations to create certain children and prevent the creation of others?¹⁰⁷

One answer to this question is the notion of "procreative beneficence," a principle Julian Savulescu defines as "the principle of selecting the best child of the possible children

For more, see pages 59-81 of Disability Bioethics.

¹⁰⁶ Liza Mundy, 'A World Of Their Own,' Washington Post Magazine, 2002.

¹⁰⁷ In my estimation, the matter of the couples' sexual orientation is of little value for my purposes here and, at times, can be a red herring. The issue in my account here is not about *who* can procreate but, rather, the norms that govern procreation – namely, the relation of rights to obligations. There is also the basic question of whether or not disability is something that deserves the medical gaze at all – that is, whether or not it is relevant. On this, see Jackie Leach Scully's appropriation of Bordieau's notion of "habitus" in chapter 4 of *Disability Bioethics: Moral Bodies, Moral Difference* (Lanham: Rowman & Littlefield, 2008). There, Scully tries to counter the charge that Candy and Sharon were fundamentally narcissists for desiring a "child like themselves." In the final paragraph of that chapter she says:

What the Bourdieusian framework of habitus and field offers is a way of analyzing an individual's interpretative framework within her embodied and social context, avoiding or minimizing the dichotomy of body and world, and offering a degree of distance to help compare different interpretive frameworks, to analyze their development and the power relations and strategies that enable one or some to override others.

one could have.¹⁰⁸ Another is the notion of "procreative altruism" which charges advocates of procreative beneficence of having a far too narrow understanding of what constitutes the "best" life of a child. According to a strong principle of procreative altruism, parental obligations extend not just to the prospective child but, rather, to society as a whole. In the words of Douglas and Devolder:

If couples (or single reproducers) have decided to have a child, and selection is possible, they have significant moral reason to select a child whose existence can be expected to contribute more to (or detract less from) the well-being of others than any alternative child they could have.¹⁰⁹

Between these two views, there is some degree of agreement on the question of

reproductive rights - who possesses them, how they can be asserted, and so on. Far less

agreement exists on the question of reproductive obligations. It is important to notice this

tension between rights and obligations in the way in which principles operate as

Though Savulescu's work has largely been compiled in academic journals and edited volumes, one beneficial aspect of his work is its consistency. Though his *Unfit for the Future: The Need for Moral Enhancement* will feature more directly at a later point, for more of Savulescu's writings, see Julian Savulescu, "Procreative Beneficence: Reasons Not to Have Disabled Children" in *The Sorting Society*, ed. Skene, Loane, and Janna (Cambridge: Cambridge University Press, 2008); Savulescu, "In Defence of Procreative Beneficence"; Julian Savulescu 'Genetic Interventions and the Ethics of Enhancement of Human Beings.' In *The Oxford Handbook on Bioethics*, ed. Bonnie Steinbock (Oxford: Oxford University Press, 2006); Julian Savulescu, "New Breeds of Humans: The Moral Obligation to Enhance," *Reproductive Biomedicine Online* 10 (2005):36-39; Julian Savulescu, "Procreative Beneficence: Why We Should Select the Best Children." ¹⁰⁹ T. Douglas, and K. Devolder, "Procreative Altruism: Beyond Individualism in Reproductive Selection," *Journal of Medicine and Philosophy* 38 (4) (2013): 400-419.

¹⁰⁸ Julian Savulescu, "In Defence of Procreative Beneficence," *Journal of Medical Ethics* 33 (5) (2007): 284-288. While Savulescu is more than ready to defend this notion as he's defined it, it is worth noting just how what strikes the reader as most immediately plausible is, upon reflection, undeniably untenable. If, as Savulescu suggests, we are morally obligated to create the best child we can, those of us who have the wealth and where with all to utilize reproductive technologies are obligated to do so. Hence, no particular technology is ruled out and, furthermore, any number of technologies ~ even if they separate sexual union from reproduction ~ are morally required.

constraints on reproductive choice.¹¹⁰ The importance lies, moreover, in the way in which

differing accounts of the relation of rights to obligations can elucidate the deep tensions

within the emergent reproductive norm - namely the tension between consequentialist

and libertarian forms of ethical reflection.¹¹¹

Paying attention to Savulescu's comments upon this case makes this tension plain.

In one moment, Savulescu seems to indicate that there are no constraints on reproductive

autonomy:

In the case of Duchesneau and McCullough, there is no ethical issue—the couple has the right to procreate with whomever they want. And many couples with a family history of deafness or disability seek to have a child without that disability.

¹¹¹ This is a particularly important tension to expose due to the fact that each side of this debate carries within it a diverse set of theorists. Hence, the tension between libertarians and utilitarians who both favor robust forms of intervention is not unexpected. As Ruth Cowan quips, "the politics of reproduction make some very strange bedfellows." Included in her list of critics of the new eugenics are "left-wing intellectuals, reproductive feminists, disability rights activists, and opponents of legalized abortion, or as they are often called, pro-lifers." When the cadre of so-called "Bioconservatives" – Leon Kass, Francis Fukuyama, Jurgen Habermas, Michael Sandel and others – is added to this list, we can then see that sorting out the grounds upon which critics reject liberal eugenics may be as complex as understanding the various proposals that render it possible to discuss the "new eugenics" or "liberal eugenics" as an identifiable set of moral arguments and policy proposals.

As the forthcoming discussion of Nicholas Agar will show, the concept of "Bioconservatives" has become more and more prevalent in recent literature, particularly as a kind of shorthand to refer to President Bush's Commission on Bio-Ethics. For a brief and unsympathetic account of "the bioconservative thesis" see Thomas Douglas' entry on "Moral Enhancement" in the recently published volume Julian Savulescu, R. H. J. ter Meulen, and Guy Kahane, *Enhancing Human Capacities* (Chichester, West Sussex, U.K.: Wiley-Blackwell, 2011). For the Kass Commission's findings on biotechnology and its uses, see, *Beyond Therapy: Biotechnology and the Pursuit of Happiness* (New York: Harper Collins, 2003.)

¹¹⁰ In fact, Savulescu and Kahane put their notion of procreative beneficence in tension with an unbridled concept of procreative autonomy that they ascribe to Robertson. On this, see the concluding section of their important article, Julian Savulescu and Guy Kahan, "The Moral Obligation to Create Children with the Best Chance of the Best Life," *Bioethics* 23 (5) (2009): 274–290.

But some deaf couples have expressed the desire to use prenatal genetic testing of their fetus or in vitro fertilisation and pre-implantation genetic diagnosis to select a deaf child. These choices are not unique to deafness. Dwarves may wish to have a dwarf child. People with intellectual disability may wish to have a child like them. Couples of mixed race may wish to have a light skinned child (or a dark skinned child, if they are mindful of reducing the risk of skin cancer in countries like Australia).¹¹²

While in the next moment, Savulescu shows the difficulty in discussing this case without

making a judgment upon deafness itself:

But what if a couple has in vitro fertilisation and pre-implantation genetic diagnosis and they select a deaf embryo? Have they harmed that child? Is that child worse off than it would otherwise have been (that is, if they had selected a different embryo)? No—another (different) child would have existed. *The deaf child is harmed by being selected to exist only if his or her life is so bad it is not worth living.* Deafness is not that bad. Because reproductive choices to have a disabled child do not harm the child, couples who select disabled rather than non disabled offspring should be allowed to make those choices, even though they may be having a child with worse life prospects. (emphasis mine)

And so, what is at work here is both a very subtle philosophical distinction

regarding person-affecting decisions and criteria for determining when reproductive choice could be constrained. While we will deal with the disability-rights critique of Prenatal screening in chapter 4, here we must show how, for Savulescu, "harm" is considered to be those conditions that would render a life "not worth living." When this principle is balanced with Savulescu's claim that "it is easy to grant people the freedom to do what is agreeable to us; freedom is important only when it is the freedom for people to do what is disagreeable to others," the tension between Savulescu's consequentialist and libertarian leanings comes into full view. In the end, this pressure is resolved with the introduction of

¹¹² Julian Savulescu, "Deaf Lesbians, 'Designer Disability,' and the Future of Medicine." BMJ 325:10 October 2002.

a "minimum threshold" proviso in his later thought on the matter, yet the tension remains unresolved.¹¹³

To restate the point, the question posed to the emergent reproductive norm is this: how are we to balance procreative liberty with procreative beneficence or, in fact, procreative altruism? If procreative *liberty* trumps procreative *beneficence*, then few, if any, constraints upon parental decision exist. And yet, as Savulescu's hesitance regarding the intentional creation of a deaf child makes plain, the question of whether or not the child created through the parents' choice to create this child and no other is harmed – that question is of some moral relevance. And so, to follow Savulescu's lead on this is to tread into the well-worn philosophical literature on the nature of harm.¹¹⁴

¹¹³ For a discussion of this proviso, see Savulescu and Kahane, "The Moral Obligation to Create Children With The Best Chance of the Best Life."

¹¹⁴One thing largely unnoticed among liberal eugenicists like Savulescu is the degree to which their "ideal" persons mimic that of the original Galtonian eugenicists. Take, for example, this provocative paragraph from Robert Sparrow's analysis of the new eugenics as representative of a certain tension within the proposal itself:

Unfortunately, it will often be much easier to alter a child's genetics than the social conditions that will shape the ultimate impact of their genetics. In particular, one "genetic condition" associated with reduced life prospects in many societies – the sex of the child – is easily shaped prior to birth using existing technologies such as sperm sorting, PGD, or ultrasound-plus-selective termination. Where girls face reduced life prospects as a result of entrenched sexism, Harris and Savulescu's arguments imply that parents are obligated to choose male children. If it becomes possible to select for genes for skin color, then parents will have strong reasons to prefer a child with the skin color of the dominant social group in order to avoid the destructive effects of racism. Similarly, if there are genes that elevate the chance that an individual will be attracted to others of the same sex, then parents will be obligated to select against these genes in homophobic societies. While the prospect of identifying and selecting for (or against) genes for race or sexual preference might seem remote, so, too, does the prospect of eliminating the impact of entrenched racism and homophobia on individual well-being. Thus, in most of Europe, North America, and Australia, Harris and Savulescu's argument would have parents choosing white male children who would grow up to be tall and (probably) blonde haired and blue eyed. When it comes to the sorts of people the consequentialist

In the end, Savulescu's view places a limit on parental choice, but only the most minimal limit. For Savulescu, discussing the limits of procreative choice is to draw attention away from the importance of who has to make these choices, and more particularly, that parents should be very intentional about the nature of what is at stake when making them. "Once technology affords us with the power to enhance our and our children's lives," Savulescu claims, "to fail to do so will be to be responsible for the consequences."¹¹⁵ So as to clarify the full scope of this obligation he continues:

To fail to treat our children's disease is to harm them. To fail to prevent them getting depression is to harm them. To fail to improve their physical, musical, psychological, and other capacities is to harm them, just as it would be to harm them if we gave them a toxic substance that stunted or reduced these capacities.

For this reason, we are once again thrust back upon something approximate to Mill's harm

principle as it relates to the question of disability. In the wake of Sharon and Candy's

decision to pursue the creation of a deaf child, two basic lines of thought emerged. On

one hand, Gauvin's parents were immediately criticized for, as one legal scholar put it,

setting "limits on a child's potential."¹¹⁶ On the other hand, however, was the view that

argument would have us choose to bring into the world, then, the ultimate conclusions of the new eugenics are remarkably similar to those of the old."

From R. Sparrow, "A Not-So-New Eugenics: Harris and Savulescu on Human Enhancement" in *Hastings Center Report* (41) (2011), 1.

While Professor Charlo has written a great deal more on this question, this quote is taken from the Guardian's reporting on the case, found here:

http://www.guardian.co.uk/world/2002/apr/08/davidteather (last accessed February 12,

¹¹⁵ Savulescu, "New Breeds of Humans: The Moral Obligation to Enhance."¹¹⁶ The full published quote is as follows:

[&]quot;I think all of us recognise that deaf children can have perfectly wonderful lives," Alta Charo, a professor of law and bioethics at the University of Wisconsin said. "The question is whether the parents have violated the sacred duty of parenthood, which is to maximise to some reasonable degree the advantages available to their children. I'm loath to say it, but I think it's a shame to set limits on a child's potential."

deafness need not be understood as a deficiency but, rather, as a unique culture with its own set of norms and understanding of flourishing.

The clash of these two views leaves us on the horns of a dilemma. What if all a parent wants is the freedom, understood as the absence of outside constraints, to reproduce in whatever way he or she chooses, creating whatever kind of biological child he or she desires? Why should he be stopped?

In answering *this* question, John Harris has argued that most of these scenarios are not, in fact, as nefarious as we might think. Consider, for example, this claim that follows Harris' argument against intervention in matters of "posthumous parenting" (the using of gametes after a provider has died), "post-menopausal mums," gender selection, racial manipulation, or even therapeutic cloning:

Insofar as decisions to reproduce in particular ways or even using particular technologies constitute decisions concerning central issues of value, then arguably the freedom to make them is guaranteed not only by the United States Constitution but by the constitution (written or not) of any democratic society, unless the state has a compelling reason for denying that control. To establish such a compelling reason the state would have to show that more was at stake than the fact that a majority found the ideas disturbing or even disgusting.¹¹⁷

In tension with this radical view of autonomy, theorists like Jonathan Glover (alongside others) have sought to develop a modified version of Savulescu's argument regarding parental responsibility to bring about the "best possible child." In Glover's view, even though it is the case that "some disabilities may be eliminated only by means that are a great burden for the parents," still, "where an obstacle to flourishing can be eliminated in a

^{2015).} This sentiment is an echo of Joel Feinberg's argument in favor of a "right to an open future."

¹¹⁷ John Harris, "Rights and Reproductive Choice" in *The Future of Human Reproduction: Ethics, Choice, and Regulation, ed. John Harris and Sopren Holm (Oxford: Clarendon, 1998).*

way that is not unreasonably burdensome, its removal is something we should owe to our children."¹¹⁸

It is crucial to see how this new paradigm forces parents and prospective parents to negotiate the relation of rights to obligations. What we are seeing is the well-worn tension between the rights-based claims and some sense of obligation to the innocent tracing its way across a whole new realm of experiences. And the intensity of the debate about just what we owe to our children reinforces our shared sense that we do owe them something. It is only in this light that the quest for the disabled (rather than enhanced) child (as in the case of Sharon and Candy) begins to elucidate the relation of procreative liberty to procreative beneficence.

4. Liberal Eugenics: A Continuum of Urgency

Liberal eugenicists hold that parents not only have reproductive rights but also *obligations*; and these obligations towards future children run both into future encounters between parent and child and back, as it were, into the womb. Importantly, their position is not premised on possessing either *complete* or completely *accurate* knowledge of the genetic basis of particular human traits and diseases or, crucially, full and uncontested power to determine the future of a given child, only the conviction that parents have a moral obligation to use whatever knowledge and power they do have in order to bring into the world the best possible child. At the heart of the new eugenics, then, is a claim about

¹¹⁸ Jonathan Glover, Choosing Children: Genes, Disability, and Design (Oxford: Clarendon Press, 2006) 62.

instrumental power: that which we *think* we can control, we should try to, and that which we *know* we can control, we are responsible for.

If there is substantial agreement between multiple thinkers on the level of *intent*, there is less so on the question of the aspects of individuals that should be altered or enhanced as well as the urgency of such a task.

Beginning with Ambivalence: The Case of Nicholas Agar

Nicholas Agar was one of the first bioethicists to make use of the term "liberal eugenics." And yet, at the heart of Nicholas Agar's work on the subject is a degree of ambivalence that is, in my view, characteristic of one pole of the continuum of urgency I am describing. His study, *Liberal Eugenics: In Defence of Human Enhancement*, is a useful summary of what he describes as a continuum between transhumanists like Nick Bostrom and so-called "bioconservatives" like Leon Kass. But there is more here than a historical point about the reemergence of the term "eugenics" in the bioethical literature: surveying Agar's work also helps highlight the ambivalence about human agency and reproductive decision making, an ambivalence I take to be partly due to our lack of historical memory but more directly related to a broader question regarding the relation of health to disease and, perhaps most importantly, the difficulty in drawing a fast and hard line between therapy and enhancement.

That Agar followed up his 2004 "defence of human enhancement" with a work titled *Humanity's End: Why We Should Reject Radical Enhancement* in 2010 shows less a development in Agar's thought than a penchant for oscillation. In the early pages of

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Liberal Eugenics, Agar argues that the distinction between modern and liberal eugenics is, or at least can be made, plain:

Hitler showed us exactly where eugenics in pursuit of a racial ideal could lead us. However, I will argue that switching attention from races and classes of humans to individuals provides a version of eugenics worthy of defense. We would be rejecting *authoritarian* eugenics, the idea that the state should have sole responsibility for determining what counts as a good human life, in favour of what I will call *liberal* eugenics. On the liberal approach to human improvement, the state would not presume to make any eugenic choices. Rather it would foster the development of a wide range of technologies of enhancement ensuring that prospective parents were fully informed about what kinds of people these technologies would make. Parents' particular conceptions of the good life would guide them in their selection of enhancements for their children.¹¹⁹

Importantly, Agar goes on to show that in a certain sense, the aim of liberal eugenics is no less social than those of the modern account; they are simply, as he states, less *authoritarian*. The locus of moral concern, then, has not fully shifted from society to the individual as much as it has shifted from a vision of the *state* as the aggregator of society's preferences and embodiment of a shared moral vision to the state as a supporter of a multiplicity of individuated moral visions. "Liberal societies," Agar, citing the early Rawls, tells us, "are founded on the insight that there are many different, often incompatible ideas about the good life."¹²⁰ On Agar's account, given the current variety of *contested* accounts regarding the ends and goods of life, the older account of eugenics is wrong in large part because the social conditions required for its flourishing no longer hold. It is wrong, at least in part, because the facts of modern pluralism ensure that it cannot be widely held. It is for this reason that it is currently untenable.

¹¹⁹ Nicholas Agar, *Liberal Eugenics* (Malden, MA: Blackwell Pub, 2005), 5.¹²⁰Ibid., 6.

Agar places himself somewhere between what he calls the "bioconservatives," represented by Leon Kass most often and Nick Bostrom and other transhumanists. He says:

The liberal eugenics that I defend occupies a location between these extremes. Against the conservatives, I argue that enhancement is not incompatible with a meaningful human life. But against the transhumanists, I offer no unconditional endorsement of the idea that we should use technological means to increase the psychological and physical vigour of our descendants. The transhumanist vision of a seamless fusion of humanity with technology may appeal to some prospective parents, but it will certainly not appeal to others. Furthermore, the onus will be on those with very ambitious visions of enhancement to show that they do not harm those they bring into existence.¹²¹

Agar's resulting "pragmatic optimism" regarding the use of enhancement technologies is rooted both in skepticism regarding the capacity of techno-utopians to deliver the goods, as it were, and his sense that moral consistency regarding technological developments is overrated. Employing an approach to assessing the morality of any particular development in accordance with a set of what Agar calls "moral images" provides Agar with a way forward that neither rejects all developments out of hand (as "against nature" or some such claim) nor causes one to check one's critical faculties at the doors of the fertility clinic or lab. After all, Agar suggests, given the nature of the claims they make, we won't be able fully to assess the morality of the work of liberal eugenicists like Nick Bostrom *prospectively*. For this reason, in the concluding paragraphs of the book, we read:

I propose that Jenner and the organ transplant pioneers, rather than the Nazi doctors, are the moral counterparts of pioneers in human enhancement. Even if they stand ready to learn from their failures, these experimenters will want the best for the clones and genetically modified humans they create.

It is impossible to guess the exact means by which we will eventually enhance human abilities. Perhaps none of the technological paths discussed in this book

¹²¹Ibid., 19.

will lead anywhere. However, it is a reasonable bet that the biotechnologies of some future century will develop techniques capable of safely enhancing human attributes. Once this point is reached we will be able to implement a liberal eugenics, granting prospective parents a limited prerogative to use enhancement technologies to choose their children's characteristics.¹²²

To see what I am calling Agar's ambivalent gradualism we need only look at Agar's next book, aptly titled *Humanity's End: Why We Should Reject Radical Enhancement*. While the substance of that book is not quite in line with the title insofar as Agar's text presumes a great deal of agreement on what is conveyed by the "radical" in "radical enhancement," it is safe to say that Agar's concerns about the push towards "post-humanity" are very much in line with the bioconservatives he criticized in *Liberal Eugenics*. For example, in developing an account of "species-relativism" wherein certain moral values are specific to particular species, Agar is searching for an account of the *humanum*, the particularly human, that is, some set of moral features or sensibilities that, once identified, could rightly be ascribed to any and all members of the species.

In other words, this is the view that, "certain experiences and ways of existing properly valued by members of one species may lack value for the members of another species."¹²³ Less a "line-drawing" enterprise that characterizes so much of our contemporary debate regarding the relation of capacities to personhood, Agar's account of species relativism is both straightforward and fairly uncontested: there are, he argues, certain moral traits possessed by human beings, certain values that we can rightly call "human."

¹²²Ibid.,175.

¹²³ Nicholas Agar, *Humanity's End: Why We Should Reject Radical Enhancement* (Cambridge, Mass.: MIT Press, 2010), 12.

The real threat of radical enhancement technologies lies in their cartoonish qualities; in the pursuit of longevity at all costs. Proponents of radical enhancement act as if these were the only distinctly human values, *thereby sacrifice some values constitutive of humanity at the altar of others*. As Agar puts it:

Does species-relativism offer a plausible account of the value we place on our lives as experiences? Some human values are likely to withstand, and even be promoted by, radical enhancement. Longer lives and improved intellectual and physical prowess are certainly the objects of human desires; they aren't constructs of transhumanist ideology. The values that correspond with these human desires will doubtless survive our radical enhancement if we exit the human species. My concern is for the violence done to other human values by the unchecked pursuit of extended lives and enlarged intellects.¹²⁴

Reaching for the language of 'doing violence' to describe the threat posed to the whole of humanity by radical enhancement technologies, Agar appears now to want to offer a noholds-barred critique of exactly that which he has previously recommended. In a series of chapters on Aubrey de Grey, Nick Bostrom, Ray Kurzweil, and James Hughes, Agar specifies this critique in great detail: each of these theorists – which he labels "the therapist," "the philosopher," "the technologist," and the "sociologist" respectively – have set their sights on the eclipsing of humanity, precisely the sort of violence Agar has in mind here.

Nevertheless, despite his apparent reversal of opinion, Agar's ambivalence towards enhancement still comes through in this later text. It is most discernible in the distinction he draws between "moderate" and "radical" forms of enhancement. In his view, "radical enhancement involves improving significant capacities to a degree that greatly exceeds what is currently possible for humans." Yet, he continues, "the chief debating examples in the

¹²⁴Ibid., 13.

philosophical literature on enhancement involve cases of what I will call moderate enhancement." In support of this distinction, Agar brings up enhancement technologies that could increase the likelihood of a child having the intellectual capacities of Einstein or athletic prowess of Roger Federer. While using these technologies does, for Agar, raise some "moral issues," they can be distinguished from "radical enhancement" that results in beings that are "not only significantly better than us in various ways, they are different from us – so different, in fact, that they do not deserve to be called human."¹²⁵

How do we account for the shift in Agar's thinking? How do we account for *In Defence of Human Enhancement* being followed by *Why We Should Reject Radical Enhancement?* Was it due to the strides Bostrom and others have taken in pointing out the so-called "status quo bias" of bioconservatism?¹²⁶ Is the threat of post-humanity actually more dire than it was a decade ago?

In my view, the shift in Agar's tone has to do more with his realization that the philosophical distinction between "moderate" and "radical" technologies is more porous than he has thought (or had wanted to think?). Importantly, this unveils the nature of the ambivalence marking one pole of the continuum I am describing here. There is a persistent sense in the work of Agar and others that both (a) the use of technological developments (particularly as they relate to genomics and reprogenetics) should not be ruled out *categorically* due to the possible real and therapeutic benefits they may produce; and (b) the pursuit of post-humanity is but an *extension* of the line of argument upon which the pursuit of "moderate" enhancements resides. Hence, the ambivalence: *there are real and*

¹²⁵Ibid., 17.

¹²⁶ On this, see the influential paper, Nick Bostrom and Toby Ord, "The Reversal Test: Eliminating Status Quo Bias in Applied Ethics," *Ethics* 116 (4) (2006): 656-679.

tangible interventions that should be pursued, but once we begin to pursue such interventions it becomes increasingly difficult to recognize the point at which those interventions have become less "moderate" and more "radical."

Even given Agar's advocacy of developments that match our moral images, it is this ambivalence about the nature and extent of human power that pervades much of the liberal eugenic mind, causing some, like Agar, to be gradualists in nature: yes, there is progress to be made; but we are susceptible to self-deception and hubris at every turn.

Techno-Utopian Alarmists and the Return to Public Health

The work of Julian Savulescu has already been mentioned multiple times, and with good reason. Savulescu's early defense of procreative beneficence as a morally unproblematic justification for both preventing the birth of deficient human life¹²⁷ and utilizing new reproductive technologies to bring into the world the "best possible child"¹²⁸ brought genuine philosophical clarity to the mood that had yet to be given full voice. Moreover, Savulescu, like his teacher Peter Singer, does not shy away following an argument to its conclusion, no matter how out of fashion or intuitively immoral such a conclusion may be. This is not to say that Savulescu is uncritically strident in his views; in fact, what follows is an attempt to show that at the other end of the continuum from Agar's ambivalence about what constitutes progress, there is another moment of ambivalence, albeit of a different sort, for in sorting through Savulescu's progression regarding the place of state compulsion regarding the need for moral bioenhancement we

 ¹²⁷ Julian Savulescu, "Reasons Not to Have a Disabled Child" in Skene, *The Sorting Society*.
 ¹²⁸ See Savulescu, "Procreative Beneficience."

begin to put pressure on one of the central claims of part I. How thoroughly *liberal*, we begin to ask, are liberal eugenicists? By interrogating this question we can begin to test the outer limits of the liberal eugenic mood.

We can begin with what looks like Perrson and Savulescu's current (final?) position on the matter of moral enhancement, at least if we hold the view that the final bookpublished version of a number of articles co-authored from 2008 onwards should be given some degree of increased emphasis. In *Unfit for the Future: The Need for Moral Enhancement*, they make a fairly straightforward argument in favor of committing significant resources (scientific, public, and financial) to further uncovering the genetic basis of morality and the possibilities of moral enhancement. Crucially, in *Unfit for the Future*, Perrson and Savulescu feel no need to give a full-fledged defense of cognitive enhancement technologies. Rather, they argue that, were our efforts at moral enhancement to lag significantly behind the effort to increase our other capacities (including the capacity to harm people), we would be, all things considered, worse off.

The argument unfolds in an uncomplicated manner. It opens with the observation that:

For most of the 150,000 years or so that the human species has existed, human beings have lived in comparatively small and close-knit societies, with a primitive technology that allowed them to affect only their most immediate environment. So, their psychology and morality are likely to be adapted to make them fit to live in these conditions. But by science and technology humans have radically changed their living conditions, while their moral psychology has presumably remained fundamentally the same throughout this change, since the change has occurred relatively rapidly (on an evolutionary timescale), especially in the last centuries.¹²⁹

¹²⁹ Ingmar Persson and Julian Savulescu, Unfit for the Future: The Need for Moral Enhancement, (Oxford: Oxford University Press, 2012), 1.

With this, the essential premise of the work is established: Our moral furniture, as it were, has not evolved in such a way as to keep up with our instrumental power. What's our predicament? We are left fundamentally ill equipped. Moral enhancement, as an act of supplementation is required, they argue, due to the increased likelihood of what they call Ultimate Harm, a term defined as the capacity to make "worthwhile life forever impossible on this planet."¹³⁰ The two potential sources of Ultimate Harm are the somewhat familiar risks to human life posed by global climate change and, perhaps more directly, the potential for weapons of mass destruction to be used *en masse*.¹³¹ In either case, we happen to be our own worst enemies.¹³²

On this view, as our powers increase, we do not simply *influence*, *alter*, or *subdue* the world; we, time and again, *make* it – that is, we fashion it into what we think it should be. The logical implication of our technological age, then, is that whatever we *can* control, or at least influence, we are morally *obligated* to control; and to the degree that we fail to control what we could control, we act immorally. Crucially, Perrson and Savulescu hold that since

¹³⁰Ibid., 47

¹³¹ Regarding this second point they argue the following:

The expansion of scientific knowledge and technological prowess will put weapons of mass destruction in the hands of an increasing number of people. In so far as this is the case, this growth of knowledge will be instrumentally bad for us on the whole, by seriously augmenting the risk that we shall die, or be seriously harmed. For if an increasing percentage of us acquires the capacity to destroy an increasing number of is, it is enough if very few of us are malevolent or deranged enough to

use this power for all of us to run a significantly greater risk of death or injury (47). ¹³² In some sense, the diagnosis Persson and Savulescu provide of the capacity of our moral concepts to meet our most pressing challenges is reminiscent of Hans Jonas' declaration on the first page of *The Imperative of Responsibility*. Jonas declares, "that with certain developments of our powers the nature of human action has changed, and, since ethics is concerned with action, it should follow that the changed nature of human action now calls for a change in ethics as well." Jonas, Hans, *The Imperative of Responsibility*. (Chicago: University of Chicago Press, 1984).

we now understand the biological and, more specifically, genetic basis of our outdated moral dispositions, what is called for is both significant research into the means by which we could genetically manipulate and enhance ourselves morally and the best political apparatus for ensuring that such developments are widespread.

"We shall contend," they say, "that in order for the majority of citizens of liberal democracies to be willing to go along with constraints on their extravagant consumption, their moral motivation must be enhanced so that they pay more heed to the interests of future generations and non-human animals."¹³³ They continue:

This could be done partly by the traditional methods of moral education, e.g. by regular reflection on the grounds or reasons that make actions morally right, and by vivid representations of what it could feel like to be on the receiving end of wrongful actions. But our knowledge of human biology, in particular of genetics and neurobiology, is now beginning to supply us with means of directly affecting the biological or physiological bases of human motivation, e.g. by the use of pharmacological and genetic methods, like genetic selection and engineering. We shall suggest that there are in principle no philosophical or moral objections to the use of such biomedical means of moral enhancement – *moral bioenhancement*, as we shall call it – and that the current predicament of humankind is so serious that it is imperative that scientific research explore every possibility of developing effective means of moral bioenhancement, as a complement to traditional means.¹³⁴

Though it is largely implicit in claims like this, the major philosophical point they

go on to develop is the view that what they call the "act-omission" doctrine of "our

common-sense morality" can no longer be tenable:

The growth of our powers of action due to the inventions of scientific technology makes it more important to realize the untenability of the act-omission doctrine of our common-sense morality ... The reason is that, as our powers of action increase, so does the range of what we let happen through failures to use those powers.

¹³³ Persson and Savulescu, Unfit for the Future, 2.¹³⁴Ibid., 2.

It is worth pausing, here, over the political implications of this view. One of the central claims of the new eugenics is that it is, in some sense, radically individualistic—the moral agent in a whole range of reproductive decisions is purportedly the individual. Who, then, does the pronoun "we" refer to in refrains such as "as our powers of action increase, so does the range of what *we let happen*"? Collective individual decision makers? Our representative leaders?

This is precisely the sense of the term employed in the conclusion of an earlier article "The Perils of Cognitive Enhancement and the Urgent Imperative to Enhance the Moral Character of Humanity." Persson and Savulescu restate their view regarding the urgency of action like this:

The picture we have painted is rather gloomy: given that we are unlikely to arrest the progress of cognitive enhancement, or that we may already be too smart for our own good, *we are in need of a rapid moral enhancement*, but such an enhancement could only be effected if significant scientific advances were made.¹³⁵

The urgency of "our" predicament grounds the proposal that bioenhancement be

compulsory:

At the very least, the perils of cognitive enhancement require a vigorous research program on understanding the biological underpinnings of moral behaviour. As Hawking quipped, our future may depend on making ourselves wiser and less aggressive. If safe moral enhancements are ever developed, there are strong reasons to believe that their use should be obligatory, like education or fluoride in the water, since those who should take them are least likely to be inclined to use them. That is, *safe, effective moral enhancement would be compulsory*.¹³⁶

¹³⁵Ibid., 173.

¹³⁶ Ingmar Persson and Julian Savulescu, "The Perils of Cognitive Enhancement And The Urgent Imperative To Enhance The Moral Character Of Humanity," *Journal Of Applied Philosophy* 25 (3) (2008): 162-177, at 173.

While they have distanced themselves from this position in *Unfit for the Future* – at least insofar as they no longer state this trajectory of their thought so clearly – one clear implication of this position is that liberal democracies are far too *liberal* and far too *democratic* to meet the challenges posed to humanity as such in the 21st century. According to Persson and Savulescu, the simple, empirical fact is that those who may be least inclined to willingly undergo forms of moral bioenhancement are precisely those whose need for such is great This, in their view, is a major argument in favor of mandatory compulsion – the very thing that the new, liberal eugenics purportedly rejects.

Moreover, Persson and Savulescu are strident in their view that the pace at which democratic forms of government are capable of change renders the core democratic principles of representative governments suspicious. Can we, they ask, trust democratically elected officials to not just do the right, but do it in a timely fashion? In the opening to the eighth chapter on "Authoritarianism and Democracy," they state the following:

Non-democratic, authoritarian forms of government are better placed than democracies to implement unpopular reforms effectively. This is increasingly so the more robustly or securely in power the authoritarian governments are. Whether this greater efficiency is a good or bad thing depends upon whether the unpopular reforms are overall beneficial or harmful.¹³⁷

Interestingly, from here Perrson and Savulescu go on to discuss China's one-child policy, describing it as clearly coercive, before making the claim that "it is not unreasonable to think that it would have been advantageous, both nationally and internationally, if India had introduced a policy similar to that of China."¹³⁸ We should not, however, think that Persson and Savulescu prefer authoritarian forms of government due to their increased

¹³⁷ Persson and Savulescu, Unfit for the Future, 86.

¹³⁸ Ibid., 87.

efficiency. Though they are clear to say that, "theoretically, a meritocracy consisting of a scientifically educated elite with authoritarian power could sufficiently quickly install environmentally-friendly policies," they are clear to say that they are "assuming that it is best to retain democracy." It is the case, however, that democracies that prize privacy, for example, run the risk of becoming "too liberal." "We suggest," they say, that contemporary liberal democracies are in danger of being too liberal to last and that this possibility is particularly serious, given that humans have the capacity to cause Ultimate Harm."¹³⁹

With these features of Perrson and Savulescu's argument in place, we can understand what I am describing as the techno-utopian alarmists on the far end of the liberal eugenic spectrum. Their alarmist sensibilities, however, are not garish like those of say, John Harris.¹⁴⁰ But alarmism it is all the same. These differences exist, however, within a shared moral framework that tends, I would suggest, to move the field of bioethics into that of public health ethics, and, in so doing, begins to move into a less liberal direction.

5. Conclusion, Or, What Does It All Amount To?

In chapter 1 I gave sustained attention to the atmospherics that constitute our reproductive social imaginary. Importantly, these include a set of material conditions as well as shifts in our general understanding of the practice of having children. In seeking to give the conditions in which the language of eugenics has resurfaced some texture, I have

¹³⁹Ibid., 99.

¹⁴⁰ For Harris' argument, see his essay "Enhancements are a Moral Obligation," in Nick Bostron and Julian Savulescu, eds., *Human Enhancement* (Oxford: Oxford University Press, 2009), 131-154.

most certainly not wanted to imply that the claims of liberal eugenicists are simply the result of a certain confluence of events and/or ideas. The emergence or establishment of the language of liberal eugenics is not, in other words, inevitable.

Throughout this chapter I have sought to show that at the heart of liberal eugenics is the conviction that parents have good reasons to utilize their power in order to bring into the world the "best possible child." In this, there is a clear, unequivocal answer to the question of what we are to do with increased technical power and knowledge: we are to *use them.* But this position comes into a cultural moment preceded by other cultural moments, and, as such, I have sought to situate the claims of the liberal eugenicists within a narrative arc.

That narrative begins with the complex cluster of social, technological, theological, and political developments that surrounded what I've called America's vintage eugenics program. I argued that during this period, the theoretical moved into the political through the scientific, which is a way of stating simply that eugenics is and always has been a political, cultural, and scientific phenomenon. From there, the narrative turned to the emergence of the concept of *reproductive autonomy*, particularly in the post-war period and into the 1970s. My claim here is not necessarily that there was broad agreement on the specific *content* of that concept. I maintain only that, however it is understood, the decisive break with the vintage eugenics of the early 20th century took place with the emergence of the widespread use of the language of reproductive autonomy. This was illustrated in the discussion of *Davis vs. Davis* from the Tennessee State Supreme Court. In section three, I pressed the question raised by the ambiguities in the concept of reproductive autonomy,

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namely, the questions regarding its scope. Are there obligations coordinate with reproductive rights? And are those obligations towards particular types of ends or treatment?

Here, in discussing the "Deaf Lesbians" case, and the debate it provoked, I argued that the next development in this narrative arc was a series of debates regarding the limits and constraints of the liberty prospective parents have. Then, in time, these debates gave way for the answer provided by the new eugenicists. In section four, I described the work of the new eugenicists along a continuum of urgency, beginning with a degree of ambivalence and concluding with a high degree of alarm. The arc turns out to be a circle.

The basic presumption of the chapter has been this: if, as I described previously, we can talk about reproductive decision-making as an expression of human agency, then we can ask questions not only about the strength of that agency but also about its moral quality – that is, the morality of its articulated objectives. Put differently, if the first chapter describes the way in which reproduction has now been disaggregated and demystified, the work of this chapter has been to take up the answers provided to the question posed by Jonathan Glover's notoriously titled work of 1984, *What Sort of People Should There Be*? Describing the narrative arc of the answer to this question has been the essential work of this chapter.

In the introduction to the project I claimed that the new eugenics comes to Christian ethics in the form of a challenge. In the first chapter I described the atmospherics within which we conceive children. In this chapter, I have described and situated the proposals of theorists like Julian Savulescu and Nicholas Agar within a basic

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narrative regarding shifting social norms in the practice of reproduction. I have also shown that there are differences between these theorists and the claims that they make. The important thing to stress, however, is that there is some basic agreement regarding what we are to do with our increased knowledge and power: *we are to use them towards the creation of idealized human persons*. There may be disagreement on the margins, but there is a constant refrain that we should understand ourselves as reproductive agents with forms of responsibility towards the children we conceive precisely because we are the ones creating them. However we characterize the details or technologies involved, this is the better baby standard: some may push it further than others, but we have a basic moral obligation to build better babies.

We are now prepared for Part II of the exercise. The task here is, in some sense, the central question of the dissertation as a whole – namely, how can Christian ethics meet the challenge posed to it by the new eugenics? Part II:

Thinking Alongside Others

Introduction

If part I of this dissertation was successful, it accomplished two things. First, in sketching four features of our common reproductive social imaginary, I sought to bring a portion of the background picture of how we conceive children in our current moment into full view. This account of the background picture is but a snapshot, and, as such, is open to contestation on two fronts: it may be inadequate due to what it obscures from view or for reasons of what it brings into focus. Crucially, the argument put forward in part II of the dissertation regarding the manner in which Christian ethicists *have* responded, *can* respond, and *should* respond to the challenge posed to them by the new eugenics depends not merely upon the particulars of chapter 1 but, rather, in the connection between chapters one and two; for, chapter 2 showed how advocates of the new eugenics make use of particular features of our reproductive social imaginary in order to support their position regarding our moral obligations to bring into the world the best possible child.

However the phrase "best possible child" is construed, the moral force of such a claim trades on some aspect of the deep logic described in the account of having children provided in chapter 1. In this way, the hope of Part I is that the two chapters work together. The background culture itself is clearer when the claims of the new eugenicists are seen in full flower, and we better feel the grip of the eugenic impulse when we recognize the degree to which it trades on common, pervasive, and widespread sentiments that, in the main, we fail to see, suppress, or ignore.

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I have just mentioned that the argument of part II regards the manner in which Christian ethicists have responded, can respond, and should respond to the challenge posed by the new eugenics, and that is, in fact, my objective. The success or failure of this part of the dissertation depends, then, on the capacity to display to the reader not simply what it is that theologians working within these traditions or schools of thought have said, but how it is that their thought could be of current use. While the chapters are not equally balanced in this regard, each of these terms corresponds to a central objective of each chapter: "have" referring to the responsibility to represent the approach I am describing with analytic precision; "can" referring to the responsibility to give some prospective account of what the particular approach enables a theologian to do and what options it closes off; and "should" referring to my own assessment of the strengths and weaknesses of the approach being described. Though I am evaluating the strengths and weaknesses of these approaches, I finally recommend the approach described in chapter 5 as most apt for meeting the challenge posed by the new eugenics. This is for two reasons: counsel, as I develop the term, carries forward the most pastorally useful features of the approaches developed in chapters three and four while being at some distance from their shortcomings; and, second, counsel is more responsive to context, rendering it both a faithful and flexible ethic.

In grouping and approaching the theological materials I am assessing here I am making two judgments that should be elucidated. First, in regards to liberal eugenics and its relation to Christian theology, I am setting to one side theologians who, in some form or fashion, endorse what I take to be the core of the eugenic impulse itself. This is for two reasons. First, to my knowledge, theological defenses of liberal eugenics are few and far between, at least within Christian theology. And, secondly, they are only vaguely theological.¹⁴¹

The second judgment, however, has to do with what the work of Christian Ethics should be in our time. While I am hesitant to call that work "problem-based," for fear that it would sound a technocratic note I want to avoid, I don't, as of yet, have a better term.¹⁴²

With the weakening of authoritarian ethics morality is being based more and more pragmatically on human need and less and less on alleged revelations of the divine will or arguments based on such revelations. If we are concerned with ethical realism we should welcome this trend. It is a desirable advance in mental and moral humility, in a free world of pluralistic moral judgment. Our criterion or ideal, then, will be what is humane and rational, not what is revealed or authoritarian.

¹⁴² The account of "problem-based" ethics is shorthand for what Willis Jenkins describes at length in *The Future of Ethics: Sustainability, Social Justice, and Religious Creativity* (Washington DC: Georgetown University Press) 2013. In an interesting passage that displays something of what I am after here, Jenkins says:

Anthropogenic changes on a planetary scale force cultures to reconsider their interpretations of the human role in earth, their symbols of nature and value, their narratives of progress and purpose. Because religious traditions curate worldviews and grand stories of human purpose, they seem central to that reconsideration. Ethicists sometimes approach an overwhelming problem like climate change,

¹⁴¹ The example I have in mind here is Joseph Fletcher's 1974 work, *The Ethics of Genetic Control.* To my knowledge, few, if any, Christian theologians have taken up Fletcher's mantle. And, moreover, as Fletcher himself makes plain in the preface to that work, what he provides is a purely humanistic analysis of genetic technologies and their use. He says:

Two or three little books more or less on these questions have appeared from special religious or theological points of view. They too will come in for attention as we go along. However, the reader should know right away that this book is written from a humanistic perspective; it is not religious and does not claim to have any knowledge of God's will beyond the conviction that any God worth believing in wills the best possible well-being for human beings. This is what the bible calls love, concern for persons. Under this standard or ideal there ought not to be any significant practical difference in the ethical judgments of either theological or humanistic inquirers.

I can, however, describe something of what I mean. It is this: to describe liberal eugenics as a problem that Christian ethicists can and should address is to say that the deep logics underpinning the proposals of liberal eugenicists are both appealing and vexing not just for Christian ethicists but for the people that occupy the pews of America's churches.

We begin, then, with the frank admission of moral ambiguity: when confronted with technological developments that simultaneously promise smarter, taller, healthier, more well-behaved, in short, *better* children, as well as fewer sick, deficient, disabled, or, in short, *worse* children, most of us, most of the time, experience some degree of something akin to moral vertigo. As I described in the introduction to the project as a whole, this too marks the academic literature on the question of genetic manipulation and enhancement: on the one hand we find cheerleaders for whom no moral claim rises beyond the level of a technological speed-bump; while, on the other, we see thinkers like Francis Fukuyama who claim that nothing less than the future of political self-governance is at stake. We are, in this way, stuck between competing apocalypticisms.

Crucially, all this ambiguity and confusion – all this moral vertigo, we could call it – is carried into the hospital rooms that populate the municipalities of this country. When medical professionals of all kinds (physicians, nurses, genetic counselors, infertility

therefore, by reconsidering the cosmology of major traditions. Yet religions are always more and different than their formal beliefs about the world, because they are carried by practitioners who constantly reuse their traditions in creative ways in order to meet the problems of everyday life." (19-20)

As will become clear in chapter 5, counsel is a form of the moral life that does not quite recommend the sort of "creative reuse" that Jenkins describes here. But it does grant a certain kind of flexibility, albeit within a pastoral relationship. The main point here, however, is just that Ethics (as an intellectual enterprise) and ethicists (as a group) should, on my view, be interested in meeting the challenges posed to them by real facts in the world. In this way, Ethics is fundamentally a responsive enterprise. specialists, etc.) "consult" with patients regarding any number of medical concerns, a major feature of such meetings is the phenomenon of *confrontation*. In these encounters, patients are forced to confront not only the material facts of a diagnosis or prognosis, but also how they think about them. This is a moment, more likely, a series of moments, of *reckoning* – again, not merely with the facts of the case, but with the fact that these facts are now my facts, *facts to which I must respond*. And the stakes are irreversibly high, particularly when the confrontation involves nascent human life.

The phenomenology of confrontation is something that medical ethicists rarely discuss. The first attempt, so far as I know, to treat it in an extended fashion comes in a fascinating and revealing new edited volume called, *Malignant: Medical Ethicists Confront Cancer.*¹⁴³ What makes this book unique among others is that the authors are all medical ethicists of great renown (including Dan Brock and John Robertson, both cited extensively in chapters one and two) who either (a) underwent cancer treatment or (b) walked alongside a loved one undergoing cancer treatments. And they commit not to writing a disputation on health care policy or the ethics of doctor-patient relationships but, rather, what it was like for them to go through treatment as the patient that they were. Crucially, much of what is said about the ambiguities of these experiences, about the mismatch between theoretical and academic knowledge and the felt concerns of the moment could easily, I think, be just as true for cancer treatment as the conception and treatment of children. Take, for example, the three paragraphs that begin Rebecca Dresser's section on "The Way We Look at Cancer" in the opening chapter, "Crash Course":

¹⁴³Rebecca Dresser, ed. Malignant: Medical Ethicists Confront Cancer (New York: Oxford University Press, 2012).

Before cancer entered our lives, most of us had worked for years in the medical ethics field. You might think that a background in medical ethics is good preparation for dealing with cancer. We are not so sure about that. It's true that we knew more about the medical system than most patients do. We were used to reading medical journals and participating in medical meetings, so we knew how to talk to doctors and find out more about our cancer and its treatment. Because of our work, we knew doctors who could help us with treatment decisions and come to our aid when the system broke down. Knowing these things was helpful, but we didn't feel ready for cancer. Although some of us had an easier time than others, cancer wasn't easy for any of us.

We did not feel particularly prepared for cancer, but we did have a certain frame of reference for the cancer experience. Before cancer became a personal matter, we were used to thinking about serious illness from an academic, professional perspective. We had discussed cases involving cancer patients with medical students, doctors and nurses, and hospital ethics committees. Cancer was embedded in many of the topics we examined in our teaching and writing, topics like end-of-life care and medical research.

This background affected our perceptions of cancer, making us particularly alert to matters of ethics. When doctors told us about the cancer diagnosis, we were frightened in the same way that anyone is when cancer is announced. At another level, however, we were watching the way the message was delivered. Our doctors were "breaking bad news," a subject we had encountered in medical ethics teaching and scholarship. We had studied truth-telling about serious illness and now we were seeing it done. We heard the unwelcome announcement primarily as patients and caregivers, but we also heard it as medical ethicists. The ethical gaze we had developed through our work was still in operation.¹⁴⁴

One could substitute "infertility" for "cancer" in these paragraphs without losing

any of the moral force of these claims. The same must be true for "genetic abnormality" or "genetic risk." Whether it is cancer, a sick child in-utero, infertility, or something far less grave, the type of analysis I want to provide is responsible to this initial moment of reckoning. To call this method "problem-based," therefore, is to say that for Christian Ethics to be properly pastoral, it must begin by attending to the very phenomenon I've just described as the moment or series of moments of confrontation. And it must, on my

¹⁴⁴ Dresser, Malignant, 3-4.

reckoning, include not just the moment wherein a medical professional confronts a patient with a diagnosis, but also the moment wherein the patient confronts his or her basic intuitions *and then begins to think about what to do*.¹⁴⁵

The term that best characterizes this is a moment of "provocation." In light of this experience of confrontation and the reckoning that it entails, what is it that provokes and merits extended reflection? All of us confront these questions; academic life affords us the time, space, and (hopefully) skill to group, assess, and recommend certain patterns of thought in the cold light of day.

The three approaches I describe in the following chapters constitute a taxonomy of complaint in that they enable contemporary Christian ethicists to meet the challenge posed to them by liberal eugenics slightly differently. The approaches characterize the agent of provocation differently, have different instincts as to what concepts or practices are most under threat and therefore most in need of protection, marshal different conceptual resources in their responses, and take different focal images as their touch-points. For this reason, it should be of no surprise that the way in which these three approaches meet the challenge of the new eugenics (or *could* meet the challenge) brings certain aspects of the phenomenon itself into better focus.

¹⁴⁵ In another context, this is what Michael Sandel calls the "impulse to philosophy," by which I take him to mean something like the search for coherence. I too mean something like the search for coherence. And in that way, this "problem-based" approach could be used to analyze any number of moral experiences people have. But I also mean more than the quest for coherence. I mean something like the search for *consolation* – that is, the quest for some sort of solace, some balm, that renders a situation intelligible enough to endure. For Sandel's thought on "the impulse to philosophy," see the opening chapter of Michael Sandel, *Justice: What's the Right Thing to Do?* (New York: Farrar, Strauss and Giroux, 2010).

In chapter 3, I take up the tradition of thought that was, for quite some time, the bread and butter of Moral Theology: what I call "ethics as act-analysis." This approach to the moral life builds from the ground up, insisting that the object of moral analysis is the dynamics of decision-making and, in particular, the basic goods towards which acts of various kinds respond. This approach has developed largely within the teaching office of the Roman Catholic Church and, as I'll show, takes the confessional booth as its imaginative core. It is here that a priest mediates God's judgment, counsel, and absolution, and, importantly, he does so with authority. In addition to this account of authority, this approach has the lasting benefit of insisting upon a teleological conception of the moral life: acts can be grouped into kinds; once so grouped, the constitutive features of the act can be articulated; those features respond to rationally discernible goods; and failures to treat those goods with their due respect constitutes moral evil. Though this approach is worked out within the teaching office as it regards a number of moral issues, the one that is most pertinent to the topic here and relevant for the ongoing debates within Roman Catholic theology is how to characterize contraception. For this reason, chapter 3 is committed to mapping that discussion, incorporating the "have" and "can" criteria described above more fully than the "should."

The chapter on what I call "the ethic of embrace" turns from the inner dynamics of action to the question of what it means and takes for a community to develop the virtue required to welcome deficient forms of life into its community of friends. Here, in the thought of theologians like Stanley Hauerwas and Hans Reinders, the scope of analysis is expanded: we get less about the mechanics of decision and more about the cultivation of

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virtue; we get less about intrinsic evils and more about the politics of the Church *qua* Church; though we get a teleology of sorts, this also comes with a form of theology-asmodernity-criticism, particularly on the question of characterizing disability. Given the emphasis on community and the virtues of a common life, I concentrate here on the dynamics of friendship and the roadblocks thereto, as evidenced in the "extraordinary encounter" between Peter Singer and Harriet McBryde Johnson that opens the chapter.

The final chapter of this section articulates the concept of "counsel" that I find in the work of Anglican theologian, Oliver O'Donovan, and one of his teachers, Paul Ramsey. Predictably, the aperture is opened further. Though Ramsey and O'Donovan each engage in act-analysis and ecclesiastical work, the object of analysis is extended to something like "civic health," rendering the approach primarily concerned with somewhat speculative concerns regarding the proximate future of society itself. Counsel, on this picture, requires an analysis of acts as well as a thick account of the practices of the church. But it is reducible to neither; it is, rather, a flexible moral theory that insists on *personalizing* judgments – that is, placing them within the context of a pastoral relationship wherein desires can be addressed candidly, hopes can be legitimated, and moments of moral danger can be identified. As becomes clear in the conclusion of the project, it is this concept of counsel that I commend, less for what it has done, and more for what it *can*.

Though the argument of this part of the dissertation depends upon differentiating these three approaches, two things are worth noting regarding their commonality. First, though there is analytic and historical value in distinguishing between these three approaches in some detail, my depiction of each approach depends on decisions I am

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making regarding the points of *emphasis* in each approach rather than their selfpresentation exclusively. I am, for heuristic purposes, making editorial decisions, both to highlight contrast between the approaches and push each of the positions to their most robust form. For this reason, little attention will be given to what we could call the "minority reports" that exist within each approach.¹⁴⁶ Perhaps too little. But the point, as I say, is heuristic. We understand each approach better when they are set in contrast to one another. Secondly, however, I should highlight my conviction that each of the approaches is pastoral in their intent, precisely in the sense I described above regarding the phenomenon of medical confrontation. In their own ways and in a more or less direct fashion, each of these approaches can be seen as responsive to known or perceived experiences of moral distress regarding the conception and nurture of children. They are, in this way, exemplars of what I take the task of Christian Ethics to be and, as such, worth a full and fair hearing rather that most pernicious of the academic vices: willful and dismissive inattention.

¹⁴⁶ This choice comes across most directly in my decision to highlight the "official position" of the Roman Catholic Church in chapter 3 as well as the work of the New Natural Lawyers who have defended that position on philosophical grounds.

Chapter 3:

Ethics as Act-analysis

In the introduction to Part II I promised to provide analysis of the three approaches described in a preliminary fashion there: what I'm calling "ethics as actanalysis," the "ethics of embrace," and, finally, "ethics of counsel." The standard I set for myself there is most decidedly not that of comprehensiveness. Each of these approaches has, to some degree or another, gathered sets of cheerleaders and detractors that constitute some "center" and various peripheries, which, put together, constitute massive literatures. My task is not to recount the claims of each and every participant who has engaged in these discussions; it is, rather to meet the three-fold standard I described there under the crass monikers of "have," "can," and "should." Each of these standards is shorthand for more highfalutin language: "have" corresponding to a historical and conceptual analysis that shows where the approach comes from and how its parts relate to the whole; "can" referring to the set of concepts, narratives, and patterns of reasoning that enable and disable certain kinds of possible claims; and "should" referring to the claims that, on my rendering of the best possible account of this tradition, could most adequately meet the challenge posed to Christian ethics by liberal eugenics.

All this, recall, constitutes the taxonomy of complaint I am constructing. And though the complaints differ from one another in multiple ways that will, if all goes well, become clear, they are each a response to the ambiguities of conceiving children in our day and, importantly, the way that liberal eugenics capitalizes on some of the deep logics of the background picture described in chapter 1. I am not merely describing a taxonomy then; it is crucial to see that I am providing a taxonomy of *complaint*.¹⁴⁷

¹⁴⁷ The hope here is that the differences between these traditions of thought will become more available to us by seeing how they interact to the provocation that is liberal eugenics.

We begin with "ethics as act-analysis."¹⁴⁸ This is an approach to the moral life that concerns itself primarily with analyzing the moral quality of discrete human actions. It self-consciously builds from the ground up, preferring to first analyze the unique features of a given action by an agent before giving an account of the good life as such. It begins with an intuitive and plausible query: *how could a good life be comprised of immoral acts*? Moreover, for this tradition of thought, the uniquely social or political question posed by the new eugenics is only answered by attending to a set of basic questions regarding individual lives: *Is sexual expression an act of a certain kind? If so, what kind of act is it? Do sexual acts have goods ingredient to them? What can we know of the natural ends of sexual expression? Anything? How do certain acts relate to agents?* And so on. In what follows I describe some of the answers ethicists in this line of thinking – predominantly Roman Catholic ~ provide to these particular questions but, more importantly, an account of how they reason.

The argument of the chapter unfolds under these five headings:

This is not to suggest, however, that those familiar with the field of Christian ethics will be unable to recognize these groupings as representing alternative approaches to the moral life as such. At the most fundamental level, this is undeniable: the ethics of act-analysis has largely been a game played within the confines of the teaching office of the Roman Catholic Church; the ethic of embrace is easily mapped on to the basic contours of a kind of Anabaptist-Communitarian synthesis that has been most fully developed by Stanley Hauerwas and his ilk; ethics of counsel has its roots in the English Reformation and the particular ecclesial and political structures that mark Anglican political thinking. Unsurprisingly, each of these traditions of thought carry forward habits of reasoning that are hard to break. For those that have ears to hear, the notes each of these sets of thinkers play will be readily discernible.

¹⁴⁸ A quick note on my use of language is warranted here. The approach I am describing is "ethics as act-analysis." Choosing the "as" in this phrase is intentional insofar the approach is solely concerned with the inner logics of given acts. At times, however, I refer to this approach with the term "ethics of act-analysis." This is simply a stylistic decision intended to smooth out sentences that would become all-too clunky otherwise. I am grateful to Matt Puffer for pointing this tendency to oscillate between different prepositions out to me. He is a good man.

- 1. On Sin and Guilt, or, "Where did Christian Ethics come from?"
- 2. Sex and Reproduction: The Official Position
- 3. The New Natural Law
- 4. On Goods and the Good: Two Hesitations
- 5. Conclusion, Or, What Does it All Amount To

Each of these sections presents an aspect of what I am here calling ethics as actanalysis. In the first section, I press the historical relation of contemporary Christian Ethics to its most immediate forefather, Moral Theology.¹⁴⁹ What I want to establish here is the degree to which the confessional booth is the center of moral imagination within this approach. Though this construction – "center of moral imagination" – is clunky, the concept of an imaginative center to a particular ethical approach is important. The basic point is this: If Benedict Anderson is right to say "communities are to be distinguished, not by their falsity/genuineness, but by the style in which they are imagined," attending to the imaginative center of an ethical community's discourse becomes paramount.¹⁵⁰

This section also highlights a basic feature of this approach, namely, the fact that human beings are the types of beings *that act*. Here I show how ethicists working in this tradition begin from the premise that human beings are rational; to be rational is to be capable of intending some species-related good; and, to act is to engage in morally praiseworthy or blameworthy projects in accordance with the type of being one is.

These premises set up what I describe as the dominant picture of sexual ethics within the ethics of act-analysis. By presenting the official position of the Roman Catholic

¹⁴⁹ As will become clear, the ethics of act-analysis in our own day is largely practiced within the Roman Catholic Church. It is not, however, exclusive to that community and, in fact, has found fertile soil within Protestant communities interested in recovering some form of natural law reasoning. That said, I concentrate here on the Roman Catholic Tradition of thought as a way of providing the most direct distillation of the approach I am describing. ¹⁵⁰ Benedict Anderson, *Imagined Communities* (London: Verso, 1991), 6.

Church on the nature of sex and reproduction, I am not saying that the conclusions reached by the magisterial teaching office are shared by all theologians working within this tradition, but, merely, that this is the dominant position in this line of thought.¹⁵¹

After the theological component of this position is displayed and described in sufficient detail, I turn to a philosophical defense of this position through a discussion of what has come to be called "the New Natural Law." This position is, in some sense, the paradigmatic case of the ethics of act-analysis, precisely because its main proponents (though not all proponents) find it both possible and desirable to derive a sexual ethic from explicitly non-theological first principles. Whatever theological positions they may hold, the sexual ethic thinkers like John Finnis hold does not depend intrinsically upon any particular theological concept or scheme. Rather, a comprehensive sexual ethic that would condone certain acts and promote others can be derived fully from a discussion of the ends of sexual acts themselves. We then discuss particular lines of critique of the New Natural Law that challenge the theological sufficiency of this particular move. In the work of Christian ethicists like Jean Porter, Lisa Cahill, and Gene Rogers (to varying degrees), we find another strand of thought within the ethics of act-analysis, albeit one that seeks to situate particular goods within a more expansive theory of the good as such. We then conclude with an account of the manner in which ethicists working in this line of thought can approach the question of liberal eugenics.

¹⁵¹ Dissent exists. But it exists *as dissent*. On this, see Charles Curran, The Catholic Moral Tradition Today: A Synthesis (Washington DC: Georgetown University Press, 1999) as well as Curran's essay, "Veritatis Splendor: A Revisionist Perspective" in Michael Allsop and John O'Keefe, eds., *Veritatis Splendor: American Responses* (Kansas City: Sheed & Ward, 1995).

Regarding the project as a whole, we start with the ethics of act-analysis for both historical and substantive reasons. In the first place, as I argue below, what has now become the discipline of Christian Ethics has emerged out of a particular conception of Christian Moral Theology that, for historical reasons alone, is worth attending to. Moreover, as recent historical work has argued, one of the only areas of American religious life that was able to muster a substantive resistance to the early American eugenics project was a set of Catholic thinkers.

Though I will finally criticize this approach for its rigidity and inability to characterize relationships in time accurately, this is a major reason to recommend this particular approach to the moral life. The Ethics of Act-Analysis defends a clear, concise, and integral position regarding the nature of sexual acts and their relationship to procreation: no sex without the possibility of procreation, and no procreation without sex. This conceptual elegance is partly responsible for this approach's capacity to say "no" to various developments and shifts within reproductive practice and decision making.¹⁵²

Perhaps this is why this approach has enduring power. Even amidst the rise of contextual theologies of various kinds and forms of ethical discourse that focus on social structures to the relative neglect of individual actions, the dominant understanding of ethics remains one wherein we intuitively hold that what constitutes ethics is an examination of *what it is we are to do in the world*, that is, how we are to act.¹⁵³

¹⁵² For a very interesting account of the debates within the Catholic Church on the American Eugenics Project see Sharon M Leon's recently published, An Image of God: The Catholic Struggle with Eugenics (Chicago: University of Chicago Press, 2013).

¹⁵³ In his recently published Self, World, and Time, Oliver O'Donovan puts it well:

But there is more to say then this. It would be a mistake to see the ethics of actanalysis as merely a way of retaining a notion of individual responsibility by insisting on breaking down morality into smaller and smaller bits. Rather, what the ethics of actanalysis retains is some sense that particular acts can express the moral fabric of an individual. It is, in this way, a way of insisting upon an intimate and direct connection between how an agent acts and who an agent is. Put differently, this ethic insists upon the notion that *character* matters. As Ralph McInerny puts it, we know that we are dealing with uniquely *human* acts when "praise or blame is pertinent."¹⁵⁴ This is what makes the ethics of act-analysis not just a form of casuistry by which we adjudicate the relative merits of a given action but, finally an *ethic* – that is, a system of judging and developing the moral quality of our lives as such.

For myself, I now see that I embarked on Christian Ethics as I embarked on life and faith themselves, by being catapulted into it. *It was a simple demand of existence* that I should ask two questions: what I was put on earth to do, and what it could mean that I was put on earth to do it.

Here, in the introduction to Self, World, and Time, we see O'Donovan making an intuitive point regarding the status of acts in our ethical thought: whatever else we are, we are the types of beings that act in the world. And not just that: we are the types of beings that ask about the nature and meaning of our actions. What could it mean that I withhold the full truth from some people while conveying too much of myself to others? What could it mean that the suffering of my near neighbors is often neglected while I invest a good deal of time and energy to alleviate the suffering of strangers across the world? Are acts of charity generated from selfish motives equal to purely altruistic acts? Do purely altruistic acts exist? And what is charity again? These are not simply the questions of professional ethicists; they are the questions that give shape and color to the life of any ethically attuned person. And at the heart of these questions is some sense – possibly inchoate – that the substance of the well-lived life, a great deal of what it means to flourish, is learning to act well.

¹⁵⁴ Ralph McInerny, *Aquinas on Human Action: A Theory of Practice* (Washington DC: Catholic University Press, 2012) pg. 8.

1. On Sin and Guilt, or, "Where Did Christian Ethics Come From?"

The ethics of act-analysis, as I'm describing it here, begins not simply with the proposition that a concept like "human acts" is immediately intelligible and philosophically defensible, but also that the primary object of concern in Christian ethics is *the moral quality of such acts*.¹⁵⁵ The moralist, in this tradition of thought, should train priests to warn confessors in matters of grave moral danger, matters of sin, guilt, and innocence. In other words, the ethics of act-analysis takes its place within the imaginative space created not by the therapist's couch but by the confessional booth: Individuals may need consolation; but they are most fundamentally in need of moral guidance and, crucially, absolution. It is the place of the moral theologian to provide guidance for priests as they provide both.

This focus is not without good reason or historical precedent. In fact, as John Mahoney tells in the opening chapter of his *The Making of Moral Theology*, it was the practice of auricular confession that gave rise to the penitential handbooks that were developed to assist parish priests and church leaders in properly hearing confessions. For Mahoney, this involved two key developments: first, in shifting from forms of confession that were, above all, public and rare (possibly once a year) to a repeated practice that took place under the confines of a pastoral relationship of sorts, the question of the moral life

¹⁵⁵ In a certain sense, there is a great deal of overlap between this approach and the vast literature produced by philosophers in the middle part of the 20th century on the question of *intention*, the terms of which were set by Elizabeth Anscombe and countered by Donald Davidson and others. This debate continues today, focusing on what has come to be called the "guise of the good" thesis. For defenders of this thesis, all human actions have a moral valence insofar as all human actions (even seemingly perfunctory actions like, say, getting up from the desk to grab a beer from the fridge) have a presumptive moral horizon, some notion of "the good" that makes such acts intelligible. As we'll see in the discussion of *Humanae Vitae* below, the notion of intention as it relates to "procreative intent" is important for theorists like Anscombe.

was, in part, privatized; and, secondly, it was also individualized. Uniting these two features was an emerging preoccupation with individual acts of sin, which, in Mahoney's view, actually weakened, rather than strengthened, notions of moral agency. "It was the Church's growing tradition of moral theology," Mahoney says, "which was itself heavily responsible for increasing men's weakness and moral apprehension, with the strong sense of sin and guilt which it so thoroughly strove to inculcate or reinforce, and the humiliations and punishments with which it drove its message home."¹⁵⁶

While this emphasis on guilt, innocence, sin, absolution, and the like may well have weakened the confidence individuals had in the basic goodness of their everyday lives and, importantly, has come under criticism for developing into a kind of ecclesiastical casuistry that can overlook the untheorized moments that constitute the majority of our lived experience in favor of an ethics of "hard cases," as Michael Banner puts it, the ethics of act-analysis begins with a plausible intuition regarding the substance of morality.¹⁵⁷ It is this: if we are, as Heidegger's project showed, beings for whom the question of our being is unavoidable, central to that question is the question of our conduct, our action in the world. And if we are to ask the basic question of our being, can we not break down our lives into its smallest possible parts, sorting our actions into various kinds before differentiating the morally salient features of particular kinds of actions?¹⁵⁸

¹⁵⁶ John Mahoney, The Making of Moral Theology: A Study of the Roman Catholic Tradition (Oxford: Clarendon Press, 1987) pg. 28.

¹⁵⁷ For his critique of the "hard cases" tradition see chapter 1 of Michael Banner's forthcoming work, *The Ethics of Everyday Life: Moral Theology, Social Anthropology and the Imagination of the Human.*

¹⁵⁸ While the story that Mahoney tells regarding Moral Theology's development in relation to the practices of auricular confession is largely a Roman Catholic one, and the analysis provided in the rest of the chapter highlights the emphasis on acts within Roman Catholic

This is precisely what the ethics of act-analysis does. It begins with the observation that human beings are those beings that act and, moreover, can give an account of their actions. The ethics of act-analysis concentrates on both aspects of this fact: that humans act deliberately, and that they can give an account of such actions, making appeals to some sort of practical reason or, as John Finnis is prone to put it, "practical reasonableness."¹⁵⁹

As a representative example of this type of approach, consider the working

definition of Christian ethics provided by Servais Pinckaers. In the first chapter of The

thought, the focus on particular acts within the field of Christian ethics is by no means the property of the Roman church. In fact, even the development of a so-called "divine command" ethic within Protestant circles retains the sensibility that the important substance of ethics, that is, what can be analyzed, is a particular action in the world. For Kierkegaard and others working within this tradition, what is important is the faithfulness in the moment it is called upon, that is, when tested. For an anthology of this tradition see Janine Marie Idziak's Divine Command Morality: Historical and Contemporary Readings (New York: The Edwin Mellen Press) 1979. The cases of Bonhoeffer and Barth are a bit different. For Barth, see John Webster's Barth's Moral Theology: Human Action in Barth's Thought (London: T&T Clark) 1998. For an interpretation of Bonhoeffer's ethics see Bernd Wannenwetsch's Political Worship (Oxford: Oxford University Press) 2007. ¹⁵⁹ As Finnis has it, "practical reasonableness" is the "least misleading" translation of Aquinas's notion of the bonum prudentiae. On this, see page 84 of John Finnis, Aquinas: Moral, Legal, and Political Theory (Oxford: Oxford University Press, 1998). This is precisely the notion that Eugene Rogers challenges in chapter 3 of Aquinas and the Supreme Court. For Rogers, inclination is prior to ratio for Aquinas, which renders "natural law" an account of how concupiscence runs within human life - that is, towards what ends human beings are inclined. This is what Rogers' calls the way in which "love and gravity" come together in Aquinas. On the debate with Finnis, see the interesting thought experiment with "Finnis" on pages 64-69. There, Rogers imagines a vivified Aquinas coming forth to talk with a fictitious "Finnis" after the apparition has read John Finnis' massive tome on Aquinas's thought. In point three of that interaction Rogers says:

"Finnis" imagines a human being as a thinker (Aquinas glimpses a bronze statue of a seated figure with his chin on his fist) who sits around ratiocinating and then deliberately performs an "act," where deliberation isolates the "act" from the stream of human actions and reasoning by a Moment of Decision. For all that Aquinas admires contemplation, this thinker is not his model of humanity (66).

See Eugene Rogers, Aquinas and the Supreme Court: Race, Gender, and the Failure of Natural Law in Thomas's Biblical Commentaries (Malden, MA: Wiley-Blackwell, 2013).

Source of Christian Ethics, Pinckaers suggests that moral theologians seem to be particularly interested in the question of "what, exactly, are we doing?" While this may be simply methodological self-awareness, Pinckaers suggests the particular anxiety under which moral theologians labor is how they justify their own existence, vis-à-vis other, more-established forms of theological inquiry. According to Pinckaers, this anxiety produces competing definitions of Christian ethics. And yet, "in all definitions," Pinckaers tells us, "there are certain elements included by all moralists but interpreted differently." According to Pinckaers, there are four basic definitions that stress different understandings of the concepts employed in the sentence "Christian ethics is a branch of theology that studies human acts in the light of revelation." The four ways of construing this utterance go something like this:

1 – Christian ethics is the branch of theology that studies human acts insofar as they are subject to the moral law, to its imperatives and the obligations determined by these, in the light of revelation.

2 – Christian ethics is that branch of theology that studies human acts in order to conform them to duty and to the norms imposed on us by reason and by the will of God, in the light of revelation.

3 – Christian ethics is that branch of theology that studies human acts in order to direct them to the attainment of true happiness and to the ultimate end of the person by means of the virtues, and this in the light of revelation.

4 – Christian ethics is a branch of theology that studies human acts in order to conform them to the values contributing to human enrichment, and this in the light of revelation.¹⁶⁰

After these four accounts are described, Pinckaers gives his own account.

"Christian ethics," he tells us, is the branch of theology that studies human acts so as to

¹⁶⁰ These accounts are described in some detail on pages 4-7 of *The Sources of Christian Ethics*.

direct them to a loving vision of God seen as our true, complete happiness and our final end." "This vision," he continues, "is attained by means of grace, the virtues, and the gifts, in the light of revelation and reason." However much Pinckaers wants to move the description of Christian ethics towards the importance of practices and virtues for giving our best account of the nature of actions, Pinckaers' preliminary account of the four conceptions of ethics on offer demonstrates an important and widely shared view, namely, the claim that begins each of the definitions of Christian ethics: *Christian ethics is that branch of theology that studies human acts.*¹⁶¹ For theologians working within this line of thought, this definition of Christian ethics is particularly salient in discussions sex and reproduction.

2. Sex and Reproduction: The Church's Official Position

Sex is something humans do. Whatever else it may be, it is certainly that. As such, it is open to moral analysis. Within the Roman Catholic Church, this analysis has come to be governed by two basic principles. As Salzman and Lawler put it:

Two magisterial principles capture the essence of the Catholic moral, sexual tradition. The first principle comes from the Congregation for the Doctrine of the Faith: 'Any human genital act whatsoever may be placed only within the framework of marriage.' The second received its modern articulation in Pope Paul VI's *Humanae Vitae*: "Each and every marriage act must remain open to the transmission of life.' In the Catholic tradition sexual activity is institutionalized

¹⁶¹ The place of Aquinas and his interpreters is paramount in the development of this form of ethics. For an extended and important attempt to synthesize the whole of Aquinas' thought on human action, see Joseph Pilsner's recent monograph, *The Specification of Human Action in St. Thomas Aquinas* (Oxford: Oxford) 2006. In chapters on "End," "Object," "Matter," "Circumstance," and "Motive," Pilsner provides an extended study of the basic mechanics of action in Aquinas' thought.

within the confines of marriage and procreation, and sexual morality is marital morality.¹⁶²

But it is not only this. In the official position, the goods of sexual activity can be specified. In a subsection of the Catechism we find the following description of the "goods and requirements of conjugal love":

Conjugal love involves a totality, in which all the elements of the person enter – appeal of the body and instinct, power of feeling and affectivity, aspiration of the spirit and of will. It aims at a deeply personal unity, a unity that, beyond union in one flesh, leads to forming one heart and soul; it demands *indissolubility* and *faithfulness* in definitive mutual giving; and it is open to *fertility*. In a word it is a question of the normal characteristics of all natural conjugal love, but with a new significance which not only purifies and strengthens them, but raises them to the extent of making them the expression of specifically Christian values.¹⁶³

The italicized words in this short description give the necessary context for the two maxims Salzman and Lawler describe as constitutive of the Catholic ethic as such. The conjugal act is confined to the marital state wherein an individual man and individual woman enter into an indissoluble and faithful union that is fundamentally oriented towards the preservation of that union and the production of children.¹⁶⁴

There are, in other words, two readily discernible ends to the conjugal act: the unification of the marital couple and the generation of new life. The connection between these two ends makes this act distinct from all others. Before describing how each of these

¹⁶² This comes in the prologue of Todd Salzman and Michael Lawler's important work *The Sexual Person: Toward a Renewed Catholic Anthropology: Toward a Renewed Catholic Anthropology* (Washington DC: Georgetown University Press, 2008).

¹⁶³ 1643 of Catechism of the Roman Catholic Church (New York: Doubleday, 1995.) ¹⁶⁴ There are numerous "defenses" of this particular position on the nature of marriage. For the most recent, see Robert George and Patrick Lee's, *Conjugal Union: What is Marriage and Why it Matters* (Cambridge: Cambridge University Press, 2014). The relative merits of their conclusions does not concern me here for, strictly speaking, *what* these theologians conclude about who can marry is less important than *how they reason*.

features is distinctive, however, it is important to tarry with the first part of the first sentence here: "conjugal love involves a totality."

Here, the catechism is in line with John Paul II's notion of "an integral vision" of sexual life, developed most completely in his *Theology of the Body*. There, in the conclusion of the first part of that important work, John Paul II represents the official view by tying the indissoluble nature of marriage to the notion that the marital act is an act unlike all others. Sex is, in every way, a total self-giving of one to another and, as such, it touches every aspect of the individual. There we read:

We are, in fact, the children of an age in which, due to the development of various disciplines, this integral vision of man can easily be rejected and replaced by many partial conceptions that dwell on one or another aspect of the *compositum humanum* but do not reach man's *integrum* or leave it outside their field of vision. Various cultural tendencies then insert themselves here that are based on these partial truths and on this basis make their proposals and practical suggestions for human behavior and, even more often, about ways of *relating to "man."* Man then becomes more an object of certain technologies than the responsible subject of his own action.

This is John Paul II's notion of a total self-giving in full flower. Due to this totality, what is required for a sexual act to be fully intelligible is the stability afforded by an *indissoluble* bond between two people.¹⁶⁵ But, it is procreation, finally, that is the conjugal act's special perfection.

Nowhere has this view of sex as total self-giving and the intrinsic connection of sexual expression to reproduction been more thoroughly developed and defended than in aforementioned publication of *Humane Vitae* by Pope Paul VI in July of 1968. And,

¹⁶⁵ This is clear, for example, in the official canon law of Church wherein we see the logic behind the Church's claim that marriage is a sacrament. "The essential properties of marriage are unity and indissolubility," we are told, "which in Christian marriage obtain a special firmness by reason of the sacrament." (canon 1056)

crucial for our understanding of the ethics of act-analysis, it is a concept of *nature* and the *natural* that solidifies the connection between the unitive and procreative aspects of sex. While many expected Pope Paul VI to alter the Church's official view regarding contraception, in fact, the text of *Humanae Vitae* harkened back to the message of *Casti Connubii* wherein we read that, "no reason, however grave, may be put forward by which anything intrinsically against nature may become conformable to nature and morally good."

This means, moreover that since "the conjugal act is destined primarily by nature for the begetting of children, those who in exercising it deliberately frustrate its natural power and purpose, sin against nature and commit a deed which is shameful and intrinsically vicious."¹⁶⁶ It is precisely this thought that is carried forward into *Humanae Vitae* (paragraph 12) where we read:

The doctrine which the Magisterium of the Church has often explicated is this: There is an unbreakable connection between the unitive meaning and the procreative meaning of the conjugal act, and both are inherent in the conjugal act. This connection was established by God and cannot be broken by man through his own volition.

From this, the official position of the Church becomes one in which each and every sexual act, as an act of total self-giving, must be "open to life," that is, unimpeded by any artificial means of frustrating the natural ends of sexual expression. "This includes," as paragraph 14

¹⁶⁶ Paragraph 54 of Casti Connubi, Pope Pius XI.

of *Humanae Vitae* tells us, "acts that precede intercourse, acts that accompany intercourse, and acts that are directed to the natural consequences of intercourse."¹⁶⁷

Here, the question of intention and its relation to the morality of an act is taken head on. Let me illustrate. Imagine two couples, Mark and Carey Morgan and Steve and Mary Wall, each of which are happily married within the Church. The Morgans are the paradigmatic DINKYs (double-income-no-kids-yet). Throughout the early days of their married life, they have been largely unencumbered. Their highly demanding jobs offered

The Church is not inconsistent when it teaches both that it is morally permissible for spouses to have recourse to infertile periods and also that all directly contraceptive practices are morally wrong, even if spouses seem to have good and serious reasons for using these. These two situations are essentially different. In the first, the spouses legitimately use a faculty that is given by nature; in the second case, the spouses impede the order of generation from completing its own natural processes.

It cannot be denied that the spouses in each case have, for defensible reasons, made a mutual and firm decision to avoid having a child; and it cannot be denied that each of them is attempting to ensure that a child will not be born. Nevertheless, it must also be acknowledged that only in the first case are the spouses strong enough to abstain from sexual intercourse during the fertile times, when, for good reasons, offspring are not desired. And then, when the time is not apt for conception, they make use of intercourse for the sake of manifesting their mutual love and for the sake of maintaining their promised fidelity. Clearly when they do this, they offer a witness to truly and completely upright love.

¹⁶⁷ This does not mean, however, that married couples cannot willfully abstain from sexual engagement in order to prevent the birth of a child. In Part 3 of the encyclical, labeled "pastoral directives," Pope Paul VI is clear to say that the Church has an obligation to provide "morally permissible methods of regulating family size." In this – what *Humanae* Vitae calls "moral family planning" and subsequently has become known as "natural family planning" – a notion of "self-mastery" is paramount. "Moral family planning," we are told, "requires that spouses recognize and value the true goods of life and the family and also that they acquire the habit of complete mastery of themselves and their desires. In order to control the drives of nature, the spouses need to become self-denying through using their reason and free will." Crucially, however, the intention to prevent conception is neither ruled out nor described in wholly negative terms. Paragraph 16 of the *Humanae Vitae* makes this plain:

great financial stability but little occasion for "settling down" into all the sticky complexities of parenthood. This, however, does not prevent them from an active and satisfying sexual relationship; but the prospect of having a child is so terrifying that they make use of multiples methods of contraception.

The Walls, on the other hand, know the difficulties of parenthood all too well. Having welcomed two children in rapid succession, their third, Jacob, was born with significant mental and physical disabilities, causing great financial, emotional, and physical stress on the family as a whole. Nowhere is this stress more apparent than in the quiet moments after the children have gone to bed and the bundled pressures of simply surviving the day rendered the couple ill at ease. Frustration mounting, Steve and Mary heed the advice of friends and counselors and plan a vacation to celebrate their sixth wedding anniversary. With aims to both recharge their batteries and reboot their affections for one another, they arrange for childcare and book a long weekend at the coast.

Suppose further that the Walls seek to follow the Church's teaching on contraception and do their very best to forego sexual activity during Mary's fertile period, which they track with regularity. The needs of their family are so grave that they are immensely conscientious of the workings of Mary's cycle, consistently abstaining from sexual activity when the likelihood of conception is even remote. Accordingly, due to the likelihood of conception and their concomitant desire not to have another child, Steve and Mary *should* abstain from sexual activity during their vacation. Instead, however, they purchase and make use of condoms during their time away from the children, judging that the mutual delight that comes from reinvigorating their marital bond is of greater value

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than heeding the Church's counsel that each and every sexual act should be open to new life. They do not plan to make a habit of such, but each sense that the attention their marriage requires justifies their disobedience to the Church's teaching.

According to the official position, there is no substantive moral difference between the actions of the Walls and the Morgans. Each couple engages in unique and obvious acts of contracepted sex, which are, by the intrinsic nature of the act, contrary to nature, disordered, and, as such, morally impermissible. That the Walls' decision to contracept takes place within a context that can plausibly be described as "open to life" (as evidenced by the fact that they have welcomed children) whereas the Morgans' decision does not has little to no moral significance. *What matters is the nature of the act itself, understood in its most base anatomical form.*

The important thing to highlight here is simply the teleological quality of this position: acts can be determined to be of certain kinds, and once so determined, the ends of these acts can be discerned. Once discerned, the end of the act (in this case, the unitive and procreative ends of total self-giving in sexual expression) must be respected by being fulfilled. And not just fulfilled in general, but, rather, *in each and every instance wherein the act takes place*. As paragraph 14 of *Humanae Vitae* puts it:

Nor is it possible to justify deliberately depriving conjugal acts of their fertility by claiming that one is choosing the lesser evil. It cannot be claimed that these acts deprived of fertility should be considered together as a whole with past and future fertile acts and thus that they should share in one and the same goodness of the fertile acts of marriage. Certainly, it is sometimes permissible to tolerate moral evil – when it is the lesser evil and when one does so in order that one might avoid a greater evil, or so that one might promote a greater good. It is never permissible, however, to do evil so that good might result, not even for the most serious reasons. That is, one should never willingly choose to do an act that by its very nature violates the moral order, for such acts are unworthy of Man for this very reason.

This is so even if one has acted with the intent to defend and advance some good either for individuals or for families or for society. Thus, it is a serious error to think that a conjugal act, deprived deliberately of its fertility, and which consequently is intrinsically wrong, can be justified by being grouped together with the fertile acts of the whole of marriage.

The importance here of a concept like intrinsically disordered acts is most clearly seen a generation later in the account of the moral life given in *Veritatis Splendor*.¹⁶⁸ Here Pope John Paul II confirms that contracepted sexual acts are intrinsically disordered while also defending a particular account of the nature of moral acts as such. Fairly early on in the document, John Paul II demonstrates the degree to which the Church's response to either moral relativism or various forms of proportionalism is one and the same: "Freedom," he makes plain, "is not only the choice for one or another particular action; it is also, within that choice, a decision about oneself and a setting of one's own life for or against the Good, for or against the Truth, and ultimately for or against God."¹⁶⁹ When this line of thought is extended to the morality of particular acts, a general theory of action is described. Put briefly, the position is that "activity is morally good when it attests to and

¹⁶⁸ For a useful set of essays on *Veritatis Splendor* see J.A. DiNoia and Romanus Cessario, eds., *Veritatis Splendor and the Renewal of Moral Theology* (Princeton: Scepter Publishers, 1999)

¹⁶⁹ Veritatis Splendor, paragraph 65. This serves as evidence, however, of the precise nature of John Paul II's complaint against the notion of a "fundamental option" *en vogue* at the time with disciples of Rahner and others. For John Paul II, the issue with discussions of one's "fundamental option" is the way in which it can be used to deny the existence of intrinsically evil acts or notions of mortal sin. Moreover, in paragraph 67 we read that, "to separate the fundamental option from concrete kinds of behavior means to contradict the substantial integrity or personal unity of the moral agent in his body and in his soul." For a succinct account of Roman Catholic Moral Theology post-Vatican II see Thomas Hibbs' chapter in Stephen Pope, ed., *The Ethics of Aquinas* (Washington DC: Georgetown University Press, 2002)

expresses the voluntary ordering of the person to his ultimate end and the conformity of a concrete action with the human good as it is acknowledged in its truth by reason."¹⁷⁰

Here we are given a fully worked out teleology that fills out the theory governing the distinction between "legitimate" and "illegitimate" sexual acts provided in *Humanae Vitae*. What makes sexual acts that sever the unitive from the procreative immoral is not that such acts misapply some calculus weighing various pre-moral goods against one another; rather, what makes such acts intrinsically disordered is that that the *object* of such an action cannot be ordered to the Good. Contraceptive acts, in this view, "intend directly something which of its very nature contradicts the moral order" and, as such, must be considered as akin to genocide, homicide, and voluntary suicide.¹⁷¹ This is the paradigmatic example of the inner logic of the ethics of act-analysis.

3. The New Natural Law

There is no question that the position on the immorality of all "contralife" sexual acts developed by the Catholic Church, instantiated in *Humanae Vitae*, and solidified in the account of exceptionless moral norms in *Veritatis Splendor* brought about significant and sustained dissent among Catholic theologians and church leaders.¹⁷² In time, it also grew to be a debate about the status of exceptions in moral reasoning itself. As John Finnis

¹⁷⁰ Veritatis Splendor, Paragraph 72.

¹⁷¹ Veritatis Splendor, Paragraph 80.

¹⁷² This literature is immense and ever increasing. In recent years, see Todd Salzman & Michael Lawler's The Sexual Person: Towards a Renewed Catholic Anthropology, Margaret Farley's Just Love: A Framework for a Christian Sexual Ethic, as well as Alexander Pruss' One Body: An Essay in Christian Sexual Ethics.

has noticed, it is not accidental that it was the morality of *contraception* that put this doctrine into the center of debate:

One fact seems clear and basic. The formal attack on the moral absolutes emerges, among Catholics, in response to the problem of contraception. Not in response to the desire to maintain a counterpopulation deterrent strategy of annihilating retaliation; or to tell lies in military, police, and political operations; or to carry out therapeutic abortions; or to arrange homosexual unions; or relieve inner tensions and disequilibria by masturbation; or to keep slaves; or to produce babies by impersonal artifice. Those desires were and are all urgent enough, but none of them precipitated the formal rejection of moral absolutes. The desire to practice or to approve contraception did.¹⁷³

Historically speaking, Janet E. Smith has vindicated this insight from Finnis by pointing not only the intellectual production surrounding *Humanae Vitae* but also the way in which *Humanae Vitae* served as a proxy of sorts. For some, like Charles Curran and other dissenters, the promulgation of *Humanae Vitae* served as a test of the limits of dissent; for others, the claims forwarded were but a re-articulation of the tradition's thought on contraception, and, as such, interesting only for the backlash they elicited.¹⁷⁴ In either case, however, fidelity and obedience to the Church's teaching on sexual matters became a kind of orthodoxy by which one could be judged. As Smith puts the point:

Not only did theologians come to question the prohibition of contraception in terms of the traditional principles of moral theology; they also came to question those very principles. No longer was the central question, Is the Church's prohibition justifiable in terms of the traditional principles of moral reasoning? Rather the question came to be, Are the traditional principles of moral reasoning that the Church has used to condemn contraception true? Again, the debate was no longer simply about the single issue of contraception or about the proper

¹⁷³ Moral Absolutes: Tradition, Revision, and Truth, 85.

¹⁷⁴ For a historical account of the development of dissent within the Roman Catholic Church see Charles Curran's recent *The Development of Moral Theology: Five Strands* as well as his aptly titled memoir, *Loyal Dissent: Memoir of a Catholic Theologian.*

application of agreed-on principles. The debate now was about the fundamental principles to be used in moral reasoning.¹⁷⁵

In a helpful clarification, Smith – who, it must be said, is not an impartial observer of these matters, as evidenced in the fact that another of her publications is a massive edited volume with the wonderfully revealing and candid title, *Why Humanae Vitae was Right* – shows that disagreement among moral theologians could be of one of three sorts. In the first place, moral theologians could disagree about what principle should govern decision-making in a given instance. Where agreement regarding basic principles exists, however, there may be disagreement regarding justification – that is, along what intellectual grounds a principle could be said to be commendable and true. Third, however, there may well be a basic degree of agreement on both the principles governing decision-making and the justification for such alongside deep and abiding disagreement over a principle's application – that is, how *it should best be used*.

By Smith's lights, the important thing to note about the debate regarding contraception in the Catholic church of the 1960s was the degree to which it involved all three forms of basic moral disagreement. No longer was the concern simply about *application* of principles that garnered widespread assent ~ like, say, the notion that the procreative ends of sexual experience deserve protection.¹⁷⁶ Nor was the debate solely about justification of principles such as this. It was, above all, a fundamental challenge to the reigning orthodoxies of Catholic moral theology as such.

¹⁷⁵ See page 10, Janet E. Smith, *Humanae Vitae*: A Generation Later (Washington DC, Catholic University Press, 1991).

¹⁷⁶ Janet Smith, Humanae Vitae: A Generation Later, 11.

The particular orthodoxy under threat was the view that "every marital act ought to be open to new life," the view re-articulated in *Humanae Vitae* and broadly understood as the more contested of the two moral maxims of Roman Catholic sexual ethics. In an important article titled "Every Marital Act Ought to be Open to New Life: Toward a Clearer Understanding," John Finnis and Germain Grisez were joined by William May and Joseph Boyle in order to provide a *philosophical* defense of the position articulated by the magisterium.¹⁷⁷ Because of the philosophical importance of such a view, allow me to develop the thought at some length. This is warranted for one further reason: simply put, there are few that have defended the position laid out by the Magisterium with more *philosophical* acumen or resolve than Germain Grisez and John Finnis. In fact, Finnis has long defended the notion that the "basic goods" theory he develops is *both* deeply indebted to the account of practical reason found in Aquinas' thought and fully detachable from theological premises.

This, in a sense, is not surprising: advocates of what has come to be known as *New Natural Law*, including Finnis and Grisez, have long defended the notion that the goods of human life – including uniquely *moral* goods – can be rationally discerned, rendering the intelligibility of acts subservient to the goods such acts are capable of promoting and protecting.¹⁷⁸ And yet, it is a striking feature of this account nonetheless, in no small part

¹⁷⁷ Summations of the basic positions of the New Natural Lawyers can be found in numerous works on Catholic sexual ethics. For a succinct, dense, and critical account, see Jean Porter's review essay of John Finnis' book, *Aquinas: Moral, Political, and Legal Theory*, "Reason, Nature, and the End of Human Life: A Consideration of John Finnis's Aquinas," *The Journal of Religion* 80:3, pgs 476-484.

¹⁷⁸ Finnis and Grisez have collaborated on a number of occasions, often times with Joseph Boyle and William May as well. In their important edited volume, Nigel Biggar and Rufus Black refer to the "Grisez school" of "New Natural Law." For an important overview of the

due to the fact that this interpretation of Aquinas has been used in public debate regarding judicial matters, particularly those involving sexual relations.¹⁷⁹ So, what is the "New Natural Law," and how does it work?

In their definitive article defending the traditional prohibition on contraception, Boyle, Finnis, Grisez, and May (hereafter simply referred to as "the authors") begin with the claim that "the only plausible interpretation of 'every marital act ought to be open to new life' is: It is wrong for those who engage in marital intercourse to attempt to impede the transmission of life which they think their act otherwise might bring about."¹⁸⁰ Moreover, the authors claim that there can be no significant moral difference between such a statement and the claim that "contraception is always wrong." For, in their view, what distinguishes "contraception" from sexual acts that are not intended to be procreative is not intention as such, but, rather, the fact that the object of a contraceptive act is "contralife."

While the authors readily admit that this is a fine conceptual distinction, in the end, it is this line of thought that makes all the difference. Returning to the basic line that contraception is regarded as akin to homicide, what funds such is the notion that each are, in some relevant sense, "contralife." The authors put it in the following manner:

The characterization of contraception as a contralife act is one major element of the unbroken Christian tradition condemning contraception as always wrong ... [this

basic tenents of this school, see Black's introduction to that volume, "The New Natural Law Theory." For other notable contributions, see Rufus Black and Nigel Biggar, eds., *The Revival of Natural Law: Philosophical, Theological, and Ethical Responses to the Finnis-Grisez School* (Aldershot: Ashgate Press, 2000)

¹⁷⁹ See Eugene Rogers, Aquinas and the Supreme Court, chapter 1.

¹⁸⁰ John Finnis, Germain Grisez, Joseph Boyle, William E. May, "'Every Marital Act Ought to Be Open to New Life': Toward a Clearer Understanding," *The Thomist*, 52:3 1988, pg 365.

canon] does not say that contraception is homicide; the tradition made no such mistake. The canon rather says that contraception should be regarded as homicide is regarded. To regard contraception as homicide is regarded is not only to make it clear that contraception is wrong, but also to point to its being contralife as the reason why it is wrong.¹⁸¹

But what renders something "contralife" after all? And in what does such a concept consist? How could it be distinguished from the proposed method of Natural Family Planning, which is, after all, a direct and intentional means of preventing pregnancy and the birth of a child? This is a major objection to the notion that analyzing particular acts is a sufficient form of moral analysis. However, as the authors go on to argue in the main body of the paper, the means by which a couple chooses to attempt to prevent the coming into being of a life may be of some scientific value, but not of any moral relevance.¹⁸² "Contraception," they go on to say, "can be defined only in terms of the beliefs, intentions, and choices which render behavior contraceptive."¹⁸³ And those beliefs are that "some behavior in which someone could engage is likely to cause a new life to begin" and "the bringing about of the beginning of new life might be impeded by some other behavior one could perform."¹⁸⁴

Here, a brief account of Finnis' understanding of practical reasonableness is in order. As Rufus Black makes clear in his introduction to *The Revival of Natural Law*:

¹⁸¹Ibid., 366.

¹⁸² Contraception, they say, is akin to apologizing: "There are many ways of apologizing, and performances which sometimes count as an apology can have other and even opposite meanings." It is, however, unlike "shaking hands" insofar as "to engage in the act of interpersonal communication which we call 'shaking hands,' one's hand must make contact with the other person's hand." Hence a distinction is drawn between the method employed and the object of a given act.

¹⁸³Ibid., 370.

¹⁸⁴ Black and Biggar, The Revival of Natural Law, 3.

Philosophical, Theological, and Ethical Responses to the Finnis-Grisez School, at the foundation of the New Natural Law is the insistence that a distinction can and should be drawn between theoretical and practical reason. Theoretical reason always tests "the truth of a proposition by testing the conformity of its content with some prior reality." Practical reason, on the other hand, is not fully interested in forms of theoretical knowledge that emerge from this process; rather, it is a form of reasoning that is concerned with *what we should do.* These two forms of reasoning work together, of course; but they are conceptually distinct. Take the example Black uses to highlight the point: deciding what one should have for dinner. Presuming we have a choice in the matter, it is the work of practical reason to "identify what is attractive" in the various options available to me. And yet, "faced with many options for a meal, we need theoretical knowledge of what will actually provide nourishment."

Two things are worth noticing here. First, as Black rightly notes, it is their account of the phenomenon of *choice* that provides Finnis and Grisez with the resources to respond to the charge often leveled against natural law theorists of all kinds – namely, that they commit the "naturalistic fallacy" by deriving an "ought" from an "is." For Finnis and Grisez, practical knowledge depends upon theoretical knowledge insofar as humans can only choose from the range of options that actually exist. In the same way that I can only eat that which I can prepare (or have prepared for me), so too can human beings act morally in relation to the moral options that are available to them. Saying this simply makes one a moral realist. Secondly, *it is the phenomenon of choice that brings us to the question of practical reasonableness.* Are there maxims to guide choice? Do we have good reasons for

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choosing X rather than Y in Z situation? And here, we are at the heart of the "basic goods" theory developed by Finnis, first in *Natural Law and Natural Rights* and in multiple venues since. For this school of thought, if we ask any rational agent a series of basic questions as to why they chose X rather than Y in Z scenario, we are bound to arrive at a set of basic human goods.

These basic goods not only deserve protection and respect; they are, in some sense, the substance of morality as such. As Black recounts Finnis' thought, there are seven such "basic goods," each of which corresponds with some dimension of human nature. They are: 1) the preservation of life itself; 2) knowledge and aesthetic experience; 3) excellence in work and play; 4) friendship; 5) Inner Harmony or Peace; 6) Peace of Conscience; and 7) Harmony with a transcendent source of meaning – that is, religion. Furthermore, Finnis and Grisez argue at length to defend the further thoughts that these goods are pre-moral, incommensurable, non-hierarchical, culturally embodied, elements of human fulfillment, and, crucially for our purposes, self-evident.¹⁸⁵

Once this schema of non-hierarchical, incommensurate basic goods are established, the question then becomes whether or not there are any rational principles that can guide human action appropriately. Here, Finnis depends upon Aquinas' account of practical reasonableness in order to describe the first requirement of governing the process of choice as "a coherent plan of life."¹⁸⁶ He states it as follows: "In its fullest form, therefore, the first requirement of practical reasonableness is what John Rawls calls a rational plan of life. Implicitly or explicitly one must have a harmonious set of purposes and orientations, not

¹⁸⁵ For full citations here, see Biggar and Black, *The Revival of Natural Law*, 7-9.

¹⁸⁶ John Finnis, Natural Law and Natural Rights, (Oxford: Clarendon Press, 1980) pgs. 101-106.

as the 'plans' or 'blueprints' of a pipe-dream, but as effective commitments."¹⁸⁷ This, no doubt, will put the prior claim regarding incommensurability of goods under some pressure but, as Finnis is quick to say, the commitment to favor one particular good over another at some particular juncture, "will be rational only if it is on the basis of one's assessment of one's capacities, circumstances, and even one's tastes" and not if "it is on the basis of a devaluation of any of the basic forms of human excellence."¹⁸⁸

This brings us to the heart of the matter for New Natural Lawyers and the question of sexual ethics.¹⁸⁹ As stated above, one of the landmark essays in the development of the New Natural Law is the essay defending the absolute prohibition of contraception composed by Grisez, Finnis, Boyle, and May. What is crucial to note here is that in their condemnation of contraception, the authors insist that the locus of moral concern regarding contracepted sexual acts is not, precisely speaking, their *sexual* character. It is, rather, that in choosing to contracept, one is choosing against a basic good in a way that is not in line with dictates of practical reasonableness. *That good is the good of the preservation of life itself.* Contraception, on this view, is immoral precisely because it is irrational; moreover, the strongest claim of the New Natural Lawyers is that any rational agent would, upon reflection, agree with this assessment.¹⁹⁰

¹⁸⁷ Finnis, Natural Law and Natural Rights, 103-104

¹⁸⁸Ibid.,105.

 ¹⁸⁹ For further interaction with this school of thought, see chapter 3 of John Bowlin, Contingency and Fortune in Aquinas's Ethics, (Cambridge: Cambridge University Press, 1999).
 ¹⁹⁰ See this passage from Nicholas Wolterstorff's introduction to Jean Porter's important work, Natural and Divine Law:

From its beginnings among the Stoics of antiquity, the natural law tradition of ethical theory had undergone many transformations. The most prominent spokesmen of the tradition, John Finnis and Joseph Boyle, who see themselves as representing the Aristotelian-Thomistic version of the tradition, offer natural law

There are, of course, a variety of sexual acts that the authors pronounce negative judgments upon – masturbation, fornication, adultery, and so on – but what is unique to contraception, and in fact, what renders it most paradigmatically "contralife" is the decision to "impede" the potential of bringing forth new life. So, for the authors, regarding contraception as one regards homicide means that "a young couple tempted to fornicate has two choices to make, not one: whether to fornicate or not, and whether to contracept or not." It is this distinction that makes contraception a grave evil across a variety of relationships. The harm does not simply exist between the parties engaging in contracepted sex. To engage in contracepted sex is to choose against the first and basic interest of a life that otherwise would exist. It is in this way that contracepted sex is morally wrong in a variety of registers.¹⁹¹

theory as a mode of ethical theory which is independent, both of all comprehensive religions and philosophical perspectives, and of all concrete moral communities. In particular, they present it as independent of theology. It is from human nature as such that they propose to derive ethical principles; and it is their claim that these principles are not only knowable, but in good measure actually *known*, by every ration adult human being whatsoever.

¹⁹¹ This point gets made directly in two crucial paragraphs:

Since contraception must be defined by its intention that a prospective new life not begin, every contraceptive act is necessarily contralife. Those who choose such an act often also intend some further good – for example, not to procreate irresponsibly with bad consequences for already existing persons. But in choosing contraception as a means to this further good, they necessarily reject a new life. They imagine that a new person will come to be if that is not prevented, they want that possible person not to be, and they effectively will that he or she never be. That will is a contralife will. Therefore, each and every contraceptive act is necessarily contralife.

Moreover, in and of itself, a contraceptive act is nothing but contralife. For, being separate from any sexual act which occasions it, a contraceptive act cannot be

Jean Porter, Natural and Divine Law: Reclaiming the Tradition for Christian Ethics (Grand Rapids: Eerdmans, 1999).

For the case to be made that contraceptive acts are contralife – that we should, as the Finnis, Grisez, Boyle, and May suggest, consider contraception as we consider homicide – surely we would be committed to the view that a *possible* person is morally equivalent to an *actual* person. Even if one holds the view that human life begins at the moment of conception, non-abortifacient contraceptives, as a matter of biological fact, merely prevent conception rather than eliminate embryonic life, and so, the question then becomes: whereas the basic good of existence is violated in situations of suicide or homicide, why should we understand contraception in a similar way?

The answer provided is:

The possible person whose life is prevented is no mere abstraction, but an absolutely unique and unrepeatable individual who would exist if he or she were welcomed rather than prevented. For each one of us, merely being allowed to come into existence was a great gift. The beginning of our lives, which contraception perhaps could have prevented but did not, is continuous with the life by which we are now alive. One must bear this fact in mind when one says that contraception only prevents a possible person.

Here we see the extent to which, for this line of thought, the vitiation present in

contracepted sexual acts is not limited to the parties engaging in contracepted sex. Yes, of

considered part of that sexual act. Thus, contraception in marriage is not part of any marital act. Contraception is related to marital acts only instrumentally, inasmuch as contraception lessens the likelihood of pregnancy, which can be a motive to avoid marital intercourse (371).

This appropriation of the idea that contracepted sexual acts are not "marital" acts is carried forward in John Finnis' work, particularly his sustained line of argument against homosexual encounters. Far from being "marital" in nature, Finnis argues (with Aquinas and Grisez, he says) "that approval of homosexual and other nonmarital sex acts is not simply nonmarital, in the sense of being utterly incapable consummating or actualizing the human good of marriage, but actually 'contrary to' or 'violative of' that good." On this, see "The Good of Marriage and the Morality of Sexual Relations: Some Philosophical and Historical Observations," 100.

course, the view advocated here includes the notion that persons engaging in contracepted sex are committing moral wrong; and yet, it is also the case that in so doing, they are also preventing not just "life," but a *particular* life, what is here referred to as "an absolutely unique and unrepeatable individual who would have existed." Given this emphasis on the nature of "marital" acts and the harm against a specific individual that is itself what makes each and every contraceptive act "contralife," we should not be surprised to see Grisez argue that procreation is the "specific perfection" of marriage. The marital act alone can bring about new life, and engaging in the marital act while deliberating frustrating its final end is the paradigmatic "contralife" act.

Reckoning with both the form and content of the New Natural Lawyers is important in its own right. At its most fundamental, this line of thought honors an intuitive and long-standing sense that the sexual act is both important and distinguished from other kinds of acts. The New Natural Law is an attempt to articulate what makes it so. For my purposes, however, the claims of Finnis, Grisez, and others, represent how far we can push an ethical analysis of acts as such. What sorts of claims, I am asking, are enabled by circumscribing the object of analysis to the inner hydraulics of a given act? And what sorts of claims are rendered obsolete? As the example of the Walls and Morgans illustrated, the price paid for direct, clear, and unambiguous ethical assessment of sexual activity is a kind of willed ignorance of (or at least inattention to) the myriad social, emotional, or familial factors that travel with moral decisions.

The New Natural Law narrows the frame of reference even further, arguing that theological concepts and description can be bracketed altogether. This further narrowing

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has been criticized from within the broad parameters of what I mean here by ethics as actanalysis. As such, the two hesitations I describe below are just that *– hesitations* about the shape of act-analysis in our day and the construal of the theological concepts upon which it depends. For this reason, however critical they are of the official position of the Roman Catholic Church or the body of work developed by the Finnis-Grisez school, their work should be read as counter-narratives within the ethical approach I am describing here.

4. On Goods and the Good: Two Hesitations

Advocates of the New Natural Law understand themselves to be developing a moral theory that incorporates the best insights of both deontological and teleological traditions without being reducible to either.¹⁹² When harms are committed, they reveal certain goods intrinsic to human life and rationally discernible by all people. As the claim that nonmarital sexual acts are "violative of" the goods of marriage indicated, "basic goods" must be understood as "non-instrumental goods," that is, "reasons for acting which need no further reason."¹⁹³ There is, then, a universal account of practical reasonableness coupled with an elevated sense that the primary moral act is that of *choosing*.

Two basic criticisms have been leveled in some form or fashion against the official position and its philosophical defenders, each of which deserves some mention here. The

¹⁹² See, for example, the following from page 99 of the oft-cited and important 1987 essay, "Practical Principles, Moral Truth, and Ultimate Ends," published *The American Journal of Jurisprudence*. There, Finnis, Boyle, and Grisez write:

Against deontological theories, we hold that moral truths direct free choices toward actions which tend to satisfy natural desires. Such actions help to fulfill persons as individuals and in communion. Against teleological theories, however, we hold that some of these desires are for fulfillments not only realized but constituted by morally good choices, including mutual commitments.

¹⁹³ Finnis, Grisez, May, Boyle, "Practical Principles,"103.

first is a charge about humility, the second about theological (in)adequacy. Both, unsurprisingly, are born in disputes about how best to read Aquinas.

The first criticism has to do with epistemic humility and the confidence displayed in the official position's claim regarding the ends of sexual union. While theologians like Lisa Cahill will readily assent to the notion that some aspect of binding moral norms can be described as "natural" or "from nature," they distance themselves from both the magisterium and the New Natural Lawyers on the degree to which such norms can be specified. As Cahill puts it:

As I read Germain Grisez's work on gender and sexuality, I appreciate his interest in defining sex, procreation, and marriage as important spheres of moral experience, related to basic goods that exert a claim on all human beings, no matter what their culture, time, or circumstances. At the same time, I am ever cognizant of Aquinas's caveat that it is easier to attain certainty and universality at the more general levels of natural law precepts than it is in the particulars, where contingent circumstances may affect both what is objectively right to do and what our perception of the good may be. For instance, in the case of gender and sexuality, I would take male-female social and sexual cooperation, the bearing and nurturing of children, and the institutionalization of kin identity and responsibility in the intergenerational family to be fundamental human goods recognized in all cultures. What that implies for the specific structures of gender, sexual morality, marriage, and family are different and more ambiguous matters.¹⁹⁴

Joining Cahill, Jean Porter's longstanding debate with John Finnis and others is best understood as a series of friendly amendments to the basic approach of the ethic of actanalysis.¹⁹⁵ This is most clear in the argument Porter develops in *Nature as Reason:* A

¹⁹⁴ Biggar and Black, The Revival of Natural Law, 244.

¹⁹⁵ Cahill says the following of Finnis' understanding of the basic goods:

^{...}their list does represent the conviction of many Thomistic authors that moral debate and even consensus are reasonable intercultural goals, because all peoples and all cultural differentiations have at their core a shared way of being in the world, one closely linked to our bodily nature; to our abilities to reflect, to choose,

Thomistic Theory of Natural Law. There, Porter insists that properly understood, discerning the natural law requires (rather than replaces) growth in virtue. Porter is interested in what she calls the "pragmatics of moral responsibility," by which she means the prerequisite for discerning what is natural is the development of moral virtue. This, she takes it, is axiomatic for the scholastics, but totally downplayed in the writings of the New Natural Lawyers. And it amounts to a prudential failure on their part. As she puts it:

Prudential reasoning within a Christian context opens up the possibility that moral norms are in some meaningful sense both rational and revealed, and this is why a Thomistic approach to the natural law allows for a distinctively theological natural law ethic, which is nonetheless not simply a projection of theological convictions onto the raw materials of nature and reason.¹⁹⁶

While Porter is clear to show some affinity for the basic objectives of the New Natural Lawyers, she is also clear say that "Grisez and Finnis have not made a convincing case that there are self-evident basic goods."¹⁹⁷ In support of this claim, Porter argues that the strict division between speculative and practical reason within the Finnis/Grisez school leads them not to a set of general rules of practical reasoning but, rather, to very specific forms of act-analysis. Take, for example, the way that Porter traces the Finnis/Grisez line from a general maxim on which almost all would agree down to a very particular moral norm:

and to love; and to our intrinsic dependence on a community of other human beings, not only for survival, but also for meaning.

See Cahill, Sex Gender, and Christian Ethics (Cambridge, Cambridge University Press, 1996.) 51.

¹⁹⁶ Jean Porter, Nature as Reason: A Thomistic Theory of the Natural Law (Grand Rapids: Eeerdmans, 2005) 51.

¹⁹⁷ Jean Porter, "Basic Goods and the Human Good in Recent Catholic Moral Theology," *The Thomist*, January 1, 1993.

Almost everyone would agree that, all other things being equal, it is better to be alive than dead, knowledgeable rather than ignorant, and so on. If Grisez and Finnis simply concluded from this fact that there are certain broad classes of generally acknowledged good, which are of significance for moral reflection, then their analysis would be unassailable. But of course they go well beyond this fundamental observation to assert that seven of these generally acknowledged goods are in fact self-evidently basic, irreducible, and desirable in all circumstances. Furthermore, they take it to be self-evident that it is always irrational, and therefore immoral, to act in such a way as to destroy or directly impede an instance of one of these goods. It is at these points that their analysis falters.¹⁹⁸

This, coupled with Cahill's critique, amounts to the first cluster of criticisms from within the broad scope of the ethics of act-analysis. That criticism is this: *we should be far more humble regarding what we can discern from the natural law regarding sexual expression*. For these critics, this does not amount to a full rejection of natural law as such, but rather a hesitation regarding the universal account of practical reason that governs the claims of Finnis, Grisez, and others.

The second criticism has to do with the theological adequacy of the New Natural Law in particular. The question posed to the Finnis-Grisez school from this set of critics is essentially this: *if it is possible have a fully "rational" account of sexual norms without any reference to theological or biblical arguments, how does this not explicitly denigrate the value of theology for ethical theory*? Put more directly, the argument Eugene Rogers makes in his recent work, *Aquinas and the Supreme Court,* is that New Natural Lawyers who appeal to Aquinas' treatises on law, morality, and sex often (if not always) fail to present the whole of Thomas' view on a subject due to their refusal to sufficiently attend to the extensive commentaries Thomas produced on the precise biblical texts he cites in the more formal treatises. This leads them not only to a misreading of Thomas but, crucially, to a form of argument that is

¹⁹⁸Ibid., 36.

insufficiently theological. In this way, Rogers' complaint is that the most "traditional" arguments regarding the relation of sex to procreation are, in fact, not *traditional* enough!¹⁹⁹

The effect of this effort, Rogers notes, is not only the production and utilization of countless law review articles defending the traditional account described above by appeals to the "natural" ends of sexual expression, but also a philosophical method that "dresses deeply religious views in secular clothing." This, Rogers says, is "like a higher and more textually sophisticated Intelligent Design for gender roles."²⁰⁰ For Rogers, the New Natural Law is not only disingenuous; it is theologically inadequate. It is an attempt to purchase credibility in a world that seems uninterested in tracking down obscure Latin commentary on biblical passages. But theologians can do such work, and Rogers is interested in giving the best and most full account of Aquinas' thought by following the leads, wherever they may go.

This leads him to a decidedly more scriptural account of what constitutes the natural law. On page three of his work, Rogers says:

If you read the *Summa theologiae* on natural law, you find that Aquinas cites the New Testament book of Romans for his claims about nature. If you open Aquinas's commentary to the places where he intereprets those citations you find that, contrary to the Summa's impression, Aquinas embeds all law, even natural law, not in a particular logic, but in a particular story. There, Aquinas places

¹⁹⁹ In chapter one of Aquinas and the Supreme Court, Rogers describes the purpose of the book in the following way:

This book links four claims: (1) Aquinas's recently or never translated commentaries complicate all understandings of Aquinas's natural law, conservative and liberal alike. (2) The commentaries differ from the systematic works in the type of reasoning Aquinas employs – narrative in the commentaries, logical in the Summa. (3) Aquinas's writing belongs in a historical context including medieval practices of teaching and his commitments to the Dominican Order of Preachers. (4) Aquinas's commentaries submit the law of nature of particularities of ethnicity, gender, history, and religion that would embarrass secular courts.

²⁰⁰Ibid., page 8.

natural law in a narrative of God's dealings with two religio-ethnic groups, Jews and Gentiles. There, having or lacking natural law depends not on humanity but on ethnicity. The narrative tries to explain, not how natural law would work, but why it fails. Aquinas the commentator veers away from all his modern readers, pro or con.²⁰¹

Given this emphasis, it is not surprising that this particular book culminates in an attempt to read Aquinas as a proto-Barthian who can be made consonant with the work of Judith Butler.²⁰²

Throughout the essays that comprise the book, we are given detailed argument against both the intent and execution of the New Natural Lawyers (principally Finnis) as their arguments are unveiled in public. The upshot of this exegetical enterprise is not *merely* to show Aquinas to be a far more exegetical and biblical figure than the New Natural Lawyers would admit, thereby undercutting their ambition to have publically accessible legal arguments, though it is that. Rogers also presents a positive account that extends Aquinas' best insights (according to Rogers) to weave together an argument relating law, nature, sexual activity, and lying. He does so because, on Rogers' reading, "there are at least two places where Aquinas seems to favor an appeal to natural law over an appeal to the virtues: lying and same-sex sexuality."²⁰³ If Rogers can make sense of how the natural law works not as a form of prohibition but an energizing of moral action in these two moments in Aquinas' thought, his argument about the nature of law more generally in Aquinas will be all the more persuasive.

²⁰¹ Eugene Rogers, Aquinas and the Supreme Court, 3.

²⁰² The titles of the chapters themselves are instructive: "How Aquinas Gets Nature and Grace Back Together Again: Aquinas Meets Karl Barth" (Chapter 7) and "How Aquinas Makes Nature Dynamic All the Way Down: Aquinas Meets Judith Butler" (Chapter 9). ²⁰³ Eugene Rogers, *Aquinas and the Supreme Court*, 233.

This account comes through most directly in the chapter on Aquinas and Judith Butler. There, Rogers argues that the essentialism Aquinas ascribes to nature is not the sort "that the modern essentialist-constructivist debate decries." Rather, in Rogers' reading of Thomas on the matter, "Natural law is here epistemologically subordinate to the virtues."²⁰⁴ When coupled with a reading of Aquinas' commentary on Romans 1, this move, he argues, "lends support to a nonstandard but textually compelling series of observations about Aquinas's use of natural law that sharply distinguish it from almost all modern uses."²⁰⁵ The first of these is an account of virtue as performance. "As longs as 'performance' means thorough, repeated, intensive formation (rather than falsehood)," Rogers tells us, Aquinas need have no problem with it."²⁰⁶ The natural law, on this reckoning, is *enacted* – and, crucially, is understood a set of internal principles that energize change. They are, as Rogers puts it, "principles of change, not static, but dynamic through and through."²⁰⁷

This dynamic and scripturally construed account puts Rogers at some distance from the New Natural Lawyers on the question of the "accessibility" of theological argument. As he says at a later point in the chapter:

Where disagreement is widespread, they (New Natural Lawyers) dare not appeal to scripture for fear it would expose the exercise as sectarian rather than secular. In the modern period, the whole point of the appeal to natural law is to provide an apparently universal, extrascriptural basis for a morality traditionally based upon scripture. But Thomas Aquinas would have none of it. Aquinas has the confidence of one who can assume that all his readers accept the authority of

²⁰⁴ Eugene Rogers, *Aquinas and the Supreme Court*, 234. Note the similarity here to the aforementioned claim from Jean Porter on the necessity of virtue for discerning the natural law.

²⁰⁵Ibid., 234.
²⁰⁶Ibid., 234-35.
²⁰⁷Ibid., 235.

scripture, and who also regards the best available natural science as subject to change, and that furthermore the hierarchy harbors deep and sometimes theologically justified suspicion of the best available natural science, as represented by Aristotle.²⁰⁸

Whatever we finally make of this account from Rogers, two things are important to note here. First, Rogers is explicitly not rejecting the place of traditional theological concepts or loci, or even an analysis of acts, but, rather a creative theological reworking of these elements. He is, as I said above, *out-traditioning* the traditional thinkers. This is a real achievement.

In the second place, however, we should notice Rogers' relative disinterest in the question of the "public accessibility" of theological argument. This, Rogers' method suggests, is a matter of historical accident rather than cultural strategy. The theologian does what she does with the materials before her; it is up to a given society to determine whether or not they find such appeals interesting, compelling, or authoritative. In this way, whereas the first hesitation registered by Cahill and Porter above was fundamentally about epistemic *humility*, this line of concern is fundamentally about *confidence*. In Rogers' view, the lack of rightly ordered confidence in the sources of their ethical claim is, quite ironically, the most troubling thing about the New Natural Lawyers.

5. Conclusion, Or, What Does it Amount To?

In the introduction of this chapter I said that each of the five sections of the chapter present the features of what I am here calling ethics as "act-analysis." In the first section, I argued that the Ethics of Act-analysis is directly tied to a tradition of Moral

²⁰⁸Ibid., 242.

Theology that takes seriously phenomena like sin and guilt. In the second section, I argued that the reason why this particular approach concentrates so narrowly on individual actions in the world is because it is particular *actions* from particular *agents* that we deem praiseworthy or blameworthy. And, moreover, as the example of Stephen Pinckaers' various accounts of ethics shows, Ethics, as a theological discipline, has concerned itself primarily with how such praise or blame should be assigned *in relation to particular acts*. In the third section I provided the traditional account of how theologians working in this tradition have treated matters of sex and reproduction. The view is essentially this:

- 1) The sexual act is a unique kind of act in that it involves a total self-giving;
- 2) Sexual acts alone are capable of generating children;
- This reproductive capacity should be set alongside the "unitive" good of sexual intimacy for married couples;
- 4) Hence, any sexual act that severs the unitive from the procreative does not accurately respond to the goods of sexual love, and, for this reason, is intrinsically immoral.

Once this view was described, I gave an account of the major philosophical defense of the traditional account: that of Germain Grisez, John Finnis, and their collaborators. I then registered two hesitations regarding this account and the adequacy of the theory underpinning it. It is now worth asking what this all amounts to. What is available to a Christian ethicist working in this tradition? And what of that material is most useful for addressing the challenge posed to Christian ethics by the new eugenics?

In the first place, the official position represented by the Roman Catholic Church and defended by the New Natural Lawyers possesses *an elegant simplicity*. In being able to specify what differentiates sexual acts from all other acts, ethicists working in this tradition have a very clearly defined object of analysis. Moreover, giving a full account of the goods attending such acts and the purposes of sexual expression make this particular approach conceptually very neat. There is no ambiguity in the position: no sex without the possibility of procreation, and no procreation without sex. That so much of the discussion I have recounted here focuses on the ethics of contraception attests to this basic fact and is, in a way, a consolation. The approach here begins and ends with first questions: is sex a distinct kind of activity? And, if so, are there basic norms that govern such activities?

The clear implication here is that, when we approach the question of liberal eugenics, ethicists working within this form of thought will always insist that the basic question is about the use of our powers to bring forth new life as such. And here, the traditional Roman Catholic position has a measured and dignified, yet, in our day, *humble* picture of human agency: In this system, parents and prospective parents are relieved of the immense anxiety that can be produced by feeling responsible for the quality of their children.

The norms that govern how we treat nascent human life cannot override the norms that govern sexual expression itself; those norms are fundamentally designed to preserve space for God's creative power. In insisting that the unitive and procreative goods of conjugal union must be kept intact in each and every instance, there is, in a way, a settled commitment to preserve a distinction between Creator and Creation; and it is this distinction that may well be sufficient to cut Savulescu's "best possible child" claim down at its core. In its most robust theological form, the ethic of act-analysis circumscribes human sexual responsibility in such a way as to deny the very premise that it is we, as humans, that "bring about" a child in the first place.

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Finally, we should return to the notion of therapeutic religion and what I called the "imaginative core" of the Ethic of Act-analysis: the confessional. It is here, I said, that the moral theologian working in this tradition takes her primary audience to be priests charged with hearing the confessions of the Church. On this picture, the theologian's task is to articulate the precise moments at which a sin has been committed and, perhaps more importantly, the precise moment at which a parishioner is in some degree of moral danger. In all this, the priest mediates God's judgment, alerting the confessor of his or her culpability and the requirements incumbent upon the faithful. This point should not be overlooked, for here there is not only a discernible structure of *authority* but also a real admission that *someone* must be capable of guiding people through the liturgy of confession, repentance, and amendment of life.

While this may well strike us as arcane, recalling the discussion of the "infertility treadmill" that Karey Harwood's important ethnographic recounted and the set of dizzying decisions described in chapter one, may show some of the promise of this pastoral approach. As Harwood shows, the question of regulating and channeling our procreative potential is so prevalent that a variety of support groups have emerged to support parents, prospective parents, and those struggling with infertility.²⁰⁹ In this context, it is hard not to feel the grip of a priest's authority, at least insofar as a priest can be trusted to mediate divine wisdom in an intelligible and pastoral manner. In this cultural moment, the ethic

²⁰⁹ In chapter 2 of *The Infertility Treadmill*, Harwood highlights the way in which RESOLVE is simultaneously a support group and committed to what she calls the redefinition of infertility. This just shows how infertility (and the solutions to it people make use of) is both a medical and social phenomenon. Here, she says, "Despite the rhetoric of neutrality, I believe that RESOLVE actively works to redefine or reframe the experience of infertility and that this work of redefinition is central to its mission of offering support." Harwood, *The Infertility Treadmill*, 52,

of act-analysis has the major benefit of being simultaneously concentrated and vast. It is concentrated in that it can be distilled down to a particular set of constitutive parts of a particular, punctual moment; it is vast, however, in that the whole of life is comprised of such moments. Almost nothing, it seems, recedes from the moralist's view. And, as a result, almost nothing recedes from pastoral care. Chapter 4

The Ethics of Embrace: Disability and the Ecclesial Turn

"Christians are people who remain convinced that the truthfulness of their beliefs must be demonstrated in their lives."²¹⁰

Stanley Hauerwas

In the introduction to Part II I stated that chapters three, four, and five would constitute a taxonomy of complaint, by which I mean a set of approaches to the challenge of liberal eugenics that can be articulated according to key figures and texts and, importantly, developed in future work by other thinkers. In order to provide some consistency to the way I describe and analyze each approach I have set out to answer three basic questions: How *have* the figures and texts that constitute this approach addressed the challenge of liberal eugenics? How *could* they do so? And, finally, how *should* these figures and texts be developed?

The first of these questions refers to a presentation of the sources, arguments, narratives, and concepts that constitute the approach; the second is an imaginative moment where I ask what is enabled by a particular approach and what sorts of claims are ruled out of bounds; and, the third forwards a judgment about how the approach could, as it were, *say the next thing* – that is, develop the approach in a way that is attentive to the concerns of the day and faithful to the sources upon which the approach depends. I also,

²¹⁰ Stanley Hauerwas, "Why The Sectarian Temptation is a Misrepresentation: A Response to James Gustafson" in John Berkman and Michael Cartwright, eds., *Hauerwas Reader*, (Durham, NC: Duke University Press, 2001),100.

however, made plain in the introduction to Part II that these three standards may not be given equal measure in each chapter.

In this chapter, I provide an account of what I call the "ethics of embrace." This approach to the moral life is most clearly indebted to the work of Stanley Hauerwas, but also enlists fellow travelers like Hans Reinders, Brian Brock, and John Swinton. For each of these thinkers, what Savulescu's "best possible child" standard unveils is a profound and profoundly *wrong* conception of the human person and the person's relation to a community. More directly, the ethics of embrace is an attempt to challenge the premise that we can know what constitutes the "best possible" life in the first place. If this "best possible life" is often characterized by the capacity to make autonomous choices and be as tethered to or unfettered from human relations as one wishes, the complaint registered by these figures is one of obfuscation: in claiming to clarify the essential conditions of a life well-lived, liberal eugenicists overlook and undervalue the central facts of human existence – namely, the phenomenon of dependence and the nature of friendship.

This framework also presses the question of the relation of individuals to the community in which they are formed, expanding the object of analysis a bit further than the individual and mechanics of the individual's acts in chapter 3 to something like the *ecclesia* as such. And here, the conclusions thinkers working within this frame *can* draw regarding the morality of a particular technology and its use are path dependent upon the question of the moral fabric of its community. This, to be sure, is also true to a degree for the other approaches described here. But the calling card of the ethic of embrace is the way in which the basic picture of social life is one of rival *communities of discourse and practice*

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- each forming individual agents in complicated and mutually exclusive forms of moral language. This can be seen, I will argue, in attending to the degree to which the ethic of embrace depends upon a theological method of modernity-criticism.

The argument unfolds under the following headings:

- 1. Unusual Encounters
- 2. Disability and the "Standard Account of Morality"
- 3. The Church as Ethic
- 4. Modernity and its Discontents
- 5. Possible Allies
- 6. Conclusion, Or, What Does it All Amount To?

As in chapter 3, the center of gravity in this chapter is answering the question of how theologians working in this vein of thought *have* addressed the problem of conceiving children. It is only in sections five and six of this chapter that I move to evaluate the strengths and weaknesses of this approach by discussing what sorts of moves it enables and does not have the resources to address. There, I argue that there are alliances that could be built between thinkers indebted to the communitarian turn in Christian ethics and feminist thinkers highlighting the turn to first person – that is, the turn to personal experience as ethically relevant. That they have such trouble doing so, however, unveils the limits of this approach – most directly the reliance on modernity criticism and the rhetoric of *contrast*.²¹¹

²¹¹ For some of Hauerwas' only statements on feminist theological themes, see Stanley Hauerwas, "Failure of Communication *or* A Case of Uncomprehending Feminism," *Scottish Journal of Theology* 50, no. 2 (1997): 234. I should also note that my use of the "communitarian turn" in Christian ethics is shorthand for precisely the kind of focus on communities of moral formation that Hauerwas has long recommended. That said, in a short and, as far as I can tell, largely ignored essay titled "Communitarians and Medical Ethicists: Or, 'Why I am None of the Above,'" Hauerwas argues that the terms "liberalism" and "communitarianism" should both be scrapped. In his words:

1. Unusual Encounters

In March of 2002 an unusual encounter took place in central New Jersey. Devoid of all relevant context, there was little, if anything, unique about a noted ethicist inviting a public intellectual to campus in order to address a university class offered to the bright students of Princeton University. This sort of thing, of course, happens all the time.

What makes this particular debate both remarkable and unlikely is the degree to which the participants both embodied and represented positions diametrically opposed to one another. On the one side, Peter Singer: a figure of immense stature within the philosophical academy who has developed an ethical theory derived from "fact and reason" free of traditional encumbrances like species fellow-feeling, religion, family and cultural history. Central to this ethic is a notion of personhood that excludes the profoundly mentally disabled, neonates incapable of expressing preferences and projects, and geriatric persons suffering from advanced stage dementia or other severe mental impairments. On the other hand is Harriet McBryde Johnson, a disability rights advocate and lawyer who

Though it has become commonplace to refer to a communitarian turn in Christian ethics, this passage usefully points out how Hauerwas understands community, namely, as a requirement for the worship of God and the development of virtue. For this essay in its entirety, see Stanley Hauerwas, *Dispatches from the Front: Theological Engagements with the Secular* (Durham: Duke University Press, 1994) pgs. 156-164.

The longing for community so prevalent in our time is, from my perspective, but the working out of liberal theory and practice. Thus, I fear all appeals for community as an end in itself. For communities formed by the alienated selves who are created by liberalism too quickly can become a kind of fascism. No one should want community as an end in and of itself, but one should want to be part of communities because the forms of cooperation offered by them provide the achievement of goods otherwise unavailable – such as the worship of God.

has, since birth, suffered from a neuromuscular condition. Aside from the standard set of challenges she must face to navigate a world that is often less than accommodating, a great deal was at stake in McBryde Johnson's willingness to interact with Singer. Her own reputation was on the line – particularly with disability rights activist groups like "Not Dead Yet" who protested the event and expressed great frustration with McBryde Johnson for her willingness to engage with Singer and thereby lend credibility to his views.

In a sense, each of these figures was poised not only to *represent* their constituencies but also to recognize each other as legitimate, potentially fatal, foes. For Singer's preference-utilitarianism to gain traction, it must begin with both a normative claim that disabled persons, like, say, McBryde Johnson, are "worse off," and, moreover, that parents should be given the legal authority to kill what McBryde Johnson calls "the baby I once was." For this reason, for McBryde Johnson to even extend a sign of respect and/or collegiality is to offer Singer far more than her constituents believe he is owed. Both parties to this debate, in other words, were under pressure. This sentiment is expressed in the opening paragraph of the *New York Times Magazine* cover story from February of 2003:

He insists he doesn't want to kill me. He simply thinks it would have been better, all things considered, to have given my parents the option of killing the baby I once was, and to let other parents kill similar babies as they come along and thereby avoid the suffering that comes with lives like mine and satisfy the reasonable preferences of parents for a different kind of child. It has nothing to do with me. I should not feel threatened.²¹²

²¹² Harriet McBryde Johnson, "Unspeakable Conversations," *The New York Times Magazine*, 16 Feb 2003. In addition to being published in the NYT magazine, this essay has been excerpted in other publications, including *The Disability Studies Reader*, edited by Lennard J Davis. It is also reproduced with only minor alterations in McBryde Johnson's 2006 memoir, *Too Late to Die Young: Nearly True Tales from a Life* (New York: Picador, 2006).

As the narrative McBryde Johnson provides moves forward, it is clear that the two figures understand themselves as, in fact, *rivals*: the continued existence of one depends, on some level, upon the extinction of the other. And so the rhetorical strategy employed by McBryde Johnson is one of persistent and systematic disarming her opponent ~ concentrating first on the schema pitting autonomy vs. heteronomy that has been so enchanting to Kantians of one sort or another. She does so in a Herculean move, taking the occasion to point out the degree to which Singer's professorial existence depends upon multiple "assistants," without which, Singer himself would be prevented from enacting his projects in the world. In this, the rhetorical strategy is of a piece with the basic line of argument put forward by the disability-rights community: we, the disabled, exist just as you do – dependent upon a number of people to make our lives rich and possible.

This position is presented in full color throughout McBryde Johnson's account of her interaction with Singer. Most poignantly, McBryde Johnson writes of a moment wherein her disability shows itself anew during an intellectual exchange with a student. As she recounts it:

I feel as if I'm getting to a few of them, when a student asks me a question. The words are all familiar, but they're strung together in a way so meaningless that I can't even retain them – it's like a long sentence in Tagalog. I can only admit my limitations. "That question's too abstract for me to deal with. Can you rephrase it?"

He indicates that it is as clear as he can make it, so I move on.

A little while later, my right elbow slips out from under me. This is awkward. Normally I get whoever is on my right to do this sort of thing. Why not now? I gesture to Singer. He leans over, and I whisper, "Grasp this wrist and pull forward one inch, without lifting." He follows my instructions to the letter. He sees now that I can again reach my food with my fork. And he may now understand what I was saying a minute ago, that most of the assistance disabled people need does not demand medical training.

Highlighting this aspect of the encounter between Singer and McBryde Johnson as we begin a discussion of the communitarian turn within Christian ethics that I am here calling the ethics of embrace is important for three reasons. In the first place, it highlights a major point of convergence between the theologians discussed here and the mainstream disability-rights community. Interestingly, each holds that, whatever their metaphysical commitments may be, what is at stake in the eugenic impulse is the treatment and continued existence of disabled persons, full stop.²¹³

In the taxonomy of complaint that I am developing, this is an important fact. Moreover, we should not overlook, then, the fact that theologians like Hans Reinders and Stanley Hauerwas seem to be in full agreement with feminists (and disability-rights theorists of all sorts) like Simi Linton who holds that disability is "a prism through which one can gain a broader understanding of society and human experience."²¹⁴ This notion of "possible allies" will be developed in some detail in section five of this chapter as a way of articulating how this approach can meet the challenges posed in Part I.

²¹³ Part of what makes the encounter between McBryde Johnson and Singer so interesting is the conviction they share regarding the need to overcome thick metaphysical descriptions of human life in debates such as this. McBryde Johnson, then, does not appeal to strong conceptions of the "sanctity of human life" or, in fact, even to the fairly tame notion of the "giftedness" of human life that Michael Sandel develops in his 2007 work, *The Case Against Perfection* (Cambridge: Belknap Press, 2007).

²¹⁴ Simi Linton, quoted in Rosemarie Garland-Thomson's essay, "Integrating Disability, Transforming Feminist Theory" NWSA *Journal* 14:3, *Feminist Disability Studies* (Autumn, 2002), pp. 1-32.

Originally published on page 118 of Claiming Disability: Knowledge and Identity (New York: NYU Press, 1998).

Secondly, this exchange highlights an important set of decisions any moralist must make about the place of *abstraction* in reasoning about these matters. As chapter 2 made clear, the proposals of figures like Savulescu trade in decidedly abstract, often hypothetical, forms of reasoning. The questions – most importantly, the explicitly *moral* questions – consistently take some form of: what sort of people should there be? As a matter of fact, these sort of questions are both abstract and hypothetical, lending credence to some forms of rationality and eschewing others. Highlighting this aspect of the shape the liberal eugenic proposal often takes is a way of putting it in some contrast with the "turn to narrative" described in sections two and three of the chapter.

The third point to make from the Singer/McBryde Johnson exchange is the importance of our normative conceptions of personhood for the manner in which we sanction and prohibit certain forms of treatment. McBryde Johnson's insistence upon the personal pronoun (he insists he doesn't want to kill *me*) displays a claim that can be theorized and then, as it happens, empirically tested. That claim is this: *what one takes as the ontological status of the person is intrinsically related to the ethical treatment of individual persons*. The detail McBryde Johnson provides supports the oft-heard point that autonomy – understood as independence – is, at the least, less basic than dependence and, quite possibly, a genuine fiction. To show how theologians like Hauerwas make just this point is the task of sections two and three. But the essentially *ethical* question is this: do we have good reason to think that contrasting conceptions of the individual person *inevitably* leads to particular forms of treatment, including possible maltreatment?²¹⁵ This is important due

²¹⁵ Time and again McBryde Johnson proves the point that anyone who has spent significant time around a senior public intellectual, just to take one example, already

to the fact that what I was gesturing towards in the claim that liberal eugenics is itself a *mood* and, as such, cannot be reduced to a particular technological development, was the sense we all intuitively have that the judgment one makes about the deficiency or particular excellence of a human life carries in it an ethic of how that particular life should be treated.²¹⁶ That this could verifiably be the case lends credence to the position developed by the ethic of embrace and is the main topic we will return to in the concluding two sections of this chapter.

2. Disability and the Standard Account of Morality

No theologian has developed the ethics of embrace as comprehensively as Stanley Hauerwas. From the publication of *Suffering Presence* onwards, Hauerwas' interest in medicine has centered on the question of what virtues, skills, habits, and dispositions are required for faithful medical practice, by which he means not the "curing of disease" but

knows: the independence of thought that is afforded such people is not independent; it depends, rather, on a full fleet of willing assistants that manage the rudimentary functions that comprise daily life.

²¹⁶ This is the topic of the important work that sociologist John Evans is currently completing on the relation of particular conceptions of the human and the ethical fabric of our lives. In a large-scale study that includes in-depth interviews with PhD students at elite institutions alongside a nationally representative survey, Evans is pressing the question of whether or not we can actually establish any meaningful connection between our basic concepts of what a human is and how we treat other humans. In this, Evans makes use of three basic anthropologies - what he calls the "biological," the "theological," and the "philosophical" – in order to then ask whether or not, for example, holding the view that humans are purely and solely biological entities would make someone support statesanctioned acts of torture, and so on. Though these connections are tenuous and notoriously difficult to pin down, what Evans has proved is this: if we care about human rights generally speaking, it turns out that promoting the "theological anthropology" – namely, that all persons are created in the image of God – is significantly preferable than any of the others, most notably the "biological" anthropology. I am grateful to Professor Evans for sharing a pre-publication manuscript for a roundtable held in the fall of 2014 with Charles Mathewes and others.

the particular species of attention that only medical professionals can provide. Medicine, on his reckoning, is a moral practice that attends to suffering. A byproduct of attending to suffering may well be its alleviation, but this is not the aim of medical practice as such.²¹⁷ In fact, when medicine takes its primary aim to be that of the alleviation of suffering at all costs, it is very hard to see how a concept like "clinical judgment" retains any moral significance. Medical professionals, on that view, are mere service providers, technicians in the worst sense of the term.²¹⁸ This is to say that medicine, for Hauerwas, is a political – that is, intersubjective – enterprise.

Moreover, readers of Hauerwas grow accustomed to a certain stylistic flair that marks his writing. On record for not writing books but, rather, "putting essays together to make them look like books," Hauerwas' style is largely ad hoc and contrarian in nature.²¹⁹ Though his early work on the place of the virtues in the process of sanctification as well as his Gifford lectures published as *With the Grain of the Universe*, have a more systematic character (we could call it *systematicish*), the occasional nature of Hauerwas' preferred style of writing means that his thought often develops in a *responsive* manner, whether it be a particular work of fiction – say, *Watership Down*, for example – or an event like the attacks

²¹⁷ On this, see chapter one of *Suffering Presence* on "Reflections on Suffering, Death, and Medicine." Stanley Hauerwas, *Suffering Presence: Theological Reflections on Medicine, The Mentally Handicapped, and the Church* (South Bend: Notre Dame, 1986).

²¹⁸ For a large, searching work that supports this basic insight from within the practice of medicine, see Gregory Fricchione's magisterial 2011 work, Compassion and Healing in Medicine and Society: On the Nature and Use of Attachment Solutions to Separation Challenges. Hopkins, 2011.

²¹⁹ Stanley Hauerwas, *Hannah's Child: A Theologian's Memoir* (Grand Rapids: Eerdmans, 2010) pg. 239.

of September 11th, 2001.²²⁰ This means that Hauerwas' method is irreversibly what he calls theology as "indirection." Rather than beginning with explicating traditional doctrinal commitments, Hauerwas begins by giving his attention to particular phenomena in the world, highlighting what he takes to be the interesting moral features of such phenomena, and then, in some sense, making a set of arguments about how these phenomena unveil something true about the nature of God and God's relation to humanity.²²¹ It is in this way, and this way only, that Hauerwas thinks it possible to discern and highlight the possibilities of Christian existence *today*.²²²

²²⁰ For Hauerwas' though on Watership Down see pages 171-199 in Hauerwas Reader. For Hauerwas' thought on responding to 9/11 see his contribution to Dissent From the Homeland: Essays after September 11th (Durham: Duke University Press, 2003).

²²¹ This approach to Christian theology has come under sustained critical attention in Nicholas Healy's recent *Hauerwas*: A Very Critical Introduction. In that book, Healy argues that untangling Hauerwas' theological claims from his theological method exposes him for a kind of Schleiermachian liberal, precisely the thing Hauerwas claims to avoid. In his review of Healy's book for the *Times Literary Supplement*, Oliver O'Donovan argues that Healy's enterprise misunderstands what practical reason is. Healy's account is of "the dogmatic theologian Hauerwas might have been" had he, in fact, become a dogmatic theologian. And yet, according to O'Donovan, "Healy's wily reconstruction of Hauerwas is a demonstration, if one more is required, that the modern academy is at a loss as to how to situate a disciplined reflection on practical reason." See "What Shall We Do?", *Times Literary Supplement*, 29 December 2014

²²² In responding to John Bowlin's review of Hauerwas and Cole, Hauerwas makes plain his desire for more folks to read *Christian Existence Today* in order to see his political ethic in full. In Hauerwas' memoir, *Hannah's Child*, he reflects on the occasional nature of his writing and his varied attempts to make Christian speech intelligible through interactions of all kinds. Interestingly, Hauerwas' first publication came in 1969 in *The Augustana Observer*. As Hauerwas tells it, "An Ethical Appraisal of Black Power" got him into trouble, in large part due to his advocacy for black students at Augustana. For this, see pages 79-82 of *Hannah's Child*. This is part of what it means for Hauerwas to be an "eclectic" thinker. Recognizing this, however, makes the task of interpreting Hauerwas all the more difficult – not because his thought on a particular matter is unclear or his language impenetrable, but, rather, because the task of synthesizing all of his thoughts on a particular subject requires one to read across a number of different volumes and periods of development within Hauerwas' thought. When this is added to what Hauerwas calls the "exploratory" character

One consistent source of reflection throughout Hauerwas' career has been disabled persons, or, more precisely, the plight of disabled people in modern societies. The disabled, for Hauerwas, or more accurately, the paradox at the heart of liberal society's relation to disabled persons, is of enduring interest to Hauerwas, not out of fascination, but out of utility. In his view, if we commit the energy required to think seriously about the plight of the disabled, we will quickly question the nature of liberal individualism, our tendencies towards perfection, our inability to welcome children as gifts, and so on. As he puts it, "No group exposes the pretensions of the humanism that shapes the practices of modernity more thoroughly than the mentally handicapped."²²³

These reflections have often traveled together with Hauerwas' critique of the socalled "standard account" of morality in our time. Against a view of ethics that is over determined by hypothetical situations and quandaries, Hauerwas and David Burrell

of his writing, the task of interpreting rather than simply chronicling Hauerwas' thought becomes all the more complex.

²²³ Stanley Hauerwas, "Timeful Friends," *Journal of Religion, Disability, & Health* 8 (2005): 16. Though it will come up more extensively in a later section on "possible allies," it should be noted here that this statement could be made by any number of thinkers working within feminist studies and/or disability studies. To take one example, in her discussion of the "Deaf Lesbians" case I treated in chapter 2, Alison Kafer says, "I want to suggest that discrimination on the basis of disability ... is often not seen as discrimination at all, and therefore not considered as having a place in the political arena." What this means, for both Hauerwas and Kafer, is that the claim that reproductive technologies, if used at all, should be used to *eliminate* disabled forms of life becomes normative, leaving any public debate about the ends of technological advances less than robust. While Hauerwas and Kafer would differ on a great deal, on this, they are one. For more of Kafer's analysis, see chapter 3 of her book, *Feminist, Queer, Crip* (Bloomington: Indiana, 2013) titled "Debating Feminist Futures: Slippery Slopes, Cultural Anxiety, and the Case of the Deaf Lesbians."

penned "From System to Story: An Alternative Pattern for Rationality in Ethics," which Jeffrey Stout has called probably Hauerwas' "most influential piece from the period."²²⁴

Importantly for our purposes here, "From System to Story" was not only published as the first essay in *Truthfulness and Tragedy* selected for the widely-read *Hauerwas Reader* but first published as a central contribution to a volume produced by the Hastings Center and published in 1977 as *Knowledge*, *Value, and Belief: The Foundations of Ethics and Its Relationship to Science*. Its first hearing, in other words, was in a context of debating the source not of ethics as such, but medical ethics in particular. Edited by Tristram Engelhardt and Daniel Callahan and featuring key contributions from Alasdair MacIntyre, Paul Ramsey, Edmund Pellegrino, Hans Jonas, and others, *Knowledge, Value, and Belief* begins by noticing that "religious morality has been a major force in shaping the ethical and value structures of Western society," a claim that Hauerwas and Burrell go on to describe not as spurious but inadequate. Whatever we now make of the contributions that comprise this volume, it is important to take note of the breadth of contributions and the moral seriousness of all involved in this discussion regarding the "foundation" of medical ethics.

Hauerwas and Burrell argue for a form of practical reason that is not overly determined by "quandaries" but, rather, pays due attention to the place of narrative in the development of an ethics of character. The essay begins with demolition: "In the interest of securing a rational foundation for morality, contemporary ethical theory has ignored or rejected the significance of narrative for ethical reflection. It is our contention that this has

²²⁴ Jeffrey Stout, *Democracy and Tradition* (Princeton: Princeton University Press, 2004) pg. 142.

been a profound mistake, resulting in a distorted account of moral experience.²²⁵ This "distorted account," Hauerwas and Burrell go on to tell us, at its most basic, is an attempt to "free moral behavior from the arbitrary and contingent nature of the agent's beliefs, dispositions, and character." "Just as science strives to free the experiment from the experimenter," they go on to claim, "so, ethically, if we are to avoid unchecked subjectivism or relativism, it is thought that the moral life must be freed from the peculiarities of agents caught in the limits of their particular histories."²²⁶

Put differently, the push for a modicum of respectability and scientific credibility has pushed ethicists to pare down their picture of human agency in such a way as to obscure from view the processes that generate multiple conceptions of what constitutes responsible action.²²⁷ According to the "standard account" then, "what I am morally obligated to do is not what derives from being a father, or a son, or an American, or a teacher, or a doctor, or a Christian, but what follows from my being a person constituted by reason."²²⁸

Morality, in this sense, is deracinated, uprooted from its native context in the hope

that a generally applicable universal set of norms or principles can be deduced, ascertained,

²²⁵ This essay has been reproduced in multiple volumes. Here, I cite from its publication in the 1977 Hastings Center volume, *Knowledge*, *Value*, *and Belief* (Hastings on Hudson: Institute of Society, Ethics and the Life Sciences, 1977). ²²⁶Ibid., 113.

²²⁷ There is also a story to tell here as to how Hauerwas characterizes Medical ethics as being indebted to "terms of analysis" that are "primarily legitimating categories for a medicine shaped by a liberal culture." This phrase comes from Hauerwas's essay, "How Christian Ethics became Medical Ethics: The Case of Paul Ramsey," which has the happy accident of possessing the two major points of emphasis within the title. Those are: 1) that "Christian Ethics" has become "Medical Ethics," and 2) that Paul Ramsey had a big part to play in this. For more on this, see chapter 8 of *Wilderness Wanderings: Probing Twentieth-Century Theology and Philosophy* (Boulder: Westview, 1997).

²²⁸Hauerwas and Burrell, "From System to Story," 115.

and employed in a variety of contexts. This move towards abstraction "distorts the nature of the moral life" in three specific ways. First, it places "an unwarranted emphasis on particular decisions or quandaries" by, second, "failing to account for the significance of moral notions and how they work to provide us with skills of perception." The result of this, they argue, is that the agent is "separated" from "his interests," understood rightly.²²⁹

As they describe it, the standard account of ethics "becomes a decision procedure for resolving conflict-of-choice situations" that "assumes no one faces an ethical issue until they find themselves in a quandary – should I or should I not have an abortion, etc."²³⁰ In this way, "ethics becomes a branch of decision theory."²³¹ "What matters," they go on to say, is not that David Burrell or Stanley Hauerwas confronts a certain quandary, but that anyone may or can confront X or Y."²³² As Sam Wells and others have noted, the subsequent criticism of "quandary ethics" leveled by Hauerwas and Burrell is premised upon a vaguely and broadly neo-Kantian set of commitments undergirding the "standard account of morality" as Hauerwas and Burrell describe it. "What exactly is this standard account?" asks Wells. "Hauerwas never exactly says." "It is hard," Wells continues, "to identify one contemporary moral philosopher who subscribes to the entire range of 'standard' assumptions – though its ancestry is recognizably Kantian."²³³

Historically speaking, it is important to pay attention to the fact that Hauerwas arrived at this position on the disabled during a period of his career committed to the kind

²²⁹Ibid.

²³⁰Ibid.

²³¹Ibid.,116.

²³²Ibid.

²³³ Sam Wells, *Transforming Fate Into Destiny: The Theological Ethics of Stanley Hauerwas* (Eugene, OR: Cascade, 1998) pg 13.

of distancing from one's teachers that is characteristic of an ambitious academic agenda at its inception. As Jeffrey Stout has noticed, at the heart of Hauerwas' early work is an initial insight regarding the centrality of virtue not simply for Christian decision-making but, in fact, for a proper understanding of sanctification as such. "For the Methodist Hauerwas," Stout argues, "Christian ethics is perfectionist. It is mainly about what kind of people Christians are called to be, not about what one ought to do, and he has always read Aquinas mainly with this thought in mind."²³⁴

While Stout's account of Hauerwas' perfectionism may be over determined by his objective to describe and dismiss what Stout calls the "new traditionalism" of figures like Hauerwas, Alasdair MacIntyre, and John Milbank, it is clear that Hauerwas' prodigious writings from the time in his career – most notably his dissertation, published as *Character* and the Christian Life, as well as the essays that comprise *Truthfulness and Tragedy: Further Investigations Into Christian Ethics* and *Vision and Virtue: Essays in Christian Ethical Reflection –* are mostly variations on a theme. As Sam Wells describes them, these writings are "dominated by a noisy discomfort with what he perceives to be the way ethics is conventionally approached." Hauerwas began, Wells goes on to say, "in a mode of demolition," wherein what provoked Hauerwas' ire was the "standard account" of ethics undergirding supposed rival theories.²³⁵

While the utilitarians and deontologists of the day saw themselves as holding deeply divergent views, each, Hauerwas contended, bought in to some degree to the notion that the substance of "ethics" is decision-making strictly conceived, some sense that the

 ²³⁴ Jeffrey Stout, Democracy and Tradition (Princeton: Princeton University Press, 2004),142.
 ²³⁵ Wells, Transforming Fate Into Destiny, 13.

most pressing questions are ones of action, some variant on the question of "What is right? What am I obligated to do?"

Lest you think Hauerwas is alone in this basic methodology, this stance towards the "standard account" of ethics as it has come to us through a more-or-less Kantian frame is shared by the Dutch bioethicist, Hans Reinders. In his two books on the topic – *The Future of the Disabled in Liberal Society* and *Receiving the Gift of Friendship: Profound Disability, Theological Anthropology, and Ethics*, Reinders has specified Hauerwas and Burrell's "standard account" by challenging the disability-rights approach to bettering the plight of disabled persons as profoundly misguided for the simple reason that the basic anthropology it assumes is overly dependent upon a modern, contested notion of rights-talk. In this way, there is a sense in which Reinders' work on disability, like Hauerwas', never leaves behind the basic notion that what is at stake in our discussion of disabled persons is not "their" welfare, but our own. Take, for example, the opening paragraphs of *Receiving the Gift of Friendship*:

This book makes an unusual claim about unusual people: it says that people with profound intellectual disabilities are people just like other people. At first sight, this claim is not unusual at all. Thousands of proclamations, preambles, declarations, mission statements, reports, and newspaper articles declare that to be true. However, things begin to look different as soon as the question of what distinguishes people from other living creatures arises. Most of the answers to this question will present a version of the commonsense view: this view says that people are different because they have language, they have reason and will and a sense of self, so that they can make up their minds about things and choose what they want, they can pursue plans and ideals, and so on. In other words, the things that human faculties allow people to do or to have are what make people different. Unfortunately, however, people with profound intellectual disabilities cannot do or have these kinds of things. That is, they don't do or have what is said to distinguish human beings from other creatures. Therefore, in light of the

commonsense view, to say that the profoundly disabled are just like the rest of us must be a very unusual claim.

There is thus more to this claim than what may appear at first sight, because, if we want to uphold the claim that people with profound intellectual disabilities are people just like any other people, then the commonsense view must be false. I know that many readers will want to uphold that claim, which logically commits them to the conclusion that the commonsense view is false. But this results in a very unusual claim about usual people: that whatever distinguishes them as human beings, it cannot be the human faculties. If it were the human faculties, people with profound intellectual disabilities could at best be understood as "subnormal," or "subhuman," but not as human beings properly speaking. Since this conclusion would defy the first premise, it follows that what people ordinarily think makes them different qua human beings cannot be true. In that sense, to deny the commonsense view is to make an unusual claim about usual people.²³⁶

Here, in this extended passage, we have Reinders reproducing the basic structure of Hauerwas and Burrell's discussion of the "standard account" of morality, albeit where the term, the "commonsense view," is preferred; and it is this thesis that is developed in the 350+ pages that follow. For Reinders, the fact that the language of rights comes so easily to the lips of advocates for the disabled points to the difficulty we have uttering the statement with which he begins the book: "people with profound intellectual disabilities are people just like other people." Here, it is crucial to emphasize the importance of Reinders' use of the "profoundly intellectually disabled."

However laudable it may be to want to expand the horizons of legal consideration to include ever more members of the human family, Reinders' concern is that any modern conception of rights cannot bear the weight put on it not just by disability, but profound disability. In an important passage on this matter he says:

²³⁶ Hans S. Reinders, *Receiving the Gift of Friendship: Profound Disability, Theological* Anthropology, and Ethics (Grand Rapids, MI: Wm. B. Eerdman's Publishing Co., 2008), 1-2.

However, in its celebration of individual human freedom as a "hyper good," the disability-rights literature fails to address the needs of human beings for whom purposive agency exists only at the fringes of their lives, or does not exist at all. Even when we take into account, as we should, that the capacity for agency comes in degrees, the fact remains that some human beings are very far from knowing what it is to choose for themselves what they want. And to the extent that choosing for oneself what one wants depends on the capacity for self-identification and self-affirmation, the logic underlying human freedom as a "hyper good" has marginalizing effects. Not only does it pose human agency in control of itself on center stage; it also implies that some human beings belong at best only at the fringes of its conception of the human.²³⁷

Here again is a kind of affirmation-through-denial, the kind which is the calling card of this form of modernity criticism. The impulse towards inclusion at the heart of the modern project cannot, these theorists claim, be sustained by the sources upon which they depend.²³⁸ But there is also here an important and sustained critique of the aspirations of something like a "public ethic." In a society such as ours, the Christian ethicist could deign to speak for the good of the whole, but in so doing he or she would, by definition, be forever tempted by what Hauerwas has at times called the church's "cultural captivity." There is, then, a constant preference for the micro community, a sense that any resonance a theological claim regarding the goods of human life and how they should be protected or promoted may have outside the churches' walls could only be accidental, never intentional, always a matter of happenstance and never a result of persuasion or will.²³⁹

²³⁷Ibid.,139-140.

²³⁸ The question of "who's in and who's out?" is raised directly in Robert Spaemann's account of personhood as a *nomen dignitatis*. This will be mentioned in the body of the text below, but for Spaemann's account, see the opening chapter of *Persons: The Difference Between 'Someone' and 'Something'* (Oxford: Oxford University Press, 2007)

²³⁹ This aspect of Hauerwas' thought is often attributed to the influence of Alasdair MacIntyre, about which more will be said below.

3. The Church as Ethic

An individual can only know what to do in a given situation when they have cultivated the virtue required to act in accordance with what is just, true, and fitting; and such virtue can only be developed within a community of discourse and practice. This is the claim that follows on from Hauerwas and Burrell's critique of the "standard account" of morality.

The heart of the ethic of embrace is constituted by the view that efforts to systematically prevent the birth of disabled or deficient humans expresses disdain or displeasure with existing disabled human life due to the contestable claim that full human personhood depends upon a particular form of agency-as-autonomy, a view that is particularly strong in its modern form. Against this view, Hauerwas argues both that friendship is the goal of inter-subjective relations and that what constitutes a person capable of friendship is not the activated capacity to enact projects in the world or express preferences; rather, to be a person is to be welcomed and recognized as a full member of a human community.

But what is this human community, and how would we know it when we saw it? As Hauerwas' writings on the disabled often note, what modern conditions make difficult, if not impossible, is a politics of friendship premised upon the facts of asymmetrical relationships and the constitutive element of dependency that the very existence of the disabled present us with. And yet, when we enter into relationship with the disabled, or at least view the ways in which moral exemplars like Jean Vanier do, the facts of our observations and experiences are at odds with the moral theories to which we are

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instinctively and uncritically committed. On this, Hauerwas is clear: "we cannot," he says, "help but desire and delight in the reality of the other, even the other born with a difference we call mentally handicapped."²⁴⁰ This last point is crucial for, as Hauerwas argues, "friends need no justification."²⁴¹

The question then becomes: where can such a truly human and humane community be found? For Hauerwas, the answer to this question is the Church. In fact, in one of his most widely excerpted pieces in medical ethics, "Salvation and Health: Why Medicine Needs the Church," Hauerwas argues that "if medicine can be rightly understood as an activity that trains some to know how to be present to those in pain, then something very much like a church is needed to sustain that presence day in and day out."²⁴² Despite the whiff of instrumentalism in this way of phrasing the relation of the church to medical practice, Hauerwas' point here is fairly plain: the church is a source of nourishment for the practice of medicine as well as a limitation on its ambition. It nourishes medical practice by providing medical professionals with the moral resources to sustain their attention to the suffering; it limits medical practice by holding out the option that, in the right time

²⁴⁰ This passage comes from the important essay, "Timeful Friends: Living with the Handicapped." It has been published as a part of an important collection edited by John Swinton titled *Critical Reflections on Stanley Hauerwas' Theology of Disability: Disabling Society, Enabling Theology* (Binghamton NY: Haworth Press, 2004). In its journal form, this collection was an edition of the *Journal of Religion, Disability & Health* 8:3/4. This particular passage comes from page 16 of the book.

²⁴¹Ibid., 23.

²⁴² Hauerwas, Suffering Presence, 65.

and in the right way, the best thing a medical professional can hope for is the wisdom of "doing nothing gallantly."²⁴³

This line ~ "doing nothing gallantly" ~ is as provocative as it is evasive. And this has been true for a number of aspects of Hauerwas' thought, leading him to develop an everincreasing arsenal of one-liners intended to provoke thought on just what it means to describe the church as the "body of Christ."²⁴⁴ The pithy nature of these aphorisms should not distract, however, from Hauerwas' basic intent to highlight the particular value of a church community for giving shape to medical practice. "The church," he tells us in multiple places, "does not *have* a social ethic; it *is* a social ethic."²⁴⁵ In a brief and important distillation of this idea, Hauerwas continues:

The claim that the church is a social ethic is an attempt to remind us that the church is the place where the story of God is enacted, told, and heard. Christian social ethics is not first of all principles or policies for social action but rather the story of God's calling of Israel and of the life of Jesus. That story requires the moral of a corresponding community which has learned to live in a way that makes it possible for them to hear that story. The church does not have a social ethic but is a social ethic, then, insofar as it is a community that can clearly be distinguished from the world. The world is not a community and has no such story, since it is based on the assumption that human beings, not God, rule history.

In a sense, this last claim regarding the authorship of history is the essential key to unlock

the rhetorical force of Hauerwas' view.

²⁴³ See "Doing Nothing Gallantly," co-written with Gerald McKenny and published as the penultimate chapter in *Approaching the End: Eschatological Reflections on Church, Politics, and Life* (Grand Rapids: Eerdmans, 2013.)

²⁴⁴ See his recent essay, "How to Write a Theological Sentence" in Approaching the End.
²⁴⁵ This claim is described at length in *The Peaceable Kingdom* and A Community of Character. Here, however, I focus on an essay from Christian Existence Today titled "The Gesture of a Truthful Story." For this see pages 101-111 of Christian Existence Today.

²⁴⁶ Hauerwas, "The Gesture of a Truthful Story," 101.

When, for example, Hauerwas makes his oft-quoted claim that the task of the church is not to make the world more just but make the world recognize itself *as world*, Hauerwas knows full well the degree to which such a statement is jarring for anyone who thinks the primary task of the churches is the extension of its life to those outside its doors. Hauerwas may well endorse these efforts, but his primary task is to question the premise that Christians are sufficiently schooled in the language of the faith they aim to share with others. And so, in saying that the church should aim to "make the world, the world," Hauerwas is simply pointing out the degree to which "Christian social ethics," of course, has predominantly been a game played by Protestant thinkers that, more or less, follow Rauschenbusch's original call.²⁴⁷

For Hauerwas, it will only be a truly counter-cultural church that will suffice to preserve the Christian faith for future generations. This is due, in part at least, to what Hauerwas calls the Groucho Marx problem:

Groucho Marx said he would not want to be a member of a country club that would have him as a member. In like manner I suspect most of us distrust a church that we have chosen. We do so because we do not trust our own ability to choose because we think our lives are also the result of our arbitrary choices. We therefore have great difficulty passing on our faith in God to our children because we think they ought to make up their own minds about such important matters. As a result, too often our children think they get to make up the kind of Christianity they will practice, which usually means after a time they quit practicing altogether.²⁴⁸

²⁴⁷That Hauerwas takes some degree of joy in the "death of Protestant liberalism" is debatable; that he thinks it is a fact is not. See his recent essay on "The End of Protestantism" in *Approaching the End: Eschatological Reflections on Church, Politics, and Life.* This theme, however, is not a new one in Hauerwas' thought.

²⁴⁸ Hauerwas, Approaching the End, 88.

In light of this, Hauerwas has long placed a great deal of emphasis on the

sacraments that narrate the church and the place of the virtues in Christian formation. In some ways, then, an abiding question of Hauerwas' is not simply about the relation of the practices, virtues, and narratives present within the Christian church, but the way in which understanding such relations helps distinguish the church from voluntary associations like the Boy Scouts of America, the local Chamber of Commerce, and so on. The basic answer Hauerwas has provided centers on the place of the narrative in the life of the church and the centrality of the sacraments for creating and sustaining the people of God.²⁴⁹

4. Modernity and Its Critics

The ethic of embrace has always been worked out in contrast to other ethical pictures, even from within other streams of Christianity. This is most clearly the case in Hauerwas' voluminous writings on the nature of Christian non-violence, and it is no different when it comes to the question of disability. Hauerwas, generally speaking, works his thought out in conversation with those who hold rival positions on matters of perceived importance. This means that one of the most surprising but enduring features of Hauerwas' writing on the disabled is that it is not really "about" the disabled in a direct sense; rather, they serve as a proxy of sorts. Disability, for Hauerwas, gives rise to thought, thought that may be most directly on the nature of liberal individualism, our tendencies towards perfection, our inability to welcome children as gifts, and so on. This is to say that

²⁴⁹ On the relation of liturgy to ethics, see Hauerwas and Wells' introduction to the *Blackwell Companion to Christian Ethics*. On the "turn to narrative" and Hauerwas' place within it, see Peter Ochs' Another Reformation: Postliberalism and the Jews or Hauerwas' own essay, "The Narrative Turn: Thirty Years Later" in *Performing the Faith: Bonhoeffer and the Practice of Nonviolence* (Waco: Brazos Press, 2004).

Hauerwas' reflections on disabled life are frequently grist for the mill of modernity criticism; they may well be more than that, but they are certainly not less.²⁵⁰

Whether it is the state or the individual that decides to label some forms of human life deficient or disabled is of little importance. The crucial thing that unites rather than distances the modern and the late-modern forms of eugenics is the quintessentially modern picture of what makes for a good human life that allows eugenicists in either era to discriminate "fit" from "unfit," "feebleminded" from "intelligent," and so on. According to this line of thought, one could grant the new eugenicists their claim regarding the lack of coercion in new reproductive technologies used for eugenic purposes and yet pronounce a negative judgment on the proposals as such. In this way, the critique of liberal eugenics leveled by the ethics of embrace is fundamentally a criticism of contemporary conceptions of moral agency that are, as they have it, over-determined by modernity as such.

To say "Modernity as such" is to begin a discussion that seems to inevitably elude conclusion.²⁵¹ Modernity, it seems, is an inexhaustible subject, capacious enough to produce tome after tome, yet somehow traumatic enough to justify producing yet another attempt to ameliorate its effects. And yet claims like the following from Stanley Hauerwas mark the essence of the ethic of embrace: "No group," according to Hauerwas, "exposes the

²⁵⁰ There is a third feature worth mentioning here that will come up at a later juncture. This feature comes into being at a later point in Hauerwas' career and includes the primacy of moral exemplars like Jean Vanier as essential to the task of describing the appropriate Christian response to the profoundly disabled. While Hauerwas has, of course, given sustained attention to the place of the virtues in the Christian life, a discernible shift has taken place, I argue, wherein a description of the virtues of the practice of medicine as such has given way to an emphasis on the possibility of individual acts of character. ²⁵¹ The debate over the theological origins of modernity is endless. See, for example, Thomas Pfau's *Minding the Modern* (South Bend: University of Notre Dame, 2011), Michael Gillespie's *Theological Origins of Modernity* (Chicago: University of Chicago, 2009), and Taylor's A Secular Age.

pretensions of the humanism that shapes the practices of modernity more thoroughly than the mentally handicapped."²⁵²

We could, however, go further. We could argue that the eugenic impulse, in contra-distinction to eugenic practice, is not inherently a modern project and in fact, has a strong advocate in Plato. As chapters one and two made plain, the *liberal* eugenic impulse is constituted by an evaluation of human life as somehow deficient and the technical power given to us by developments in reproductive technology to alter or eliminate such deficiencies. Moreover, one could label some human life "deficient" for any number of reasons – it lacks the capacity for a sufficient amount of well-being, it lacks the capacity to be a sufficiently robust economic producer, it lacks the capacity for sufficient degrees of inter-subjective relations, or whatever. What is crucial for understanding the concept of eugenics is not the justification, but the act of evaluation itself – the normative judgment that a particular form of life is substandard and in need of modification, enhancement, or elimination.

Once this judgment has been made, however, what is required for eugenic practice is the technical capacity for such a judgment to be actualized, set into motion, and enacted. And here, though there are important differences among the methods employed to enact these judgments, what unites them is the sense they create within us that we can operationalize, as it were, our distinct visions regarding valuable human life. It is this point – this description of how we go about labeling certain human lives as deficient – that undergirds the definition of modernity operative in ethic of embrace. For theologians working in this tradition of thought, the question is this: what normative conception of the human person

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²⁵² Hauerwas, "Timeful Friends," 16.

undergirds both the stigma associated with disabled or deficient life and the effort to eliminate such forms of life? What would one have to believe, in other words, about well-functioning full members of a society to "draw the line" as it were, regarding full and equal treatment and status?²⁵³

For these thinkers, asymmetrical relations among persons are an irreversible fact of human existence and are not something to be fixed. Moreover, we do not know, this position argues, what constitutes the "best possible life" and, unless we want to

We refuse to accept Down's syndrome as a valid and acceptable genetic variation and way of living a human life, not because it is inherently problematic for those who have that life experience but because of the ways in which we have *chosen* to build our communities and the types of values and moral frameworks we *choose* to make our norms (6).

By electing to underscore the notion that modern societies choose to treat disabled human life in certain fashions, Swinton is nodding to the possibility of alternative ways of organizing society, alternative aspects of human experience that deserve our sustained attention and welcome. However, as is often argued by proponents of the ethic of embrace, what is remarkable about our current historical moment and the "we" that opens the passage previously quoted is a "profound social contradiction." At the very moment wherein there is sustained support for using public funds to better the lives of the disabled we also see developments in reproductive medicine that aim to prevent the disabled from coming into being. This observation is encapsulated in the heading to one of Swinton's subsections, "We love you...now that you are here..." This constitutes an "odd situation," Swinton argues, "wherein there is a public discourse that is pro disabled people and wary of eugenics and eugenic intentions, and a healthcare context within which eugenic activities aimed at people with disabilities appears to be accepted and acceptable" This basic line of thought is forwarded also by the essay that opens Hans Reinders' edited volume, The Paradox of Disability: Responses to Jean Vanier and L'Arche Communities from Theology and the Sciences (Grand Rapids: Eerdmans, 2010)

²⁵³ What I am describing here as an ethic of embrace is less interested in technological developments within the field of reproductive medicine than our capacity and willingness to describe certain forms of human life as deficient or substandard. Representative of this view is John Swinton's claim in the opening chapter of an edited volume that develops the ethic of embrace, *Theology, Disability, and the New Genetics: Why Science Needs the Church* (London: T&T Clark, 2007):

categorically deny the possibility that relations of dependence can be mutually edifying and properly human, we should be very wary of technological developments that take as their aim the elimination of such relationships.

5. Possible Allies

Though the particular theologians that have developed the ethic of embrace insist, to some degree or another, on rhetorical strategies of differentiation, I see no reason why, with some modifications, two possible alliances could not be forged. The first of these would be with feminists and disability rights theorists who have led the way in turning to first-person narratives; the second being a set of disability-rights theorists who champion the so-called "expressivist" critique of technologies like Prenatal Genetic Testing. Let me take these in turn.

On Theology and the First Person

One of the most consistent performative strategies of thinkers like Hauerwas, Jean Vanier, and Brian Brock is the turn to first person narratives to illustrate their critique of modernity and the forms of life it supports. Here, the strategy is akin to that of Harriet McBryde Johnson, and it is this: to resist the impulse to abstraction, we should focus on very real situations in which people find themselves engaged in relations of asymmetry. In essays with titles like "Must a Patient Be a Person to Be a Patient? or "My Uncle Charlie is Not Much of a Person But He Is Still My Uncle Charlie," what Hauerwas advocates is not the absence of theory but an insistence that theory begin with practice, that it be, in my own words, not "from below" but from "between."

What we are talking about when we talk about the relation of patient to doctor, for example, is *not* a form of relationality mediated by some fictional mutual decision to regard one another as persons. Rather, we are talking about the nature of the relation between Frank and Jane, wherein "Frank" names one member of a community and "Jane" names another. The introduction of a concept – in this case, *personhood* – actually confuses the matter, Hauerwas contends, "not because some of the conclusions reached by such reasoning may be against my own moral opinions or because they entail practices that seem counter-intuitive, but rather," he continues, because "this use of person tends to do violence to our language."²⁵⁴ In this, Hauerwas is both extending and separating himself somewhat from Robert Spaemann's observation that:

Intellectual preoccupations with the concept of the person have, until the present day, assumed a somewhat theoretical and academic character. But in recent years, unexpectedly, that has changed. The term 'person' has always (since Boethius) served as a *nomen dignitatis*, a concept with evaluative connotations; in the wake of Kant it became the central plank in the foundation of human rights. Now its function has been reversed. Suddenly the term 'person' has come to play a key role in demolishing the idea that human beings, qua human beings, have some kind of rights before other human beings.²⁵⁵

What unites Hauerwas and Spaemann here is a common intuition regarding the development of the use of the concept of "personhood," and the perceived nefarious ends to which it is now put. Rather than a *nomen dignitatis* that bestows certain protections and dignities upon all human beings as human beings, the concept is now utilized first as a heuristic concept wherein something more than membership within the human community is required for a particular human being to be deemed a person. Hence, when

²⁵⁴ Hauerwas, "Must a Patient Be a Person to Be a Patient? Or, My Uncle Charlie is Not Much of a Person But He Is Still My Uncle Charlie," found in Swinton, 116.
²⁵⁵ Spaemann, *Persons*, 2.

Hauerwas says that his uncle Charlie (or a neonate, or profoundly disabled human life) may not be much of a *person*, but is still his Uncle Charlie, what he is arguing is that the concept of personhood is inadequate as a means of determining the morality of any particular act towards Uncle Charlie.

Any attempt, Hauerwas contends, to ground a set of criteria, an ethic, as to how one is to relate to Uncle Charlie that obscures his "uncleness" by replacing it with his "personal status," fails due to the fact that it "does violence to our language." Here, however, Spaemann and Hauerwas depart, in large part on the prudential question of the utility of the concept of personhood. Whereas Hauerwas is willing to distance himself from the concept altogether and only use it sparingly, Spaemann is interested in reinvigorating and defending the basic Kantian project against those who would see in it as an excuse to deny personal status to certain human lives.

This difference manifests itself in what I have here described as a dependence upon personal narratives for the ethics of embrace and, in particular, its distancing from an ethic from either "below" or "above." It is not uncommon, for example, for Hauerwas to make statements that begin with "what people like Jean Vanier (founder of L'Arche) make possible is X" wherein X refers to the substantive form of life he intends to commend. The habit of reasoning from the particular to the theoretical is, moreover, characteristic of the ethic of embrace.

Consider, for example, the essay composed by Brian and Stephanie Brock that opens the edited volume *Theology*, *Disability*, *and the New Genetics*: *Why Science Needs the Church*. Titled "Being Disabled in the New World of Genetic Testing: A Snapshot of

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Shifting Landscapes," Brock and Brock cast a retrospective glance on the first two years spent parenting their first son, Adam. Beginning with an extended quotation from George Grant that is glossed by Brock and Brock as establishing that "the most important aspects of our technological age are grasped only though close participatory examination of the contours of experience in technological existence," the essay is punctuated by a push-andpull relation between a set of conscientious first-time parents and the medical establishment's many actors.

Early on in the essay we are told that the couple's "theological beliefs and hopes cashed out in a single criterion for diagnostic action" which, though seemingly commonsensical to the couple, "turned out to be increasingly hard to maintain in the contemporary medical context."²⁵⁶ In their own description, the Brocks "asked simply and directly that all treatment of mother and child be correlated to the medical interests of both." "We did not," they continue, "consider termination a 'treatment' for our child, nor diagnostic testing which was not directed at a proximate and remediable medical problem."²⁵⁷

This approach resulted in a non-interventionist pregnancy and a protracted struggle with a number of medical professionals after a series of complications resulting in an extended hospital stay after Adam's birth caused his pediatrician to suspect a diagnosis of Down's syndrome. In the Brocks' own narration of these first few weeks of Adam's life, their conviction to filter all medical decisions through their basic frame remained steadfast. When the German doctors admitted that they had taken a blood-sample from Adam in

²⁵⁶ Brian Brock and Stephanie Brock, "Being Disabled in the New World of Genetic Testing: A Snapshot of Shifting Landscapes" in *Theology, Disability, and the New Genetics:* Why Science Needs the Church, ed. John Swinton and Brian Brock (New York: T&T Clark, 2007), 31.
²⁵⁷Ibid., 32.

order to perform a genetic test to determine conclusively whether or not Adam was, in fact, suffering from Down's, the Brocks were solidified in their resistance:

We made our position clear. We were unhappy that they had taken blood and done a genetic test without our permission, and were now simply informing us that the test would be repeated: on those grounds alone we decided out of pure stubbornness that it was not in Adam's or our best interests simply to sit back and let them proceed without discussion with us. So we refused the test, a decision which, at least while we were in the hospital, we were very happy to have made.

We decided from that point on that we would insist on asking a relatively simple question when a diagnostic procedure was suggested: 'Will it aid Adam's treatment?' This turned out to be a revealing question. The only reasons offered from having the genetic test fell under the category of 'for future planning.' This included testing for known problems suffered by children with Down's such as problems with sight and hearing, intestinal troubles and thyroid disturbance. However, we soon found that the real reason to test our son's chromosomes was to know what kind of Down's he has so that we would be informed about our chances of having healthy children in the future. Now the point of the discussion and the push for testing began to emerge from the murk of scattershot argumentation: you wouldn't want to have any more of 'these children.'²⁵⁸

Over time, the repeated requests for testing the Brocks fielded from the medical community resulted not only in a series of stand-offs but, as they describe it, a repeated incapacity to treat Adam's presenting symptoms without first engaging in genetic testing deemed superfluous by Adam's parents. Reflecting on this aspect of their story, Brian and Stephanie Brock claim that "the most overwhelming sense of continuity we found in these experiences of the impact of genetic testing, what might for us be called the 'soul' of the age, is best characterized as a pervasive and very particular form of fearfulness."²⁵⁹ The anxiety born of such fear, they go on to describe, "suggests that one way to begin to think about the dynamics of our experience of genetic testing is as a symptom of modernity's

²⁵⁸Ibid., 33-34.

²⁵⁹Ibid., 38.

near-complete loss of the sense that human action is only *discovering* our sustenance and continuation as a species, nation or family, not a *grasping* or *creating* it."²⁶⁰

In this, there is a potential alliance between traditional theological voices and some feminists who have long articulated the moral importance of the turn to experience. This represents not the "can" standard I have described above, but the way in which this particular approach to the subject could and *should* address the question of the new eugenics. The suggestion here is that the attention to particular cases within this approach, as evidenced by the Brocks' account above, could be further developed to incorporate many of the insights of the feminist turn within bioethics as such.²⁶¹

While Gloria Albrecht and others have criticized Hauerwas for commending to the world a church nowhere to be found within it and, in fact, Hauerwas' mode of thought does, as I'll soon demonstrate, lead to forms of instrumentalizing "the disabled" as a group, it is nevertheless the case that many Christian ethicists indebted to Hauerwas have taken up the call of the first-person narrative.²⁶² Not only this, they have taken the turn to

²⁶⁰ Ibid., 39.

²⁶¹ A representative essay that includes a frank discussion of disability and the Deaf Lesbians case from chapter 2 is the opening essay of a volume edited by Hilde Lindemann, Marian Verkerk, and Margaret Urban Walker: *Naturalized Bioethics: Toward Responsible Knowing and Practice* (Cambridge: Cambridge University Press, 2009). In that first essay, "Moral Bodies: Epistemologies of Embodiment," Jackie Leach Scully resists the temptation to universalization in bioethical matters, insisting on the contrary, that "real, personal, and social situations" do differ in kind. This is what she means when she discusses "naturalized bioethics." That said, "saying that attention to moral experience from within disability will correct a distortion in bioethical thinking is not the same as suggesting that experiential accounts are the only source material for theorizing disability" (38). What a "naturalized bioethics" finally does, however, is "examine critically the moral authority of local knowledge claims" (40).

²⁶² Gloria Albrecht, *The Character of Our Communities: Toward an Ethic of Liberation for the Church* (Nashville: Abingdon, 1995). Albrecht and Hauerwas had a very direct exchange in the Scottish Journal of Systematic Theology wherein Hauerwas made plain his disinterest

experience as a useful means of resisting the abstracted quality the question, "What kind of people should there be?" often takes. This convergence is somewhat surprising. Within the field of feminist bioethics, a great deal of attention has been paid to the way in which first-person narratives relate to abstract forms of reasoning. The thought, so far as I understand it, is that the first person narratives of women (and, in truth, all persons) are submerged and lost in a sea of discussion regarding the principles governing decision-making.²⁶³

In this act of submerging, what is overlooked is the degree to which the agency of particular individuals is far more complex than models such as Savulescu's tend to imply. Crucially, the surprising element of the convergence between Hauerwas and the theologians who follow by his lights, on the one hand, and feminists and others on the other, is not that they each understand the moral theories present in the work of thinkers like Savulescu to be deficient, but, rather, that they each judge such theories not primarily against an alternative theoretical account but *against experience itself*, particularly the experience of caring for the disabled. Once one takes seriously what it is to care for the disabled, it is not that one's "position" on the disabled *changes*; rather, one is hesitant to characterize the disabled as something one need to have a "position" on in the first place.

in feminist theology, as practiced at the time. See both Albrecht's essay, "Stanley Hauerwas' *In Good Company: The Church as Polis*" and Hauerwas' response, "Failure of Communication or A Case of Uncomprehending Feminism," in *Scottish Journal of Theology* 50:2, 1997.

²⁶³ On this turn, see the collection of essays edited by Jackie Leach Scully, Laurel E Baldwin-Ragaven, Petya Fitzpatrick, *Feminist Bioethics: At the Center, On the Margins* (Baltimore: Johns Hopkins University Press, 2010). Also relevant is Eva Kittay's first person narratives in *Love's Labor: Essay on Women, Equality, and Dependency.* There, in a riff on Adrienne Asch's claim, she says, "The most important thing that happens when a woman becomes the mother of a child with disabilities is that she becomes the mother of a new child." See *Love's Labor*, page 147.

But, crucially for Hauerwas, the utility of first-person narratives resides in their capacity to serve his critical objectives, wherein "critical" both names the importance of these narratives and the fact that are forms of critique.

Given Hauerwas' views on the church/world distinction, the nature of modernity's effects on the capacity for friendship, and his perfectionist tendencies in matters of moral formation, it is not surprising that the communities that enact such an ethic are few and far between.²⁶⁴ The ethic of embrace, however, is as much aspiration as description. And here it could forge relations with other communities that share its basic sensibility and intuitions, even though they don't share deep metaphysical agreement. As the opening vignette on the Singer/McBryde Johnson exchange illustrated, this particular approach is capable of discriminating between "better" and "worse" anthropologies without being anxious that neither are, strictly speaking, "correct." This is the first major move enabled by the ethic of embrace.

The Ethic of Embrace and the Expressivist Critique

A second alliance could be brokered, albeit with substantial modification of the modernity criticism that seems endemic to the ethic of embrace itself. This alliance could be bridged with theologians following Hauerwas' lead and critics of Prenatal Genetic Testing who argue that intrinsic to the practice of prenatal screening is a negative judgment not on "disability" as a concept, but, in fact, on the disabled themselves.

Take, for example, the work of Adrienne Asch and Erik Parens as they summarize the work of a late 1990's and early 2000's Hastings Center Working Group. Published as a

²⁶⁴ Though there is little utility in going into great depth here, it is clear that Hauerwas owes a great debt to MacIntyre precisely on these points.

supplement to the Hastings Center Report in October of 1999 as well as the first chapter of *Prenatal Testing and Disability Rights*, Erik Parens and Adrienne Asch's "The Disability Rights Critique of Prenatal Genetic Testing: Reflections and Recommendations" serves as a useful, if a bit dated, description of the main lines of argument emanating from the "disability studies" community.

Though the description of the technologies utilized in the screening practices of the late 1990's have been augmented and, in some senses, surpassed, the philosophical lines of argument remain fairly constant.²⁶⁵ The report itself is the product of a Hastings Center working group intended to provide both "intellectual and policy benefit," understood both as describing the nature of the disability-rights community's objections to prenatal testing and a series of policy proposals for clinicians *and* government officials alike. This twin-purpose is crucial, insofar as we can discern within it an implicit shape to the conventional task of bioethics, a model for what it means to "do bioethics," in the standard sense of the phrase. If, the model goes, consensus emerges on the morality of particular practices, technologies, or trends, then policy recommendations will follow shortly. As such, the working group was intentionally comprised of clinicians *and* academics working in common cause, all, of course, of great esteem.²⁶⁶

²⁶⁵ For an important historical account of amniocentesis, see Ruth Cowan's *Heredity and Hope*. For an assessment of amniocentesis with a great deal of attention to the experience of women, see Barbara Katz Rothman's *The Tentative Pregnancy*.

²⁶⁶ As the Hasting Center report explains, the working group met for five two-day events over a two-year period. According to the report:

Our group sought to understand both the logical moves made in the arguments from a disability perspective as well as the social and psychological context in which those arguments are made. Not only did we try to understand the logical moves and feelings of the disability community, but we also tried to understand the moves

Given the diversity of specialty and experience, it is somewhat surprising that the working group generated as much consensus as it did. It did so, in part, due to its commitment to view prenatal testing not as an isolated aspect of routine prenatal care alone but also a novel form of medical practice, in some sense:

As the ease of testing increases, so does the perception within both the medical and broader communities that prenatal testing is a logical extension of good prenatal care: the idea is that prenatal testing helps prospective parents have healthy babies. On the one hand, this perception is quite reasonable. Though no researcher has yet even attempted to correct a genetic impairment with in-utero gene therapy, increasingly there are nongenetic approaches to such impairments ... On the other hand, as long as in-utero interventions remain relatively rare, and as long as the number of people seeking prenatal genetic information to prepare for the birth of a child with a disability remains small, prospective parents will use positive prenatal test results primarily as the basis of a decision to abort fetuses that carry mutations associated with disease and/or disability. Thus there is a sense in which prenatal testing is not simply a logical extension of the idea of good prenatal care.²⁶⁷

With this, Asch and Parens unveil what stands behind and animates the discussion over the morality of prenatal testing, namely, selective abortion.²⁶⁸ While many expectant parents report that their desire to know, for example, the likelihood of their child being born with Down's Syndrome is rooted in a desire to make preparations (financial,

and feelings of the people in the majority community of the "temporarily abled." No one in our group can any longer imagine having a view from nowhere. Those of us with disabilities appreciate that our particular experience of discrimination colors our critique of prenatal testing. Those of us who used prenatal testing before or during the project appreciate that this experience colors our response to those critiques. Not surprisingly, those of us who are parents sometimes found ourselves justifying our own parental attitudes. Those of us who are not parents sometimes asked ourselves whether becoming parents might make us think differently about what constitutes an admirable parental attitude (ix-x).

For more, see Erik Parens and Adrienne Asch, *Prenatal Testing and Disability Rights* (Washington DC: Georgetown University Press, 2000). ²⁶⁷Ibid., pg 4. ²⁶⁸ Of course, there is a sense in which all medical abortions are "selective." psychological, and so on) for that child's arrival, it is undeniably the case that the knowledge one ascertains through prenatal testing is *actionable* knowledge – that is, knowledge that could lead to terminating a pregnancy that had previously been desired, uncomplicated, or both. While they are clear to show that the debate over testing is not, in fact, a proxy for debating the moral status and proper treatment of embryos, to treat the topic of genetic testing and/or screening without a frank recognition of the place of selective abortion within the practice of prenatal care would be disingenuous.²⁶⁹

The surgeon described interventions that would give our son the best chance of surviving birth. But the pediatrician could tell that we were looking for candid guidance. He cautioned that medical ethics constrained what he could say, then added, "Termination is a reasonable option, and a reasonable option that I can support." The surgeon and nurse nodded in agreement. I burst out sobbing. My husband cried, too. But in a sense, the pediatrician's words were a source of comfort and kindness. He said what we already knew. But we needed to hear it from professionals, who knew we were good parents who wanted what was best for our children.

Given their desire to avoid threatening the life of the second fetus, Nicastro and her husband desired to wait until it was closer to that gestational state demarcated with the ever-elusive term, "viability," to perform the abortion. Though the intended effect of describing the "success" of aborting one embryo and later giving birth to a healthy daughter, one can surmise, is to highlight the perceived folly of legislative bodies making "one-size-fits-all" judgments regarding the legality of certain abortions, this is not all that the op-ed exposes. What is particularly striking about the portion of the decision making process described in the excerpt above is Nicastro's stated desire for candor and the physician's claim that "medical ethics" constrained what could be said. This all-too-

²⁶⁹ On this, it is important to note the ambiguities of "non-directive" information regarding the physical characteristics of an embryo, one of the perennial sticking points in the "hard cases" of reproductive medicine. In response to the Republican-led House of Representatives passing a bill proposing to ban abortions after 22 gestational weeks, Judy Nicastro, a former city councilor in Seattle, published an op-ed in the June 20, 2013 edition of the *New York Times* titled "My Abortion, at 23 Weeks." The scenario that Nicastro describes is one in which one of the two twins she is carrying is determined to have dramatic physical impairments (a herniated diaphragm that would lead to an extended stay in the NICU and a high chance of early morbidity) at roughly 22 gestational weeks. In a poignant paragraph of her essay, Nicastro writes:

As I have said, the expressivist argument against prenatal testing holds that selective abortions performed to prevent disabled children from coming into being highlight a socially constructed (and contested) theory of what constitutes disability and, thereby, express a negative attitude towards disability as such.²⁷⁰ The charge is essentially one of reductionism: in seeking, tacitly or otherwise, to prevent the birth of the disabled, advocates of testing reduce the humanity of the disabled by, as Adrienne Asch has put it, allowing a single trait to "stand in for the whole."²⁷¹ Highlighting this "standing-in" component, Marsha Saxton develops the thought:

The message at the heart of widespread selective abortion on the basis of prenatal diagnosis is the greatest insult: some of us are "too flawed" in our very DNA to exist; we are unworthy of being born ... Fighting for this issue, our right and worthiness to be born, is the fundamental challenge to disability oppression; it

common linguistic dance reveals deep tensions, both within a form of medical ethics that would prize patient autonomy over and against suspected forms of paternalism and, importantly, within the dispensing of "advice" within the practice of medicine itself. When the request for candor is met with a claim regarding the way that "medical ethics" constrains speech, we can be certain that there is a deep divide between theory and practice, particularly, in this case, on the question of selective abortion. The question then becomes: if this is true for the practice of fairly mundane and common details regarding well-known pathologies, how could genetic information as such – the topic to be taken up in later iterations of PGD ~ be "non-directive?"

²⁷⁰ Asch and Parens cite Allen Buchanan's 1996 article, "Choosing Who Will Be Disabled: Genetic Intervention and the Morality of Inclusion," as coining the catch-all term of the "expressivist argument." Buchanan himself has written in great detail on the topic and often points to the work of Julian Savulescu or Jonathan Glover to refute the charge that all efforts at genetic enhancement necessarily imply a critical judgment of that which has come beforehand. See, for example, the first chapter of his *Beyond Humanity*? (Oxford: Oxford University Press, 2011).

²⁷¹ Adrienne Asch, "Why I Haven't Changed My Mind" in Prenatal Testing and Disability Rights, ed. Erik Parens and Adrienne Asch (Georgetown: Georgetown University Press, 2000). underpins our most basic claim to justice and equality – we are indeed worthy of being born, worth the help and expense, and we know it!²⁷²

Within the disability rights community this form of self-assertion is familiar: In the face of willful and patronizing blindness, the claims of proponents of this line of thought often take a visceral turn. It is as if the plea is an attempt to utter the sentence "*We are here*" in such a fashion as to give equal stress to each term: the one who addresses you is not an enigma, but, rather, a part of a community, one that may be quite different from yours, but a community all the same; this community exists not as an abstraction but in a very real life, with all the complexity, sorrow, disappointment, pettiness, laughter, futility, joy, and expectation that characterizes your life as well; and this life that we live, well, it is not lived, as it were, "outside the gates," but, rather, here – in your midst. That this is the essential force of Harriet McBryde Johnson's response to Peter Singer is not coincidental.

For these thinkers the argument against prenatal testing is fundamentally based upon the view that advocates of its use either under-recognize or misrecognize disability as such. Disability, for some, is a fundamentally *social* concept whose employment reveals more about the evaluative constructs of whatever community claims for itself the title of "normalcy" than anything about a particular individual or community. "The definitions of terms such as health, normality, and disability," Asch has written elsewhere, "are not clear, objective, and universal across time and place." Rather, "individual physical characteristics

²⁷² Cited in report and first published as Marsha Saxton, "Disability Rights and Selective Abortion," in Rickie Solinger, ed., *Abortion Wars: A Half Century of Struggle, 1950-2000*, (Berkeley: University of California Press, 1997).

are evaluated with reference to a standard of normality, health, and what some commentators term 'species-typical functioning.'"²⁷³

Without denying that disabled persons do differ from "normal species functioning" insofar as various impairments do, in fact, reduce the range of possible interactions and engagements with and in the world, those who hold the expressivist argument against prenatal testing argue that the answer to the difficulties disabled people have within the world as it currently exists is not their exclusion from that world but, rather, the creation of a better, more just, more welcoming one. Disability, in this way, is both real and malleable; there are real harms to disabled people within our society, but that fact alone calls for ameliorating those harms rather than eliminating the persons that experience them.

Even within the social understanding of disability, Asch makes plain that the virtues required to bring a disabled child into being are many. In an important paragraph she writes:

I do not deny that disability can entail physical pain, psychic anguish, and social isolation – even if much of the psychological and social pain can be attributed to human cruelty rather than to biological givens. In order to imagine bringing a child with a disability into the world when abortion is possible, prospective parents must be able to imagine saying to a child, "I wanted you enough and believed in who you could be that I felt you could have a life you would appreciate, even with the difficulties your disability causes." If parents and siblings, family members and friends can genuinely love and enjoy the child for who he or she is and not lament what he or she is not; if child care centers, schools, and youth groups routinely include disabled children; if television programs, children's books, and toys take children with disabilities into account by including them naturally in programs and products, the child may not have to live with the anguish and isolation that have marred life for generations of disabled children.²⁷⁴

²⁷³ Adrienne Asch, "Prenatal Diagnosis and Selective Abortion: A Challenge to Practice and Policy" in *The Double-Edged Helix: Social Implications of Genetics in a Diverse Society*, ed. Joseph Alper, Catherine Ard, Adrienne Asch, Jon Beckwith, Peter Conrad, Lisa Geller (Baltimore: Johns Hopkins Press, 2002), 126.

²⁷⁴ Asch, "Prenatal Diagnosis and Selective Abortion," 135.

By paying close attention to all the conditional components of this way of looking at things – *if*, by chance, the public would support the disabled, parents would see children as they are and not as they *could be*, and so on – the possibility for alliances with theologians like Stanley Hauerwas, Brian Brock, and John Swinton becomes tantalizingly clear, for it is precisely this type of world that they describe as "church." As I've described above, at the heart of the ethic of embrace is the rejection of the idea that we should conceive children as projects. And it is precisely the language of "welcome" and "gift" that trains a community and its members in the patterns of speech and action that make Asch's claim of, "I wanted you…" intelligible. Even with the pain, difficulty, loneliness, and genuine suffering that you and I may endure, *I wanted you*.

I am aware of no such alliance. For such an alliance to be forged, it would require ethicists working in this vein to tamp down the modernity criticism described above in favor of a more ambivalent relationship to the language of "autonomy" and "rights" these theorists have distanced themselves from. Take, for example, a fascinating set of comments Hauerwas made on Michael Berubé's well-known memoir focusing on raising Jamie, his "exceptional" child. In Hauerwas' view, Bérubé's desire to see Jamie finally become "his own author" by gaining a measure of independence is, in the end, "sad." As Hauerwas puts it:

All Bérubé can imagine for Jamie is that he be "his own author." That Bérubé can imagine no other future is not his fault ... What other possibility could there be in a world in which God does not exist? What other politics is available for those like the Bérubés when the church has been reduced to reinforcing the sentimentalities of contemporary humanism? Bérubé has been gifted with Jamie, but he lacks the

practices of a community that would provide the resources for narrating his own and Jamie's life.²⁷⁵

When we couple this with Hauerwas' well-known criticisms of the language of rights, we see that one of the essential features of Hauerwas' project is to reject liberal concepts like "autonomy" and "rights," replacing such concepts with Christian language of "gift," "welcome," and "embrace." But does such a relationship **have** to be characterized by the phenomenon of *replacement*? Do theologians working within this tradition of thought have to insist on differentiating themselves from theorists like Bérubé, with whom they share a great deal? I think not, and, moreover, that alliances between theologians working in this line of thought and disability-rights advocates like Bérubé can, in fact be mutually beneficial. Forging such alliances, of course, will come with costs on both sides, but these alliances are available to Christian ethicists working within this tradition of thought, and they can and *should* make use of them.

6. Conclusion, Or, What it All Amounts To?

The objective of this chapter has been to give an account of the ethic of embrace, paying sufficient attention to how it *has*, *can*, and *should* meet the challenge posed to Christian ethics by liberal eugenics. In parts two and three of the chapter, I gave an account of how theologians following Stanley Hauerwas' lead have addressed this question. By and large, they have done so through a strategy of *contrast*: wherein there is a "standard account" of morality, they develop a Christian account that, whatever else it may be, must

²⁷⁵ Hauerwas, in Swinton, Critical Reflections, pg16.

be something *different*; wherein modernity as such bequeaths us certain patterns of speech and normative conceptions of a full human life, these theologians give us an alternative.²⁷⁶

Describing just what this alternative is and the way in which the church is such an alternative was the objective of section three of this chapter and, in fact, is usefully described in the Singer/McBryde-Johnson moment that illustrates the challenge facing society according to these thinkers. This also shows the degree to which the ethic of embrace characterizes the challenge of the new eugenics as a challenge in the mode of *replacement*, not as fundamentally a welcomed *provocation*. One entailment of this approach is an inability to discriminate between various forms of technological interventions in the procreative process. Theologians working in this tradition are more interested in lumping various technologies into groups and labeling them as instantiations of a technological imperative than they are in analyzing the very real benefits and/or challenges those technologies present.

As in chapter 3 on the ethic of act-analysis, my contention is that each of the approaches described in part II of the dissertation have an imaginative center, that is, some basic and guiding image that serves as the focal point for ethical explanation. In a sense, the opening Singer/McBryde Johnson exchange could be understood as the imaginative center of the chapter. It sets the tone for the combative and critical pose theologians

²⁷⁶ This style of contrast is, in some sense, an expression of Hauerwas' concern with Paul Ramsey's basic approach to Christian ethics. On this, see the important essay "How Christian Ethics became Medical Ethics: The Case of Paul Ramsey" published in *Wilderness Wanderings: Probing* 20th *Century Theology and Philosophy.* For a detailed and critical engagement with Hauerwas' work in medical ethics, see M Therese Lysaught's chapter, "Hauerwas and the Redemption of Medical Ethics," in *Unsettling Arguments: A Festschrift on the Occasion of Stanley Hauerwas's* 70th *Birthday.* Eds. Charles Pinches, Kelly Johnson, Charles Collier. (Eugene: Cascade Books, 2010).

working in this vein often take. But this would be only partially correct. The true center of gravity for the ethics of embrace is not the lecture hall, but the church hall. It is here, in the mutual breaking of bread wherein truly human fellowship is enacted, and, as I have recounted, it is in the practices of the church that the virtues required to welcome deficient human life are nurtured.

The ethics of embrace offers one significant benefit to theologians interested in meeting the challenge posed by liberal eugenics, as well as two significant deficiencies. The essential strength of this position, however, is the way in which it places the practice of medicine as one component of a comprehensive vision of social life. By this, I mean something of what Hauerwas has recently written in his retrospective glance at *Suffering Presence*. In a recent essay, he says:

Suffering Presence is a book that, as far as I can tell, fell stillborn from the press. That it did so is not surprising. After all, I was trying to challenge some of the dominant paradigms associated with the development of medical ethics. From my perspective the development of medical ethics was but a legitimating discourse to underwrite, as Joel Shuman would later argue in a more sustained way, the transformation of medicine into an "industry that is in the business of selling an especially desirable product, namely health."²⁷⁷

The ethic of embrace is, in this way, not simply a technology for making clinical decisions nor a permission-giving enterprise; it is, rather, a description of an ecclesial body that carries with it a series of technologies of moral formation for its members. In this way, the form of the ethic matches its content – individual action, however important it may be, is always nested in a series of interpersonal relations, and the key practical question of *what should I do?* is always derived from the answer to a prior question: *to what community do I*

²⁷⁷ Hauerwas, Approaching the End, 177.

belong? This, it seems to me, gets something important right about the nature of plausibility structures and the ways in which we often make decisions. This speaks of a deep and abiding (pneumatological?) confidence that the Church, in the end, is guided in history; and what it is guided towards is ever-new modes of enacting God's welcome in the world.

The deficiencies, however, are but the shadow side of this strength. In the first place, what is lacking in the ethic of embrace is much by way of direction for individuals or couples struggling with the set of dizzying decisions prospective parents face. In focusing on the moral quality of the community and the need to welcome all kinds of lives into that community, there is a strangely *reactive* quality to the ethic of embrace: virtues are formed so as to discern the good and embrace it; but much of the challenge of our time is that we do not just respond to the world, we can exercise our agency to bring, or at least *hope* to bring about, some states of affairs and not others. In this way, there is a fatalist tendency within the ethic of embrace that renders the approach largely silent on many of the most pressing reproductive questions parents and prospective parents face.

The second deficiency is essentially the difficulty described in section five of this chapter – namely, the degree to which theologians working in this line of thought have difficulties seeing and creating rather obvious points of convergence with communities and individuals outside of their theological communities. There is, in the end, some way in which the thoroughgoing modernity criticism renders certain types of alliances not impossible, but undesirable. It is, as Nigel Biggar has recently put it, an insistence upon

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"distinctiveness" that is, in the end, misplaced.²⁷⁸ I agree with Biggar's assessment, and think that for the ethic of embrace to move forward on the question of disability and conceiving children, it must reckon with this basic deficiency. Were it to do so, it may have to concentrate less stridently on a set of calling cards that serve as demarcations of group membership, forging surprising alliances with those outside the church's walls. This is something the ethic of embrace can and should do.

²⁷⁸ See chapter one of Nigel Biggar's *Behaving in Public: How to Do Christian Ethics* (Grand Rapids: Eerdmans, 2012) for the interest in "integrity, not distinctiveness."

Chapter 5

Theology and Counsel

"I fancy myself engaged in the pursuit of 'the truth to be done."

Paul Ramsey, The Ethics of Fetal Research

The accounts given in chapters three and four presented and assessed the two approaches to the construction of a Christian reproductive ethic that have featured prominently in Christian theology in the recent past. They are not, of course, the only approaches on offer, but they do represent two major components of what I have described as the "taxonomy of complaint" I am developing. This chapter presents a third approach – one I describe as "counsel." It does so by explicating the work of Oliver O'Donovan and Paul Ramsey. The chapter also recommends this approach as being most apt for responding to the challenge posed to Christian churches by the new eugenics. It is so for two simple reasons: first, counsel carries forward the most pastorally useful aspects of the two approaches described in chapters three and four; and, second, counsel is more responsive to context, rendering it both a flexible and a faithful ethic for our time.

It is useful to own up to my use of the term "construction" in the sentence above regarding "dominant approaches to the construction of a Christian ethic...". With this term I mean to signal the degree to which Christian ethical thinking is always disciplined by prudence. Whether it be the ethic of act-analysis I described in chapter 3 or the ethic of embrace I developed in chapter 4, Christian ethical thinking is an inherently synthetic enterprise. It begins with a basic assessment of the challenges of the moment, surveys the conceptual and textual history given to the churches, and then asks: how *should* we proceed? And this is an inherently prudential question. But the question of *how should we*

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proceed? is always predicated upon some notion that we *can* proceed, that there is a path available for Christians to pursue.

This is particularly true in the matter of reproductive ethics and the pursuit of idealized human beings. A Christian ethicist provoked, perturbed, or intrigued by the claims of the new eugenicists has to first chase down the source of his or her intrigue. Once this is done, he or she can then analyze the set of resources available for addressing the issue, selecting and developing those resources judged to be most fitting for the occasion.

This chapter argues that counsel can avoid the allure of purity narratives that marks the ethic of embrace as well as the pitfalls of pursuing the kind of simplicity present in the ethic of strict act-analysis. Put more directly, Hauerwas offers a compelling vision of the Church *qua* Church without useful advice as to how Christians could navigate the series of reproductive technologies available to them; the official Teaching Office of the Roman Catholic Church provides little contextual support for the kind of act-analysis described in chapter 3; but counsel, as an approach to the moral life in general and reproductive ethics in particular, enlivens agents by coming alongside them to *assist* them in the making of ethical judgments. In this way, counsel preserves and highlights the differences between persons, deferring, in the end, to the individual agent who must decide what it is she should do. The essential burden of this chapter is to show how this approach is a more flexible and faithful way to meet the challenge posed to the churches by the new eugenics.

The argument unfolds in five sections before coming to a conclusion. The first section, "Theoreticians of the Church," introduces the work of O'Donovan and Ramsey,

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showing how they characterize the work of Christian ethics. This phrase, "theoreticians of the church" is Ramsey's, and illustrates Ramsey's stated interest in avoiding direct policy prescriptions on the one hand and obsolescence on the other. In the next section, "What is Counsel?," I argue that counsel is a role-specific form of morality that makes use of the moral law in order to assist the task of moral judgment. Each of these features – that it is "role-specific," that it makes use of the theological concepts that comprise the moral law, and that it is ordered towards judgment - is important for understanding the general theoretical account I am commending and will be defined specifically. In section three, "The Need for Judgment," I emphasize the way in which counsel is an action-oriented enterprise that enlivens and ennobles the place of human agency. This formal account of counsel's distinctives is put to use by recounting O'Donovan's important concluding chapter to Begotten or Made? in section four, "Counsel Enacted." Here I show how this form of the moral life takes shape in relation to one particular development in reproductive technology, arguing that the logic on display in O'Donovan's discussion of IVF can be extended to other challenges in reproductive decision-making. This extension is complicated, however, by the subject matter of section five, titled "Approaching Judgments: Fabricating Man." Here I discuss the ways in which Ramsey and O'Donovan are, at times, prone to overstated and hyperbolic rhetoric. This exposes a residual form of modernity criticism in their thought that cannot be dispelled but must be addressed and overcome. This I attempt to do in the conclusion of the chapter, "Ending with Ambivalence: Or, What it All Amounts to."

1. Theoreticians of the Church: Oliver O'Donovan and Paul Ramsey

Put in general terms, O'Donovan and Ramsey have pursued three related foci: what we could call "fundamental" Christian ethics, questions of theology and medicine, and something like "Christian political thinking" or Political Theology. While it is tempting to see each of these foci as "phases" within either thinker's development, they are better understood as theoretical and theological foci – that is, consistent points from which thought emerges and upon which the mind repeatedly comes to rest.

Though there are significant differences between Ramsey and O'Donovan (including denominational differences), O'Donovan often mentions his debts to what he learned from Ramsey, both when he left his studies in Oxford in order to spend an academic year under Ramsey at Princeton and throughout the early years of his teaching career.²⁷⁹ Moreover, Ramsey and O'Donovan each follow a basic pattern wherein they frequently approach a topic in two moves: first, a basic "mapping" book or essay that sets out the key concepts from scripture and theology that can be made use of, to be followed, secondly, by some demonstration of how the concepts could or should work. So, for example, Ramsey's *The Christian and the Sit In* (1961) is followed up by *War and the Christian Conscience* (1961) and, in a similar fashion, the political theology O'Donovan develops in *The Desire of the Nations* (1996) is complemented by the political ethics presented in *The Ways of Judgment* (2005).

My contention is that this is more than a mere publishing strategy. Rather, this pattern conveys something of the manner in which not only Ramsey and O'Donovan

²⁷⁹ Oliver O'Donovan, "Obituary: Paul Ramsey (1913-1988)." Studies in Christian Ethics 1:1 (1988), 82-90.

produce academic work, but the theology of counsel itself. Counsel begins with the cartographer's instinct: It is first and foremost a *mapping* work that characterizes the nature of the challenge before Christians and explores all of the possible paths forward. But counsel, like the cartographer's labor, *is intended to be used*. For this reason, O'Donovan and Ramsey are consistently drawn to some form of recommendation, some sense of how the concepts they articulate could be deployed.

But the end result of even the second, more directive works is not unmediated policy recommendation for what Reinhold Niebuhr referred to as the "burden-bearers" of the world.²⁸⁰ This can be illustrated in a preliminary fashion in the introductory comments to Paul Ramsey's important and underappreciated work, *Who Speaks for the Church?* There we read:

It has been easier to arrive at specific recommendations and condemnations after inadequate deliberation than to penetrate to a deeper and deeper level the meaning of Christian responsibility – leaving to the conscience of individuals and groups of individuals both the task and the freedom to arrive at specific conclusions through untrammeled debate about particular social policies. Radical steps need to be taken in ecumenical ethics if ever we are to correct the pretense that we are makers of political policy and get on with our proper task of nourishing, judging, and repairing the moral and political *ethos* of our time.²⁸¹

²⁸⁰ This comes on page 31 of Niebuhr's An Interpretation to Christian Ethics. The full passage reads:

Whether rationalistic religion tends toward the optimism of philosophical monism or the pessimism of dualistic mysticism, it is an essentially aristocratic religion, unavailable for the burden-bearers of the world. These can not indulge in the luxury of the contemplative withdrawal from the world which such religion requires; nor does the curious mixture of beauty and tragedy revealed and enacted in their lives permit them to harbor the illusions of either pure pessimism or pure optimism.

Reinhold Niebuhr, An Interpretation of Christian Ethics (New York, Meridian, 1956), 31. ²⁸¹ Paul Ramsey, Who Speaks for the Church? A Critique of the 1966 Geneva Conference on Church and Society (Nashville: Abingdon, 1967) pg. 15.

This call to nourish, judge, and repair our political *ethos* comes as the introduction to a work that is responding to what Ramsey took as the overly direct proclamations of the 1966 Geneva Conference on Church and Society. In response to the policy prescriptions of the Geneva gathering, Ramsey charts a course that he describes as "between pious generalities and particular policy conclusions." Instead, he offers up "middle axioms" that are "decision-oriented," which is to say that rather than *providing* judgments, they are intended to *assist* those who are given the task of making judgments. This is a large part of what I mean here by *counsel*.²⁸²

Elsewhere in *Who Speaks for the Church*? Ramsey reemphasizes the point but states the objective of Christian ethics more positively. He states it in the following manner:

In politics the church is only a *theoretician*. The religious communities as such should be concerned with perspectives upon politics, with political doctrine, with the direction and structures of the common life, not with specific directives. They should seek to clarify and keep wide open the legitimate options for choice, and thus nurture the moral and political *ethos* of the nation. Their task is not the determination of policy. Their special orientation upon politics is, in a sense, an exceedingly limited one; yet an exceedingly important one. Still, in this they need to stand in awe before people called political "decision makers," or rather before the majesty of topmost political agency.²⁸³

While this claim first appeared in Who Speaks for the Church?, the fact that it appears again,

without attribution or alteration, within the second chapter of Ramsey's far more well

²⁸² There are family resemblances between what I take Ramsey to mean here with the term "action-oriented" principles and the way in which principles function in Tom L Beauchaump and James F. Childress, *Principles of Biomedical Ethics*, 6th edition. (Oxford: Oxford University Press, 2008).

²⁸³ Ramsey, Who Speaks for the Church, 152-153.

known work, *The Just War*, presents an interesting point of entry into the heart of Ramsey's approach to ethics.²⁸⁴

For Ramsey, as we'll also see for O'Donovan, the moral theologian's task is one of *clarification* wherein the object of analysis is patterns of reasoning rather than conclusions on matters of policy. So, for example, even though Ramsey never shied away from polemics and held strong positions on any number of issues throughout the whole of his career, we read in the introduction to *The Ethics of Fetal Research* that he would "sooner have answers to (his) arguments than to (his) conclusions."²⁸⁵

This comment should raise a basic question: is not the work of Christian ethicists providing the Churches and their members with pronouncements regarding social policy and its comportment with Christian principles? Is that not precisely the task for which we afford them all the leisure concerted study requires? The answer provided by O'Donovan and Ramsey is a decided "no." Whatever expertise Christian ethicists have, on this view, it cannot replace the careful and important work of common deliberation by pronouncing judgments for the whole. In fact, it is a form of *temptation* for the church to do so. Again, in Who Speaks for the Church?, Ramsey puts it best:

²⁸⁴ I am indebted to Adam Hollowell for pointing this out in his recently published work, *Power and Purpose: Paul Ramsey and Contemporary Christian Political Theology*. Among the secondary works produced on Ramsey's work, Hollowell's is important for highlighting the political nature of Ramsey's thought throughout the corpus. His work is also the first that I know of to show such attentive care to *Who Speaks for the Church*? by also paying close attention to the Ramsey Papers now housed at Duke. In the final chapters of Power and Purpose, Hollowell also "updates" Ramsey, as it were, by putting his thought into conversation with important developments within Christian political ethics in recent years, particularly as they have centered on Augustine. See Adam Hollowell, *Power and Purpose: Paul Ramsey and Contemporary Christian Political Theology* (Grand Rapids, Eerdmans, 2015). ²⁸⁵ Paul Ramsey, Ethics of Fetal Research (New Haven: Yale University Press, 1975) xvi.

In order for the church to regain *its* voice and for the churches or Christians in council to speak for the church to the world today, we must resist the temptation to believe that what needs to be done is to improve the church's use of "experts." It is the aim of specificity in the church's resolutions and proclamations that should be radically called into question. The better use of political and other experts to improve *that* might only make matters worse. On the other hand, it is certainly true that the church's *deliberations* and our procedures for deliberation need to be reexamined.²⁸⁶

This preference for "middle axioms" that assist public judgment rather than direct

policy prescriptions has been carried forward by O'Donovan, particularly in his work on

the just war tradition.²⁸⁷ It has also been criticized by O'Donovan's successor, Nigel Biggar.

In a recent essay titled "Regime Change in Iraq," published in a Festschrift for O'Donovan,

Biggar makes the distance between himself and O'Donovan plain. After recounting his

One of the considerations that moves me to commit these thoughts on armed conflict to print at this point is that those to whom it falls to guide Christian reflections in a time of war and rumours of war seem to have difficulty taking the measure of their task. For this reason I address this little book to you, a friend on whom the heaviest of such burdens has come to rest. Not that you need me to supply you with ideas on the subject. But I dare to hope that in the reflections that follow, whether they persuade you or not, iron may sharpen iron, putting a suitable edge on your thoughts for the service of the church and the political community (ix).

This is a revealing paragraph. What it shows is the basic posture the counselor takes towards others – in this case, the Archbishop of Canterbury who, in addition to being O'Donovan's friend and former colleague is now "on whom burdens have come to rest." What is provided, however, is not policy directives but, rather, *lectures* – that is, the patient display of an intellectual world. Among other things, this short book takes up the nature of right authority, the question of counter-insurgency, the relation of private judgment to public action, patterns of post-conflict resolution, and so on. But, dedicated in Advent of 2002 (just before the invasion of Iraq in March of 2003), what is remarkable is what is lacking – namely, an endorsement or condemnation of the very real prospect of very real war.

²⁸⁶ Ramsey, Who Speaks for the Church?, 138.

²⁸⁷ See Oliver O'Donovan *The Just War Revisited* (Cambridge: Cambridge University Press, 2003). In a fascinating preface O'Donovan dedicates to Rowan Williams, O'Donovan says that "the moralist knows, or ought to, that there is nothing more difficult and more perilous than reading the situation within which one actually stands" (vii-viii). Further in that preface, O'Donovan supplements this challenge with a concern. He says:

varied response to the prospective invasion of Iraq, Biggar steps back to question what it is that Christian ethicists *should be doing*, particularly in matters of war and peace. And he does so in conversation with O'Donovan. After admitting that he was mistaken on some important factual points in the run up to the war, Biggar says:

... this moves me to think again about what role a Christian ethicist – indeed, any academic ethicist – should, and should not, play in public deliberation; and it brings to mind Oliver O'Donovan's warning that ethicists should beware of making precise judgments on policy. 'Any private contribution to a current political debate," he writes, "...is not ... in a position to offer precise recommendations.²⁸⁸

Biggar continues by saying that he "appreciates the problem" but cannot "embrace the proposed solution." While it is very possible for the ethicist to "damage his own moral authority" by overreaching his competence, Biggar dissents from O'Donovan's claim that the danger of overreach should put the Christian ethicist off the task of making specific judgments and recommendations on matters of public policy. As Biggar has it, if an informed ethicist can't provide precise judgments, not only should that ethicist's credentials be questioned, but a crucial social function may well be avoided. "What the ethicist lacks in expertise about Iraq, for example, the Iraq pundit in the Foreign & Commonwealth Office is likely to lack in just war doctrine." As he puts it, "People of positions of governmental leadership carry responsibility (sometimes onerous) for making decisions (sometimes momentous) on our behalf under pressure of very limited time."

This means that, "it is therefore incumbent on those of us who have ethical expertise, it seems to me, to take moral principles and to show what they might amount to concretely." What Biggar notices and points out, however obliquely and gingerly, is that

²⁸⁸ This particular essay comes in The Authority of the Gospel: Explorations in Moral and Political Theology in Honor of Oliver O'Donovan (Eerdmans: Grand Rapids 2014) pg. 53.

the kind of counsel O'Donovan provides carries within it a subtle temptation to stay maddeningly abstract. How would one know when one had nourished a political *ethos*? While O'Donovan is right, according to Biggar's view, to preserve the difference in responsibility between the advisor and the actor, the advisor *must* run the risk of becoming either defiled (that is, complicit) or proved wrong, precisely by making explicit points of recommendation on particular policies.²⁸⁹

In relation to other ethical approaches on offer, this quibble between Biggar and his predecessor is of fairly little significance. It could, in fact, be little more than another version of Biggar's claim that O'Donovan is unnecessarily difficult to read, particularly by policy makers who are accustomed to short, declarative sentences. Biggar's complaint, as far as I understand it, is that intelligibility is the essential precondition for utility and, on these grounds, O'Donovan's work in just war thinking is not as useful as it *should* be. This claim regarding intelligibility (and the lack thereof) is a charge often leveled at Ramsey as well.²⁹⁰

²⁸⁹. Biggar points to an interesting paragraph in the afterword to *The Just War Revisited*, quoted below in the section on "What is Counsel?"

²⁹⁰ See Biggar's review of *The Just War Revisited:* Nigel Biggar, "The Just War Revisited: A Review Article," *Studies in Christian Ethics* 19.2 (2006) pgs., 223-232. There, Biggar repeats his concern about O'Donovan's unwillingness to make direct hypothetical judgments, which renders the ethical task "only half done." He also says the following regarding O'Donovan's rhetorical style:

Someone who reads an O'Donovan chapter must be prepared to proceed without much idea of where he or she is going or why. By the time they reach the end, light will probably have begun to dawn; but they will have to go back to the beginning and start again, in order to check that they have got it right and to see if they can now appreciate better the many stretches of text that made little sense the first time round. Presumably the author has been this way before and is therefore equipped to give those who follow him the benefit of some clear directions. With O'Donovan, however, it often feels as if one is being made to share the uncertain experience of the original, pioneering trip. If this compulsory reiteration is

We should notice, however, just how this shared emphasis on nourishing, judging, and repairing a common cultural <u>ethos</u> in Ramsey and O'Donovan stands in some contrast to other ethical schemes. When taking up the question of Paul Ramsey's relevance for contemporary ethical discourse, one of his interpreters recommends his approach by describing Ramsey as "theological without being pushy, seeking commonality without disregarding transformation."²⁹¹ This lack of pushiness is noteworthy and, as Lisa Cahill has noticed, attributable to a particular feature of Ramsey's ethics as a whole. "Ramsey is committed to develop for Christian decision making the biblical norm of *agape*, or self-sacrificial neighbor love," Cahill begins. "He disclaims interest in discovering secular translations of it," she continues, "but does expect a 'convergence' of religion and humanism at the level of concrete judgments." This leads Ramsey to a "peculiar claim," namely, that "while his reasoning has a unique and nonreducible source, his conclusions may well convince those who reject his presuppositions."²⁹²

When Cahill's claim is coupled with the passage quoted above regarding the health of a common cultural *ethos*, we begin to see the difference between what we could call counsel's social ambition, as I will develop it, and the communitarian turn in Christian

...any biblical position, whether Jewish or Christian, is going to be at odds, so it seems, with the dominant secular standpoints of our culture; alliances between the theologian and the secular thinker are going to be limited to specific points and easily fractured by disagreements elsewhere. The modern secular world may provide fewer allies than Ramsey believes.

supposed to bring the reader some special benefit, what that might be escapes me (232).

²⁹¹ Michael McKenzie, *Paul Ramsey's Ethics: The Power of Agape in a Postmodern World*, 144. ²⁹²Lisa Cahill, "Within Shouting Distance: Paul Ramsey and Richard McCormick on Method," *The Journal of Medicine and Philosophy*, 1979 4.4 398. In his response to Cahill's articulation of Ramsey's basic position, Alasdair MacIntyre makes plain his pessimism regarding Ramsey's push to build alliances. He says:

ethics. By definition, a cultural *ethos* is held in common. It is the property of everyone and no one in particular at once, but, crucially, can be nourished or depleted by individual or institutional actors, including the Church. In this way, the basic objective of wise counsel is to encourage human agents and institutions to act in such a way as to nourish and enhance what is shared between them. This is a social vision that includes the Church and its neighbors. These "middle axioms" and forms of deliberation begin unapologetically within the church, but, without being "pushy," makes use of its theological resources to enhance goods held in common.

This is a decidedly high Protestant view of the Church's role within a social order. It is also a claim regarding what it means for the church to counsel with authority in public. In a chapter on "the subjective reality" within *Resurrection and Moral Order*, O'Donovan distinguishes "counsel" from "command," arguing that counsel is "a sphere of public discussion and recommendation." This is not to say, however, that heeding counsel is voluntary in a *fundamental* sense; rather, counsel exists as "a sphere of obligation which is rooted in the good and in divine command."²⁹³ This thought is extended to all moral decisions in an important passage:

The hiddenness which especially veils these areas of decision is present to a lesser extent in all the decisions of an individual, so that the church may counsel him, rather than command him, not only in the vocational sphere covered by the classical form of the doctrine but in all his moral decisions. Counsel, indeed, is the church's most characteristic form of address to the individual, because it respects his status whom God also addresses directly, and whose particular decisions are partly hidden from public gaze. It is not, however, that the church pretends to know nothing about the rights and wrongs of individual decision. When the church counsels, it points to the authority of God's revelation in Christ and to the moral teaching of Jesus, the prophets and the apostles; for it knows that right

²⁹³ Oliver O'Donovan, *Resurrection and Moral Order*: An Outline for Evangelical Ethics (Grand Rapids: Eerdmans, 1994) 171.

attitudes and decisions, however hidden and inscrutable in their detail, are those which come from a thoughtful obedience to that revelation. Thus the church counsels *with authority*. Its counseling is not fashioned on the non-directive model popularly favoured in a pluralist society, in which the counsellor's role is limited to helping the client discover and articulate his own convictions (which is not to deny the *instrumental* value of such an approach, especially in therapeutic situations); but then neither is it a veiled appeal to its own political authority as a society which, having made rules, expects obedience and loyalty. It is a didactic moral authority, appealing to the authority of a truth which stands above it and seeking to place the hearer in an equality of perspective with the teacher.²⁹⁴

This passage is particularly important because it successfully displays counsel's *didactic* form of authority that is mediated by the same set of authorities that guides the church as a whole. In this way, the church's counsel is fundamentally responsive, first to the deposit of authoritative resources at its disposal, second to the particular moment in which faithfulness is required, and then, finally, to the very real people that populate not just the pews, but the parish. This is counsel's social vision, but what are its features?

2. What is Counsel?

In a world awash with data, punditry, big-box stores, prepackaged moral maxims, and TEDtalkified pseudoscience, the substance of counsel is not generic but, rather, *personalized* and *responsive* to the social location, vocation, and particular responsibilities of the recipient. This means that first and foremost counsel is an inherently "role-specific" ethic, noting at every turn that all decisions are not equal in kind, nor should they be. Counsel is in this way an approach to the moral life that respects the facts of responsibility.²⁹⁵

²⁹⁴ Resurrection and Moral Order, 171-172.

²⁹⁵ Much of this thought was first developed in a review essay on the work of Nigel Biggar and Oliver O'Donovan co-authored with Charles Mathewes: Philip Lorish and Charles

This means, first and foremost, that counsel begins with Oliver O'Donovan's claim that recommendation always begin with "if."²⁹⁶ The counselor who fails to rightly recognize the person with whom she is speaking and misapprehends the particulars of the situation the recipient faces will, in all likelihood, either suffer from irrelevance due to a high degree of abstraction or have her judgment clouded by personal over-investment. In either case, the counselor errs. She fails to see that which is in front of her.

This means that counsel, as I'm using the term, is a way of approaching *differentiation both at the individual and institutional level*: what has been given as *mine* to do may well differ from what has been given as *yours*. The wise counselor recognizes this difference, noting just how the very real decisions that correspond with the particular positions a person occupies within a society may call for moral advice that is, like a new suit, *custom-made*, tailored to the specifics of the situation and the particular contours of the body for which it is made.²⁹⁷

Mathewes, "Theology as Counsel: The Work of Oliver O'Donovan and Nigel Biggar," Anglican Theological Review 94 (2012): 717-736.

²⁹⁶ The full context here is from the afterword to *The Just War Revisited*:

Any private contribution to a current political debate must be, in Kierkegaard's phrase, 'without authority.' It is not in a position to make predictions. It is not in a position to make decisions. It is not even in a position to offer precise recommendations. Practical reasoning as such can only marshal reasons for decision as each new moment of decision arises; practical reasoning towards decisions that others must take can only clear the way for them to understand their responsibilities before God and their neighbours. Useful recommendations will tend to be introduced by the useful word, 'if.' That is to say, they will address hypothetical practical situations, not basing themselves on a pretended knowledge about what is, or what will be, the case. 'Without authority,' I can only *exemplify* the usefulness of the just-war proposal – by using it, as Paul Ramsey like to say, 'as a tool to think with' about possible eventualities that are at the time of writing still stubbornly – and mercifully – hypothetical (127).

²⁹⁷ This does not commit this approach to a blind deference to those who occupy positions of high social esteem. Without denying the very real facts, powers, and responsibilities that

In its commitment to role specific morality it is not, however, a form of

individualism that predicates an inability to relate the "I" of the subject to the "We" of society, as O'Donovan puts it. Public judgments emerge out of deliberations that are both private and public. Neither is it a form of sectarianism wherein hope for cultural health outside the Churches' walls is in short supply. Neither still is it a form of "situationism" that labors to say "no" with any consistency to forms of temptation.²⁹⁸ It is, rather, an attempt to develop an ethic of responsibility that does not labor under the illusion that the task(s) given to every member of society is equal in degree or kind.²⁹⁹

Precisely as a form of casuistry wherein the moral law is understood to be a deposit of accumulated wisdom from authoritative sources, counsel is enacted primarily through the mode of *specification*. The lion's share of Ramsey's revived casuistry, particularly within the field of medical ethics but also in his work in political ethics, is a work of *specification*. The norms governing moral reflection (such as they are and to be discussed below) are

²⁹⁹ By describing this as an "ethic of responsibility" I am happily situating "counsel" within the line of "responsibility ethics" whose lineage includes the late work of Dietrich Bonhoeffer and, within the United States, focuses on H. Richard Niebuhr. In fact, studying the Ramsey Papers at Duke has led Adam Hollowell to the discovery that Ramsey encouraged James Gustafson to publish The Responsible Self after H. Richard Niebuhr's death. "I am very glad that you are to set forward that manuscript of Richard Niebuhr's so that it will secure the greatest possible understanding and impact," he wrote to Gustafson. In Hollowell's view, "Ramsey had been fond of Niebuhr's ethic of responsibility since his days as a graduate student at Yale." And, furthermore, Hollowell argues "his return to concepts of responsibility in his later work marks an important rethinking of several key aspects of his political theology." See Adam Hollowell, *Power and Purpose*, 171.

accord with particular offices in society, counsel is required for citizens of all kinds – teachers, business owners, full-time parents, and so on.

²⁹⁸ Ramsey's famous dispute with Joseph Fletcher was present throughout a number of his writings, particularly the cluster of exchanges regarding the nature of agapism. See, in particular, the lengthy essays, "Two Concepts of General Rules in Christian Ethics" and "The Case of Joseph Fletcher," published as chapters six and seven of *Deeds and Rules in Christian Ethics*.

constant – that is, fixed; but they must be clarified and tailored to the particular responsibilities given to particular individuals in particular times.

This is clearly evident in Ramsey's work in research and medical ethics. Take, for example, the short volume on *The Ethics of Fetal Research*. Here, Ramsey begins and ends the book with detailed accounts of the major reports of the governing medical bodies of the UK and US, pressing and probing the particulars of the language therein in order to evaluate the general moral maxims from which such language is derived and upon which it depends. The most natural justification for this action is that Ramsey does this sort of painstaking analysis because he thinks it both important and unknown. The moral maxims themselves are fixed for Ramsey; their specification is anything but. And this is precisely what is meant here by describing counsel as "role-specific": it is not that particular professional codes are utterly untethered to more general moral norms, but, rather, that moral norms must be specified to particular roles.³⁰⁰

This raises a basic question regarding the constancy of counsel over time and across a given society: if counsel is inherently role-specific, how can we be sure that the substance of counsel retains an identifiably Christian and consistent quality? Ramsey takes this question on directly in the introduction to *The Patient as Person*, appearing at first glance to deny what I assert, namely, that morality can be "role-specific." Before specifying his approach as one that unashamedly uses the language of "fidelity to covenant," Ramsey says

³⁰⁰ In his recent dissertation, Joseph Clair pushes the conversation over where to place Augustine's ethics by highlighting the role-specificity. That dissertation was completed at Princeton University and was titled "Discerning the Good in the Letters and Sermons of Augustine."

that "the question, What ought the doctor to do? is only a particular form of the question, What should be done?". He holds, further:

This, then, is a book about ethics, written by a Christian ethicist. I hold that medical ethics is consonant with the ethics of a wider human community. The former is (however special) only a particular case of the latter. The moral requirements governing the relations of physician to patients and researcher to subjects are only a special case of the moral requirements governing any relations between man and man. Canons of loyalty to patients or to joint adventurers in medical research are simply particular manifestations of canons of loyalty of person to person generally. Therefore, in the following chapters I undertake to explore a number of medical covenants among men. These are the covenant between physician and patient, the covenant between researcher and "subject" in experiments with human beings, the covenant between men and a child in need of care, the covenant between the living and the dying, the covenant between the well and the ill or with those in need of some extraordinary therapy.³⁰¹

The claims of this passage are fairly straightforward. In writing a text that would be Ramsey's "mapping" book on the emergent field of medical ethics, Ramsey is making plain that the moral norms that govern *medical* relations are in fact the same moral norms that govern *human* relations as such. These are the covenant, fidelity, and what he calls canons of loyalty. It is right, in this way, to object to the notion of a "special" ethics, if by that we mean an ethical norm that is so specific to a particular vocation that it is wholly unrelated to ethics as such. Elsewhere in the preface Ramsey puts it this way: "an ethicist is only an ordinary man and a moral theologian is only a religious man endeavoring to push out as far as he can the frontier meaning of the practice of a rational or a charitable justice,

³⁰¹ The introduction to *The Patient as Person* is republished within William Werpehowski and Stephen Crocco, eds., *The Essential Paul Ramsey*, (New Haven: Yale University Press, 1994), 169. The original publication is *The Patient as Person: Explorations in Medical Ethics* (New Haven: Yale University Press, 1970).

endeavoring to draw forth all the actions and abstentions that this justice requires of him in his vocation."³⁰²

I say this *appears* to deny what I claim here about counsel as a "role-specific" form of morality. If, for example, the medical doctor and the city planner are each "men" in Ramsey's scheme, and, as such, must adhere to the basic morality of all humans *qua* humans, one could read Ramsey as providing the very inverse of a "role-specific" morality. But this would be a mistake. Understanding just how Ramsey fills out the concepts of "canons of loyalty" or "fidelity to covenant" shows that there are theological constants across the moments of *specification*. And this is how casuistry works: it specifies theological concepts in response to the particulars of the situation that arises.

The counselor makes use of what Paul Ramsey refers to as a Christian manner of "intending the world." Though this phrase "intending the world," comes up at multiple junctures, it is best seen early on in *Fabricated Man*:

In order to analyze the moral implications of genetic control for western religions, it is necessary to lift up to view certain aspects of what it means to intend the world as a Christian or as a Jew. These also are modes of being human, and of how values are "otherwise known" in this world and ethical judgments made. On the assumption that it is a Christian subject who has come into the possession of all this genetic knowledge and who faces our genetic dilemma, what will be the attitude he takes toward eugenic proposals?³⁰³

Here, Ramsey marries two concepts – "intention" and "the world" – suggesting, moreover, that one has an intrinsic connection to the other. The world is given, yes, but it is also apprehended; and there are, on Ramsey's reckoning, a multiplicity of ways in which that

³⁰²Ibid., 174.

³⁰³ Paul Ramsey, *Fabricated Man: The Ethics of Genetic Control* (New Haven: Yale University Press, 1970) 22.

world is apprehended. One of these modes in which the world is presented and apprehended can be described as "Christian."

Though the language of "intending the world" is Ramsey's, the basic thought is carried forward in an intriguing passage from O'Donovan's second of three volumes in fundamental Christian Ethics. In a passage subtitled "Love of the World," he says:

The created world gives shape to our existence as agents: that is what we mean specifically by calling the totality of things "the world," referring not only to singular objects, but to events, experiences, opportunities, restrictions, all, in fact, that determines of freedom positively and negatively ... The "world" is what is not ourselves, out there as opposed to in here; but it is non-self *as the self perceives it*; it is "my world" or "our world." In saying "world," then, we have not quite said "reality."³⁰⁴

From this passage and the previous passage from Ramsey's *Fabricated Man*, we can generalize by saying that counsel both develops and depends upon a substantive definition of intending the world as a Christian. We perceive the world, however, through a set of narratives and concepts. This is made obvious in the sentences that follow directly from Ramsey's claim above regarding Christian and Jewish "modes of being human." In

Fabricated Man, he continues:

Two ingredients are of chief importance. First, we have to contrast biblical or Christian eschatology with genetic eschatology, and observe how these practical proposals may change their hue when shifted from one ultimate philosophy of history to the other. This will be the matter of the present section of the paper. Then, secondly, (in the following section), we have to explore the bearing which the Christian understanding of the union between the personally unitive purpose and the procreative purpose of human sexual relations (sex at once an act of love and an act of procreation) may have upon the question of the means to be used in genetic control.³⁰⁵

³⁰⁴ Oliver O'Donovan Finding and Seeking, Ethics as Theology (Grand Rapids: Eerdmans, 2014) 72-73.

³⁰⁵ Paul Ramsey, *Fabricated Man*, 23.

This text indicates the manner in which Ramsey fuses ethical concepts inherited from canonical and traditional Christian sources (like the "unitive" and "procreative" ends of sexual activity) with doctrinal commitments derived from canonical and traditional narratives. Put together, these two sources of Christian ethics help individuals apprehend and interpret the world in accordance with moral law. This is what is meant by the notion of "intending the world" as a Christian. And crucially, casuistry, on this reckoning, is more than a manner in which moral decisions can be made; it can be a comprehensive form of growth in wisdom.

The relation of counsel to casuistry is made explicit in O'Donovan's section on "Casuistry and Moral Learning" in *Resurrection and Moral Order*. There we read, "the moral agent approaches every new situation, then, equipped with the 'moral law' (which is how we shall refer to that wisdom which contains insight into the created order when it is formulated explicitly to direct decisions, *i.e.* deontically)." There is, however, an inherently dynamic relation between the individual and this moral law. "As he holds the moral law together in thought with the particular situation," O'Donovan continues, "it illuminates and interprets it, enabling him to reach a moral judgment about it." The final pronoun "it," in the concluding of this sentence is wonderfully ambiguous: the most direct interpretation of the sentence is that "it" refers to "the particular situation" the agent is confronted with. But, in the next sentence, O'Donovan suggests that the relation between law and situation is mutually qualifying. He says:

But at the same time this illumination reflects back upon its source, so that he comes to understand not only the particular situation but the generic moral law itself with greater clarity. It does not matter whether the situation is one in which he, or someone else, has already acted, nor even indeed whether it is a purely

hypothetical situation put up merely to be thought about. Whether in deliberation, in reflection or in abstract moral exploration, the consideration of particular cases involves learning about the moral law, which is to say, about the created order itself.³⁰⁶

This passage highlights the dynamic character between accounts of moral law and the concrete situations an individual faces. This dynamism stands in stark contrast to the form of reasoning present within the ethic of strict act-analysis described in chapter 3 and will serve as a critical way in which these two forms of the moral life can be distinguished. Ethics, as both a discipline of study and form of life, can never be likened to the manual that accompanies a child's swing-set, ever to exist as the bane of most parents' existence. There is no form of practical reason that promises successful results for all those willing to accurately follow all the steps. In his recently published *Self, World, and Time* O'Donovan describes Ethics as "trains of thought which resolve upon action." Yes, but we must be clear about the fact that practical reason, on O'Donovan's picture, is not deductive.³⁰⁷

³⁰⁶ O'Donovan, Resurrection and Moral Order, 191.

³⁰⁷ The full passage reads as follows:

A description of any thing must fit the reality of that thing, and a good fit can be verified only by holding the description accountable to the reality. What form of accountability can be offered for ethical description? It does not describe human *action*; if it did, it could be verified by observation. It does not describe what has been *thought* in relation to action, which could be verified by documentary evidence. It describes *trains of thought which resolve upon action*. But an account of how thought resolves upon action can be verified only by thinker-actors, and our only access to the thinker-actor is by reflection on moral debate and introspection into moral reasoning. Moral debate and reasoning are, by definition, normative. They are instances of moral thought, distinguishing good reasons for doing something from bad reasons and no reasons. A successful account of thought resolving on action, then, must be able to distinguish good reasons from bad reasons, as those who make the distinctions for themselves will recognize them.

Oliver O'Donovan Self, World, and Time: Ethics as Theology (Grand Rapids: Eerdmans, 2013) pg 71.

Practical reason "moves to and from between the world of realities and the moment of action."³⁰⁸ More expansively, O'Donovan's describes practical reason as possessing "no points from which an uncontroversial start may be made" and, perhaps more provocatively, "no conclusions on which its trains of reasons come to rest." This is so for the simple reason that the end of practical reason is not perfected theory but, rather, *action*. And actions are always moments of provisional discrimination; they are, occasions for enacting what it is one *should* do.

This highlights a basic claim about the flexibility of counsel as an approach to the moral life. Rather than a deep claim about the ontological structures of creation *qua* creation, the moral law is here understood as a kind of discernible historic deposit. This, crucially, is an approach to law that is shared by O'Donovan and Ramsey alike. In this, then, I am in full agreement with James Childress's argument that whatever we make of Ramsey's *agapism*, it does not prevent him from developing an account of the natural law. It does, however, give his account a decidedly Protestant hue.³⁰⁹ Law, on this picture, is understood as a binding tradition of moral reasoning that can be utilized for coming to contemporary judgments about matters of moral concern.

³⁰⁸ O'Donovan, Self, World, and Time, 31.

³⁰⁹ This too can be said of O'Donovan's account of law in Resurrection and Moral Order. There, O'Donovan locates moral law in the new creation narrative that is born of the resurrection of Christ. On Ramsey, in *Civil Disobedience and Political Obligation:* A *Study in Christian Social Ethics*, Childress states that "Ramsey's own understanding of natural law and natural justice is greatly influenced by Jacques Maritain, whose version of natural law is also 'revisionist.'" For this reason, Childresss claims that, "Ramsey does not emphasize its ontological basis as much as its expression in historical tradition, custom, and positive law, as well as in a community of moral reflection." This account is derived primarily from Childress' reading of *Nine Modern Moralists*, culminating in Childress' declaration that Ramsey's Protestant natural law can be seen in his deference to a kind of post-lapsarian realism rather than a deep ontological claim about created order as such. See pages 87-100 of *Civil Disobedience and Political Obligation* (New Haven: Yale University Press, 1971).

3. The Need for Judgment

Counsel is predicated upon the notion that the exercise of *judgment* is the primary ethical act. To return to the metaphor at the opening of the chapter, counsel is a means of both mapping the ethical terrain and showing how some routes are better than others. In mapping well, it identifies points of moral danger. But it does not state directly where the pilgrim *must* go. *That* decision is what is meant here by judgment.

On the place of judgment in the moral life, O'Donovan has done far more explicit work than Ramsey and, as such, will be the focus of this section. In the opening chapter of *The Ways of Judgment*, O'Donovan defines judgment as "an act of moral discrimination that pronounces upon a preceding act or existing state of affairs to establish a new public context." From this definition, he makes four comments: 1) Judgments are "acts of moral discrimination" that divide right from wrong; judgments are, by definition, responsive, insofar as they "always speak about something that is already the case"; 3) and yet, judgments always "establish a public context" for future action – that is, they do have a *prospective* angle wherein future actions are envisioned; and 4) it is precisely this "new public context" or, put differently, this "cleared space" that is the object of a judgment and the only way in which political judgments can be intelligible. It is only in this way that judicial pronouncement can rightly be understood as judgments "on behalf" of a society as such.³¹⁰

³¹⁰ These four comments form the heart of chapter 1 of *The Ways of Judgment* (Grand Rapids: Eerdmans, 2005) pgs., 8-12.

This account of judgment highlights what O'Donovan later calls the "reactive principle" of judgment that is, as we'll see, deeply embedded in O'Donovan's picture of a society's native relationship to structures of rule. Developed in *Common Objects of Love* and theorized more completely in *The Ways of Judgment*, O'Donovan's view that the concept of "a people" is logically prior to the notion of a political state. On this picture, there is a public good that precedes an individual's introduction into society. The goods that attend to a particular people and place (including explicitly *political* goods) are not recreated *de novo*. They exist within a common moral world that people of all kinds inherit and inhabit. And this is morally instructive, for, as O'Donovan puts it, it is not only the case that the reactive principle means that in political judgment is a response to wrong as injury to the public good."³¹¹ O'Donovan states it in the following manner:

Here, then, we can identify a distinctive way in which political judgment discriminates between right and wrong. All analogical forms of judgment make these discriminations in some way, whether intellectually or practically; but political judgment discriminates in order to *defend against the wrong*. In an intellectual discernment of justice-as-right, the wrong may be identified simply as what contradicts the right ... But in an act of political judgment it is the right that is indiscriminate, the wrong determined. No judge can declare comprehensively what is right to do – for what is right to do lies in the sphere of freedom, and is the subject of an infinite number of decisions by an infinite number of people. What the judge can determine is the wrong done at a given point, and this focus on the determinate wrong is what gives the political judgment its distinctive condemnatory character.³¹²

Here we have a general theory of judgment that gets specified in relation to particular kinds of judgments that must be made. What is true for political judgments is so because the

³¹¹ O'Donovan, The Ways of Judgment, 59.

³¹² O'Donovan, The Ways of Judgment, 58.

world of politics exists within a shared moral horizon that calls forth acts of discernment and discrimination, if, of course, we are to live thoughtful human lives. Counsel, then, exists to assist acts of judgment understood precisely in a social setting. *That* judgments our ours alone to make does not in any way commit us to the notion that the effects of those judgments can be limited to the individual. Judgments exist *within* a social context that is then acted back upon by the judgments made within it.

The examples O'Donovan gives, however, are largely political in nature. This is not a mistake. There is a crucial moment in O'Donovan's thought regarding the relation of sexual ethics to political ethics. For O'Donovan and Ramsey, it is primacy of *judgment* that unites these two realms of human experience. Judgments on sex and reproduction, precisely because they are *public* in nature, follow precisely the same form and serve a similar function as more directly *political* judgments. This means that judgments about sex and reproduction are 1) acts of discrimination that 2) respond to a current state of current affairs in order to 3) establish a new public context, wherein 4) shared moral norms can be intelligible. The most obvious entailment of this is that *any deviation from current practice bears the ethical burden of proof.* Alterations or developments in current practice may be licit, but it is deviation that must justify itself, not the status quo. Understanding this means the time has come to unveil the shape counsel takes for O'Donovan and Ramsey on the question of procreation and genetic manipulation.

4. Counsel Enacted: Seeing In a Glass Dimly

While Ramsey's writings on medicine and research ethics in particular are more extensive than O'Donovan's, some crucial similarities exist between their thought on the question of new reproductive technologies and it is possible to both treat them as fellow-travelers and extend their thought to address the liberal eugenic mood I described in chapter 2. The purpose of this section is to situate the actual claims Ramsey and O'Donovan have made on the goods of reproduction. I will do so however, by concentrating most directly on O'Donovan's final chapter in *Begotten or Made*?

We begin at the beginning. In the preface to Begotten or Made, O'Donovan writes:

As I looked through evidence submitted by Christian bodies to the Warnock Committee, and compared them with writings from other Christian sources in the last quarter-century, it seemed to me that a consistent concern emerged. It was expressed as clearly by those who accepted these new techniques as by those who rejected them. It was common to Roman Catholics, Protestant, and Jews. It arose from a caution about the impact of technology (which is, above all, the impact of certain ways of *thinking*) on our self-understanding as human beings. It found common expression in a distinction that constantly recurred: between the use of technique to assist human procreation and the transformation of human procreation into a technical operation. It was a concern about the capacity of technology to change, not merely the conditions of our human existence, but its essential characteristics.³¹³

From this, two basic claims are worth noticing. The first is the basic characterization of technology as a way of thinking. This will be taken up in the next section on "Approaching Judgment: Fabricating Man." The second is about the particular way in which O'Donovan's interest in and sustained dialogue with the findings of the Warnock report shows a kind of public concern that extends beyond the Church's walls. Here, the point is not just methodological. It is not just about the manner in which ideas are developed; it is, rather, a claim about the object of concern – namely, the health of

³¹³ Oliver O'Donovan Begotten or Made? (Oxford: Oxford University Press, 1984) pg. iii.

prospective parents as well as society as a whole. It is a claim about what was previously described as the Christian moralist's interest in judging, nourishing, and repairing a common moral *ethos*.

This means that when we think of the way that O'Donovan exhibits the form of deliberation a uniquely pastoral relationship could take in regard to the use of IVF, he is not simply recounting the experience of an individual couple. He is also speaking to the shared moral world that is asking basic questions not just about the legality of a given practice but also about its moral quality. Given what I've said about judgment above, the question is: is the evidence in favor of sanctioning and blessing a given practice so strong that a common judgment can be reached and a new public context can be established?

The all-important final chapter of *Begotten or Made? is* aptly titled "In a Glass Darkly." The chapter begins with a hypothetical scenario O'Donovan calls a "fairy-tale." In this scenario, a couple longing for children is approached by an apparition that promptly promises to satisfy the couple's desire for a child simply by providing them one. The "blocked oviduct" of the woman would not be cured; rather, a child would be provided to their couple that was of their own seed. "A majestic and queenly figure" stood in the kitchen, O'Donovan says, promising that "in place of the length, difficulty, and uncertainty" of IVF as we know it, "all was to be made simple and certain by means of the magic wand."³¹⁴ A child would be provided to the couple, satisfying their long-held desire to not just be husband and wife, but now mother and father.

When the couple gets over their excitement regarding this proposed solution to their problem, they begin to question whether or not "in consenting to her plan they had

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³¹⁴ O'Donovan, Begotten or Made? 67.

consented to something barbarous." As O'Donovan puts it, the couple begins to wonder if "the blessing so strangely bestowed upon them" was not "qualified by a certain unwholesomeness, by that air of the disreputable which always clings to the practice of magic."³¹⁵ Their concerns, O'Donovan tells us, would boil down to five. Though O'Donovan doesn't make it explicit, the questions build upon one another, modeling a form of dialogue one can easily envision taking place within a pastoral setting. In list form, they are:

1) Was this proposed solution more compensatory than curative – that is, did it solve the medical problem or simply circumvent it?

2) If the fairy godmother could apply her powers to whatever she wished, why was it necessary to apply the magic to the creation of the child rather than the curing of the condition?

3) This raises the question: *is childlessness is actually a pathological medical condition in the first place?* Or, put differently, how can a medical condition exist between two people?

4) Answering the previous question raises for the couple a sustained concern that the fairy godmother is disregarding the nature of contingency in procreation..

5) And given this, the final question the couple has concerns the basic relation between the provision of this child and their own marital and sexual union. Simply put, the question then becomes: what is the relation of the child provided to the sexual relationship they share? Is not the uniting of the unitive and procreative components of sexual love precisely what the fairy godmother denies through her provision of a child?

³¹⁵ O'Donovan, Begotten or Made? 67.

Working through this set of questions unveils O'Donovan's basic disposition towards IVF. Though, in the end, O'Donovan's view on IVF does not involve a categorical prohibition, there is a strong presumption against the use of such technologies.³¹⁶

So how does O'Donovan reason? The first distinction O'Donovan makes between curative and compensatory medicine harkens back to the basic claim regarding the ends of medical practice. As O'Donovan puts it, compensatory medicine may have "secondary status," given "competition for scarce resources," but, in principle, it can be licit.³¹⁷ And, moreover, in the case of the fairy-tale, the question of scarcity and priority is mute. So far, so good.

In the second worry, the question then becomes: could not the medical gaze, as it were, be directed at the identified pathology? Was it necessary, in other words, to adopt a compensatory model in this case? Here, O'Donovan is straightforward about the limitations of this thought experiment for discussing IVF in every instance. The doubt regarding the object of the medical gaze (my term) is justified, at least partially, due to the fact that the technique itself could be used in a variety of instances. "If at any time there was a straight choice to be made," O'Donovan puts it, "between two approaches to a problem, equally likely to be effective, one curative and one compensatory, it would be

³¹⁶ Crucially, the set of questions also demonstrates the form that counsel takes. Though the exercise itself begins with a hypothetical scenario and the strength of the analogy can be probed, questioned, or rejected outright, one can easily envision a pastoral figure working through each of these issues with a couple, pressing them to consider the issue from a variety of angles before coming to judgment.

³¹⁷ O'Donovan, Begotten or Made? 68.

highly improper not to choose the cure, even if the other course offered gains for research not easily attainable otherwise."³¹⁸

Here, O'Donovan shows a *preference* for curative medicine, even a strong preference. The basic end of medical care is to address bodily disintegration in such a way as to heal people. This entails a desire to honor the life-projects and objectives of human persons, but this desire is always an entailment, downstream, as it were, of the basic objective to cure what ails a given patient. Here, it is not hard to see a pastor or counselor cautioning against a certain kind of haste. Medicine, on this reckoning, has an abiding interest in preserving itself from becoming a kind of service provider wherein clinical medical judgment is set to the side in favor of the satisfaction of consumer demand.

But, in this scenario, the strong preference for a curative form of medicine gives way to the third worry about the status of childlessness. That worry comes in the form of a question: is childlessness, in fact, a medical pathology, or, simply, what O'Donovan calls a "disappointment?" Here, an extension of the previous worry about the status of medicine to satisfy consumer desire is complemented with a strong claim about the necessity of preserving contingency in the procreative process. O'Donovan is clear to say that "we should not employ medical means to compensate for non-medical disappointments." Moreover, some couples can experience extended periods of infertility without a known medical pathology – that is, in a medicalized state where "nothing is wrong." But, as O'Donovan makes plain, at times infertility does have a known medical etiology. In this case, "an organ which is incompetent to do what it is meant to do is *ipso facto* pathological,

³¹⁸ O'Donovan, Begotten or Made? 68-69.

and a proper object of medical concern." In these cases, O'Donovan is clear to say that "childlessness" is not being treated, but, rather, the known medical pathology.³¹⁹

The crucial aspect of this passage is highlighted in a latter moment wherein O'Donovan claims that "you cannot have a pathology which does not belong to either of the couple, but hovers between them, as it were, irresolutely." Here, the matter of contingency in procreation is met head on. Contingency is an irreducible feature of the way new lives emerge in the world because it is an essential feature of the way life is. This means, as O'Donovan says in the passage above, that, at times, the experience of barrenness can be described as natural.

Medicine may be compensatory, but, importantly, it should always treat *pathologies* – what I've described here as instances of physiological decay – and not mere contingencies. And pathologies must be identified, somehow, as residing within an individual rather than amidst a relationship. This is a further exemplification of counsel: in a pastoral setting wherein a counselor is committed to identifying points of moral danger, a couple is encouraged to set haste aside and take up the painstaking work of identifying rather than circumventing an actual diagnosis.

The fourth worry follows on from this: is not IVF an expression of a kind of technical rationality that aims to remove all contingency from procreation? O'Donovan poses the question this way: "Granted that *in vitro* fertilization intends to treat pathology and not contingency, does it not have the effect of abolishing the contingency at the same time that it compensates for the pathology?"³²⁰ From this, we can see that, in O'Donovan's view, it is

³¹⁹ O'Donovan, Begotten or Made? 69-70.

³²⁰ Begotten or Made? 71.

important to preserve some degree of contingency in the act of begetting. Put differently, O'Donovan thinks it important to distinguish between "making" and "welcoming" a child; and, it is only through seeing the creation of a child as precisely not the sole object of a given act that this distinction can be held.

For O'Donovan, if a technology like IVF effectively removes all contingency from the procreative process, a strong moral case can be brought against it. It is important to note, however, that in O'Donovan's view, IVF does not, in fact, remove all contingency – that is, all elements of *chance* – from procreation; it only addresses one moment in the procreative process. "To say 'randomness,' of course, is not to say 'providence,'" O'Donovan tells us. He continues:

But it is not the case that conception by in vitro fertilization abolishes contingency. It is true that it does so at one point: the actual fertilization of the ovum by the sperm is made the direct object of technique...But what is lost to contingency at the point of *fertilization* is not lost, but may even be enhanced, at the point of *implantation*.³²¹

From this, we see that O'Donovan does not consider IVF to be a practice intrinsically tied to a form of technical rationality that has given over begetting to the logic of making. And yet, on just the next page, O'Donovan registers a deep worry about what the practice of multiple embryo placement. "Once begetting is acknowledged to be under the laws of time and motion efficiency," he says, "then its absorption into the world of productive technique is complete."³²² Interestingly, however, O'Donovan shows that there can be great "symbolic value" in choosing *inefficiency* by resisting the urge to reduce contingency by implanting multiple embryos. "Inefficiency," he says, "is the worship they

³²¹ Begotten or Made? 72.

³²² O'Donovan, Begotten or Made? 73.

pay to the *humanum*, the human person and personal relationships, objects which cannot be subject to the laws which govern productive efficiency."³²³

This brings us to the last of the worries – namely, about the provision of a child outside of a sexual context. O'Donovan describes this worry as the "most serious" of the five and commits the most time to its discussion. That discussion begins with a brief evaluation of the report submitted to the Warnock Commission by the Catholic Bishops' Joint Committee on Bioethical Issues, published as *In Vitro Fertilization: Morality and Public Policy*. Predictably, that report articulates the basic line of thought I developed in chapter 2 on the ethic of act-analysis: according to the official position of the Catholic Church, it is immoral to generate human life outside of the marital act and, insofar as IVF is distant from the non-contracepted sexual union of a marital couple, it is immoral.

O'Donovan notices two important features to the Catholic argument for absolute prohibition. "One is the principle that I have maintained, that procreation is safeguarded from degeneration by springing from a sexual relationship in which the child is not the immediate object of attention."³²⁴ The second feature, however, O'Donovan takes some distance from; and that is, "the further stipulation that the twin goods of marriage must be held together *in one intentional act* of sexual intercourse."³²⁵ I say O'Donovan takes *some* distance from the "one intentional act" standard in order to complete our analysis of how counsel works in relation to human agency, for, in O'Donovan's view, something like the "principle of totality" can maintain the importance of uniting the two goods of marrial love while also attending sufficiently to the lived sexual experience of married couples. As he

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³²³O'Donovan, Begotten or Made? 73.

³²⁴ O'Donovan, Begotten or Made? 75.

³²⁵ O'Donovan, Begotten or Made? 75.

puts it, "to break marriage down into a series of disconnected sexual acts is to falsify its true nature." Further, he says,

But it is artificial to insist, as *Humanae Vitae* did, that 'each and every marriage act' must express the two goods equally. What was at issue in the matter of contraception was not the unity of procreation and relation as such, but the Moral Theological tradition known as 'strict act-analysis', which tends, in the eyes of its critics, to atomize certain human activities in ways that defy their inner structure.³²⁶

O'Donovan's interaction with Humanae Vitae exemplifies the account of the moral law I gave above. Counsel, as an approach to the moral life, is deferential to the accumulated wisdom of an eclectic set of concepts, narratives, and forms of life. In this way, O'Donovan is interested in preserving the traditional ethic that values two distinct goods of sexual union: relationship and procreation. The point he presses, however, (and it is precisely in pressing this point that his analysis is most *pastoral* in nature) is whether or not *distinct* acts that correspond most directly to one of the goods of sexual union are always independent acts. In doing act-analysis of a kind, he is looking for what he calls "a moral unity which holds together what happens at the hospital with what happens at home in bed." He asks, "Can these procedures be understood appropriately as the couple's search for help within their sexual union (the total life-union of their bodies, that is, not a single sexual act)?" He answers, "I have to confess that I do not see why not."³²⁷ This leads O'Donovan to the perceptive but, at first, jarring suggestion that there is a great deal of moral wisdom in couples making use of IVF also having sexual intercourse immediately after embryo-implantation in order to best embody what is meant by the procedure: "not

³²⁶ 76-77. It should be noted that this position is quite similar to the one Ramsey held. See, for example, "A Christian Approach to the Question of Sexual Relations outside of Marriage" *The Journal of Religion*, Vol. 45, No. 2 (Apr., 1965), pp. 100-118 ³²⁷ Begotten or Made? 77-78.

the making of a baby apart from a sexual embrace, but the aiding of the sexual embrace to achieve its proper goal of fruitfulness."³²⁸

With this, the analysis of the morality of IVF is nearly complete. The point of the fairy tale is to show that, in principle, there are scenarios wherein procedures like IVF could be licit, precisely as an aid to marital fruitfulness. The five worries that are generated and addressed *enact what counsel is* – namely, a kind of relational casuistry wherein technologies are evaluated in light of principles derived from the moral law, itself the culmination of canonical narratives and concepts. This process eventuates in what I've called a strong presumption against the use of IVF technologies for the begetting of children.³²⁹ But this presumption can be overridden within the context of wise counsel.

In extending this line of thought to other reproductive interventions we cannot simply "cut and paste" what O'Donovan says here regarding the morality of IVF as a way of addressing the dizzying decisions prospective parents currently face or will likely face in coming years. O'Donovan, to my knowledge, did not, for example, take the occasion of the recent Parliamentary debate regarding Mitochondrial Replacement Therapies to engage

³²⁸ Begotten or Made? 78.

³²⁹ This strong presumption against is solidified in the closing pages of the chapter (and the book) wherein O'Donovan registers two basic objections not to the characterization of IVF as it comes across in the fairy-tale but as it actually is practiced at the time. Those are: 1) the use of embryos for non-clinical research, and 2) the set of perceived harms to children created *via* IVF. On the second of these, harm is understood in fairly capacious terms that are directly related to the needle O'Donovan tries to thread in the fifth worry described above – namely, the relation of the laboratory to the bedroom within the common social imaginary. He seems to suggest that while individual cases couples could still retain this connection, it would be increasingly difficult for an entire culture to understand IVF as a form of assistance. Whether or not O'Donovan is right about this, it seems to me, is an open question. On the first of these, however, O'Donovan and Ramsey sing a similar tune regarding the immorality of experimentation on human materials. This further conditions and solidifies the "strong presumption against" use of technologies like IVF.

in a similar form of ethical analysis.³³⁰ The important thing for my purposes here is that the analysis I have provided of O'Donovan's account of IVF could be a template for a similar type of analysis not just for Mitochondrial Replacement Therapies, but any number of new technological innovations. It could be so, because the analysis O'Donovan provides is fundamentally *pastoral* in nature. It is attentive to the situation of the people charged with the task of deciding how to proceed, capable of identifying moments of moral danger, and sympathetic to the plight of the couple enduring significant forms of stress and restlessness. This is what I mean by counsel's basic flexibility. Regarding its faithfulness, however, we should notice how this approach is not a blanket endorsement of a couple's stated wishes. Counsel is always tethered to the need to specify the moral norms that comprise the moral law, which may well eventuate in prohibitions, but this is a matter that can never be prejudged.

5. Coming to Judgment: On Fabricating Man

The argument of this chapter up until this point has unfolded in four stages. In section one, I introduced the work of Paul Ramsey and Oliver O'Donovan, arguing that there is a discernible structural similarity between their patterns of thought. This approach to Christian ethics is one I'm developing under the moniker of "counsel." It is distinctive insofar as it is unashamedly a role-specific form of morality that assists individuals in the exercise of right judgments. It is also remarkable for its social location – namely, that it begins within the churches but is happy to be in common cause with institutions and

³³⁰ For an account of Parliament's decision regarding Mitochondrial Replacement Therapy, see James Gallagher's report for the BBC, "MPs say yes to three-person babies," http://www.bbc.com/news/health-31069173

actors that don't share its first principles. Then, in the second section, "What is Counsel?," I presented a general account of the dynamics of counsel – that is, how it functions. Here I showed counsel to be a form of moral guidance wherein individual agency is enlivened in accordance with an accumulated set of norms and narratives described as the moral law. Counsel, in this way, is a form of casuistry wherein settled moral principles are specified and applied to emergent phenomena. In the next section, "Counsel Enacted," I recounted O'Donovan's discussion of IVF in the concluding chapter of *Begotten or Made*?, arguing that the way O'Donovan reasons there exemplifies counsel at its best.

In commending counsel as a way forward for Christian ethicists interested in meeting the challenge posed by the new eugenics, I have highlighted its flexibility. This is particularly true for O'Donovan's analysis of the ethics of IVF. In the section on "Counsel Enacted," I made plain that O'Donovan's approach there can be extended to address other technological interventions in reproductive medicine. It is uniquely well positioned for this task for two reasons: first, counsel is inherently dialogical insofar as it is an interpersonal moral vision; and, second, that it is not fixed in time but, rather, able to address various phenomena as they emerge. With this second point, I intend to show how counsel, for O'Donovan, is the way in which the moral law is mediated through the church to the individual.

Flexibility can, however, be understood as a euphemism for "weakness." If, in the end, an ethic is incapable of prohibitions, unwilling or afraid of saying "no," it is often presumed to be insufficient for guiding human conduct. Moreover, if it cannot mediate

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authority with any success, it will earn for itself a high degree of irrelevance. And so, this section surveys O'Donovan and Ramsey on the nature of a technological society and the dangers of living therein. This is where the cartographer's task is most important; for, in a very real sense, the perceived presence of moral danger can quickly turn "counsel" into "warning."

So what is the substance of O'Donovan and Ramsey's warning regarding technological interventions within reproductive medicine? Throughout *Begotten or Made?*, O'Donovan is particularly concerned about the possibility of an epochal shift within our common imaginary. The shift is one about the nature of making in our time. "We have to consider," O'Donovan says, the position "of human begetting in a culture which has been overwhelmed by making."³³¹ In this, O'Donovan cites and, in some sense follows, the body of work developed by George Grant and Jacques Ellul who, first and foremost, highlight the totalizing nature of contemporary forms of technology. As O'Donovan recounts this line of thought, however, the issue is not merely theoretical. "When every activity is understood as making," he says, "then every situation into which we act is seen as a raw

³³¹ O'Donovan, Begotten or Made?, 2. The Full paragraph reads:

Whether it is made of matter, like a wooden table, or of words like a lecture, or of sounds like a symphony, or of colours and shapes like a picture, or of images like an idea, it is the product of our own free determination. We have stamped the decisions of our will upon the material which the world has offered us, to form it in this way and not in that. What we 'make', then, is alien from our humanity. In that it has a human making, it has come to existence as a human project, its being at the disposal of mankind. It is not fit to take its place alongside mankind in fellowship, for it has no place beside him on which to stand: man's will is the law of its being. That which we beget can be, and should be, our companion; but the produce of our art – whatever immeasurable satisfaction and enjoyment there may be both in making it and in cherishing it – can never have the independence to be that 'other I', equal to us and differentiated from us, which we acknowledge in those who are begotten of human seed

material, waiting to have something made out of it. If there is no category in thought for an action which is not artifactual, then there is no restraint in action which can preserve phenomena which are not artificial."³³² "Human life," he continues, "becomes mechanized because we cannot comprehend what it means that some human activity is natural."

In its most basic iteration, this line of thought resonates with the modernity criticism of figures like Hauerwas and Reinders discussed in the previous chapter. While O'Donovan's modernity criticism is of a different quality then Hauerwas', he is willing to draw sharp and sustained contrasts between natural 'begetting' and artificial 'making." The first of these is described as "our capacity to give existence to another human being" so that the child is "formed by what we are and not by what we intend." The second is a moment in our "revolutionary climate of thought" wherein "making is the conceptual matrix by which we understand all human activity."³³³ The worry O'Donovan registers here is essentially one of an exclusive materialism that removes all contingency from human life, including the quest for the perfected child.

Interestingly, he is adamant to say that the primary effect our technological society has on the processes of procreation is not unique, in fact, to having children. This highlights the degree to which the vision Ramsey and O'Donovan offer is one targeted at a shared moral world, a common social *ethos*. In a chapter on transsexualism that appears, at first glance, to either be a digression or a tangent, O'Donovan argues that "we cannot and must not conceive of physical sexuality as a mere raw material with which we can construct a form of psychosexual self-expression which is determined only by the free impulse of our

³³² O'Donovan, Begotten or Made, 3.

³³³ O'Donovan, Begotten or Made, 15.

spirits."³³⁴ Whether or not this is a fair description of the phenomenon of transsexualism is beside the point I see O'Donovan making here. Nature, on O'Donovan's reckoning, is not infinitely malleable or, at least, should not be considered so. On this, he and Ramsey are one. The primary reason it should not be considered this way is in order to prevent a high degree of arbitrariness from characterizing any number of human interactions. On the nature of parenthood, O'Donovan puts it like this:

1) Arbitrariness is what we have wished upon ourselves. In the natural order we were *given to know* what a parent was. The bond of natural necessity which tied sexual union to engendering children, engendering to pregnancy, pregnancy to a relationship with the child, gave us the foundation of our *knowledge* of human relationships in this area. Now that we have successfully attacked the bond of necessity (and artificial insemination was the first blow struck against it), we have destroyed the ground of our knowledge of the humane. From now on there is no knowing what a parent is.³³⁵

This sort of pessimism regarding technology's role in reshaping human relations is shared in Ramsey's *Fabricated Man*, particularly in his repeated warnings about what "the new biology" will do to the nature of human parenthood. In a chapter titled "Parenthood and the Future of Man," Ramsey's analysis is of a piece with O'Donovan's worries about what Ramsey calls "the fascinating prospect of man's limitless self-modification." While Ramsey was writing before the establishment of IVF and has a tendency to lump any number of interventions together as "the new biology," his basic worry is both about the malleability of nature and the changing nature of social life. In Ramsey's view, there are certain technological innovations in reproduction that cannot be undone. Foreshadowing

³³⁴ O'Donovan, Begotten or Made, 29.

³³⁵ O'Donovan, Begotten or Made, 48.

John Robertson's notion that "we have crossed the Rubicon," Ramsey argues that

developments cannot be reversed. Quoting David Bazelon, he says:

'If a scientist fixated upon the technical difficulties of the feat produces a clonal offspring cultivated from some medical student's intestinal cells, no judge can then decide, when someone comes tardily to court, that the baby should be uncreated.' The same can be said of the other feats we have reviewed. If a mishap from trying genetic surgery upon humans comes tardily to court, the judge cannot say that baby should be uncreated. If an embryo created and nurtured to development in vitro comes tardily to the court of public opinion, we cannot say it ought not to have been created. Discussion of the moral questions raised by the new biology must begin now. In this discussion the public should be engaged, and from it no helpful perspective should be excluded.³³⁶

Given the stakes, it is not surprising that Ramsey's rhetoric is often direct and

jarring. He says there are four ethical questions that need to be posed to advocates of the

new biology:

The question of whether or not man has or can reasonably be expected to have the wisdom to become his own creator, the unlimited lord of the future; 2) the anthropological and basic ethical question concerning the nature and meaning of human parenthood, and of actions that would be destructive of parenthood as a basic form of humanity; 3) the questionableness of actions and interventions that are consciously set within the context of aspirations to godhood; and 4) the question of human species-suicide.³³⁷

From this, we cannot avoid the conclusion that Ramsey and O'Donovan register

substantial moral concerns regarding the employment of new reproductive technologies,

particularly as they substitute the artificial for the natural. In fact, it is too tepid to say that

they have "moral concerns." Ramsey, in particular, spares no rhetorical flourish in

proclaiming that "men now have the power to do things that influence the whole of

³³⁶Ramsey, Fabricated Man, 121-122.

³³⁷Ramsey, Fabricated Man, 123.

mankind, not simply enclaves of the species."³³⁸ Frankly, it is right to see in Ramsey's bluster a great deal of modernity criticism that approaches what Jeff Stout has called the "rhetoric of excess" in Christian ethics.³³⁹ And, in truth, Ramsey and O'Donovan are the most direct and critical theologians on the taxonomy of complaint I have developed here regarding the likely societal impacts of widespread shifts in our reproductive social imaginary.

What can we make of this? How can we synthesize this bombastic rhetoric that comprises the warning O'Donovan and Ramsey register with the careful analysis of a technology like IVF described in the previous section? I have said that O'Donovan and Ramsey depend upon a kind of modernity criticism that sees technology as a form of thought, and in this they are can be likened to Hauerwas, Reinders, and others. But the crucial point to make here is that the object of their concern is society as such. This is a substantial difference, for Ramsey and O'Donovan's thought here is that the Christian concepts can, if deployed rightly, illuminate and constitute a social fabric shared by Christians and non-Christians alike. They may do so by insisting that certain things should not be done, utilizing whatever concepts and language lies ready to hand, but this form of social criticism self-consciously understands itself to be in service of a social *ethos*, a shared moral world. Though this may not alleviate the concern regarding rhetorical excess, and, in fact, may prove to be counterproductive, the social ambition of warnings within a theology of counsel is an essential and distinctive feature of this approach.

³³⁸ Ramsey, Fabricated Man, 153.

³³⁹ See Jeffrey Stout, "The Spirit of Democracy and the Rhetoric of Excess," *Journal of Religious Ethics 35:*1, 2007.

6. Conclusion: Or, What Does it Amount to?

The perceptive reader will see how counsel, as a comprehensive approach to the moral life, actually trades on features of the previous two approaches described. With Hauerwas, Reinders, Brock, and others, O'Donovan and Ramsey are unashamed to specify and articulate just what constitutes a technological society and, moreover, what is morally problematic about such societies. They do not, however, stop at the moment of critique or seek to bolster the reputation of the Church by simply appealing to its points of contrast with the world writ large. Theirs is a much murkier account of the ethical life, in large part because they are self consciously interested in thought resolving upon action, but also due to alternative views regarding the allure of purity within the church.

Moreover, readers will notice the way in which O'Donovan and Ramsey make use of the unitive/procreative goods of marriage schematism so pronounced in the ethics of act-analysis put forward in chapter 3. This basic view they appreciate and carry forward, while also differentiating themselves at some key moments. In this, they honor the need for an account of acts and the goods to which they respond, while also eschewing the kind of moral absolutism that confidently carves up the world into intrinsically evil or moral acts. Here, O'Donovan and Ramsey honor a set of ethical principles and claims precisely *by putting them to use.*

But what are those principles? And how could they be deployed in relation to the phenomenon of liberal eugenics? As a summation of this position, I find six discernible claims. They are:

The moral law is mediated and discerned within a relationship.
 Reproductive decisions are inherently public acts.

3) Contingency is an essential feature of procreation.

4) Reproductive technologies should be understood as aids to fruitfulness.

5) Experimentation on innocent and nascent human life is to be avoided.

6) The concept of parenthood is constrained by an account of nature.

The connections between these particular principles and the claims of the new eugenics are drawn quite easily. To the degree that the new eugenics aims to exclude the place of contingency within reproduction by eliding the distinction between acts and omissions and thereby rendering prospective parents responsible for the genetic "quality" of their offspring, it is to be resisted. Moreover, to the degree that advances in reproductive medicine depend upon nontherapeutic forms of experimentation on nascent human life, they are to be resisted. Yet, understood precisely as aids to marital fruitfulness and responses to medical pathologies of infertility, various interventions within the reproductive process may be embraced. These kinds of assessments and judgments will need to be made on a case by case basis but, in the capable hands of a wise counselor, can be fairly easy to see.

Perhaps the two most profound points of tension between these claims and the liberal eugenic mood come in claims one and two. The first claim will likely unsettle proponents of the new eugenics simply by claiming allegiance to "the moral law." If understood in the terms I have provided here, however – as a deposit of authoritative moral sources, for example – perhaps a productive discussion between the new eugenicists and Christians working within this tradition of thought could be had. Perhaps.

On point two regarding the social nature of reproductive decision making, the differences between the two approaches may be more stark. If we recall that one of the defining features of the new eugenics is that individual reproducers have moral obligations to society as such to make use of whatever means are at their disposal to bring into the world the "best possible child," it will be hard to square the social policy that emerges from this disposition towards conventional means of reproducing with the inherent conservatism present in the accounts of Ramsey and O'Donovan.

While a range of policy proposals are on offer from the new eugenicists, for Ramsey and O'Donovan, tradition holds a presumptive pride of place. This means that, even though the new eugenicists and O'Donovan and Ramsey are in agreement that it is the individual (and not the state) that should be making reproductive decisions, they hold decidedly different positions regarding social investment in research and development within reproductive medicine and the notion of "social progress" more generally.

Put together, these claims and principles amount to a profound ambivalence regarding the shifting nature of our common social *ethos*. This ambivalence can be seen in the way our technical capacities seem to both enable and expedite dramatic cultural change, the substance of which often goes largely un-interrogated. Do we want "better children"? Yes. Do we know what we mean by "better"? Maybe, but only at the margins. What are we willing to do to create better children? Therein lies the conflict.

Nowhere is this ambivalence more evident than in the application of genetic technologies within reproductive medicine. This turn has recently been characterized by Michael Sandel as a development that presents us with "a promise and a predicament," and the kind of response Sandel has generated serves as a good way to indicate what I mean by our ambivalent age. "The promise," Sandel tells us, "is that we may soon be able

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to treat and prevent a host of debilitating diseases." And, to be sure, the turn to genetics allows for a great deal of therapeutic benefit previously unavailable to us.³⁴⁰

"The predicament," however, is that our new found genetic knowledge may also enable us to manipulate our own nature," or, as he later puts it, evoking Carl Elliot's work on the subject, threaten to make us "better than well."³⁴¹ The worry here is akin to Ramsey's repeated refrain in *Fabricated Man* regarding those who will come after us not being "like us." Moreover, extending genetic technologies back into the womb is, as Sandel says, a form of "hyper-parenting" wherein the basic relationship between children and their classmates is characterized by competition and the basic relation of parent to child is one of project and master.

This is precisely what I mean by describing ours as an age of *ambivalence*: there may well be very real benefits within the turn to genetics in medical practice, but, as Sandel argues – and here the type of counsel Ramsey and O'Donovan provide would agree with him – the cultural and moral costs of such developments may be too high. The question is: *can there be such a thing as a properly formed ambivalence*? In my judgment, there can be. It is neither blind resignation to the social and cultural forces that cannot be brought to heel

³⁴⁰ One particularly interesting proposed benefit of genomic medicine is its capacity to assist preventative medicine. In this scenario, genetic information would be put to prospective use in order to assess health risks and prevent disease. For an account of this as well as the need for genetic counselors to help interpret genetic information for patients and doctors alike, see Julianne O'Daniel, "The Prospect of Genome-guided Preventive Medicine: A Need and Opportunity for Genetic Counselors," *Journal of Genetic Counseling 19* (2010) pgs 315-327. I first came across this essay as it was included in the proceedings of the Third National Conference on Genetics, Ethics and the Law, held at the University of Virginia School of Law in May of 2013.

³⁴¹ Michael Sandel, *The Case Against Perfection: Ethics in an Age of Genetic Engineering* (Cambridge: Harvard University Press 2007) pg. 6.

nor a kind of modernity criticism that is incapable of recognizing the very real goods that come to us through some technological developments.

Such a properly formed ambivalence is a disposition that takes seriously the phenomena of concern, worry, and moral danger. Counsel, as evidenced in this chapter, develops this disposition precisely by locating the exercising of judgment with the individual. It does not, however, abandon the individual to a sense of isolation. It does not, as I said in the introduction, force the individual to come to judgment all alone. Rather, counsel meets the challenge posed to Christian ethics by the new eugenics by insisting on a relationship wherein trust between parties can govern the decision making process, reasons for or against a particular treatment can be discussed at length, and moments of moral danger can be identified. Conclusion

On Being Awake

On Being Awake

Christian ethics resides at the intersection of two questions: *What is going on*? and *What should be done*? Wisdom and good judgment are required to answer each of these questions. And, crucially, they cannot be answered independently: one's sense of what one should do depends upon what one takes to be the situation.

This is essentially what Oliver O'Donovan describes in his stimulating account of the notion of "wakefulness.' According to O'Donovan:

...we *awake* to our moral experience at the beginning. What seems like the beginning is not really a beginning at all. We wake to find things going on, and ourselves going on in the midst of them. The beginning is simply the dawning of our consciousness, our coming-to-be what is already happening and to how we are already placed...We must grant this starting-point: moral experience is not constructed or achieved out of non-moral experience; it is woken up to as experience that has accompanied other experience, present from the beginning and distinct in kind.³⁴²

Here is O'Donovan at his most thoroughgoingly phenomenological. It is also uniquely theological, for, according to O'Donovan, "morality supposes life of a certain kind, life of intelligence, responsibility, and freedom which is, as Saint Paul has told us, "the life of 'Spirit."

As O'Donovan goes on to show, the substance of "wakefulness" is not mere apprehension of the fact that we stand in something like "relations of responsibility," understood flatly as relations of obligations towards near neighbors, our own best selves, and so on; rather, what we, each and every one of us, awake to is our *agency before God-as*-

³⁴²O'Donovan, Self, World, and Time, 2.

Spirit. We are, O'Donovan tells us, "debtors to the business of living" in some sense, which means that there is an animating spirit to the directed human life that can be distinguished from other natural life forms. "Human beings cannot live as vegetables," he says, for "they must appropriate life" and make it "their own."³⁴³ But as we make life our own, we come to realize that truth of St. Paul's claim that the "Spirit himself bears witness to our spirit" (Romans 8:16). For O'Donovan, this means that "induction into life and action is accomplished by a word of truth addressed to us, a declaration of the way things are between the world and ourselves. We are debtors to a life, a direction, and a truth."³⁴⁴

From this, the full theological weight of the metaphor of wakefulness comes into view. O'Donovan holds that, finally, humans are "debtors to God" for the simple reason that the word that animates our agency extends beyond the horizon of human kinship. As he puts it:

It originates beyond our human ken, yet is also a word from Spirit to spirit. The spirits are not equal; one is Creator, the other creatures. Yet they are spirits together in a graced analogy; God's witness comes to one whom God has made to answer and reflect him. The spirit hearing is like the Spirit heard, though at the same time wholly unlike. That likeness is what being led by the Spirit consists in, living a life that is given by Spirit and corresponds to Spirit's life. The witness tells us we are children of God, not tools, not subordinate implements moved around to serve purposes of which we know neither the why nor the wherefore, not random creatures of cosmic energy blown about as dynamics of flesh may dictate. We address God as "Abba! Father!" - freed in this elemental prayer to affirm his works and make them our own. We are led to know ourselves for what we are, to come to ourselves in coming to our Father, to enact our existence truly. It is the freedom to live, the most total expression of active, conscious, authentically engaged existence. Any other life that may seem possible to live, any life conceived according to "the flesh" in terms of mere facticity, is not life at all, but a shadow-life that leads towards death.³⁴⁵

³⁴³ O'Donovan, Self, World, and Time, 5.

³⁴⁴ O'Donovan, Self, World, and Time, 5.

³⁴⁵ O'Donovan, Self, World, and Time, 5-6

As O'Donovan plays with these biblical images of pilgrimage towards life or death and the horizon of relations that is opened by the Pauline notion of addressing God, it is important to note that he is not departing from a description of full human agency. In fact, his view is that Christian theology has an interest in the "renewing of human agency" precisely because it "has to tell of conversion, and of how our occasional moment of moral wakefulness may lead into an awakening that will be complete and final."³⁴⁶ This "summons to wakefulness" is characterized finally, therefore, by the knowledge that I am "poised between the saving and the losing of my soul."³⁴⁷

Waking to Our Power

But if we are to be awake to the challenge of the new eugenics, what do we recognize? What is it, in other words, that we awake to?

Running throughout the taxonomy of complaint provided in Part II is a set of different answers to this question – that is, a difference of view as to what the challenge posed by the new eugenics fundamentally applies to. For the thinkers described in chapter 3, the complaint is one primarily regarding teleology – that is, the internal structure of acts themselves and the intelligibility thereof. For Hauerwas, Reinders, and others embracing

³⁴⁶O'Donovan, Self, World, and Time, 7.

³⁴⁷ On page 13 we read:

The summons to wakefulness is therefore a summons to attend to my agency. I find myself in the world, attending to it, taking initiatives in respect of it, responsible for those initiatives. I find myself a distinct agent, one among many, not universally responsible for everything that happens but for some things that happen in particular. And this distinct agent, I find, is precisely what I am, so that what I am responsible for shapes what is to become of me, for good or ill. I find myself poised between the saving and the losing of my soul. The summons to wakefulness confronts me with the menacing possibility of failure to realize myself. O'Donovan, *Self, World, and Time*, 13.

the communitarian turn within Christian ethics, the challenge is fundamentally about the integrity of a worshipping community *vis a vis* its neighbors. In the first scenario we awake to the fact that we are agents who act; in the second, we awake to the fact that our actions are always nourished and shaped by communities of discourse and practice.

These challenges are real and, with care, can be met with the resources those traditions of inquiry employ. They are not, however, capable of adequately addressing the challenge of the new eugenics and the set of dizzying decisions prospective parents have in front of them in our time. That which is fundamental is the question of our *power*, by which I mean the myriad ways in which the reemergence of the language of eugenics within public bioethical discourse pushes us to consider procreation a form of instrumental making wherein, ideally, contingency is purged from the process. The logical implication of our technological age, then, is that whatever we *can* control, or at least influence, we are morally *obligated* to control; and to the degree that we fail to control what we could control, we act immorally. This is implicit in a great deal of the relevant literature on the relation of parents or prospective parents to their children and made explicit in the work of Savulescu, Harris, and others.

The patient work of counsel leads us to reject the kind of competing apocalypticisms with which we began this project. We may not, in fact, live within a world where we are forced to choose between Fukuyama's dystopia and John Harris' world of 'enhanced evolution.' What is possible for individuals – namely, obedient appropriation of the moral law – is also possible for societies as a whole – even societies as plural as our own. That this is so, and that this is essential to the approach I have developed and

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recommended as most capable for the task of responding to the new eugenics, is due, in part, to the hope that society itself can be understood not only as a set of competing narratives, but rather, as what occurs when a people bound together by place, history, and some degree of common custom and aspiration.³⁴⁸

To "do bioethics" in this time and place, therefore, is not only to be inundated with the near daily news reports of "breakthroughs" within the field of reproductive medicine but also to be confronted with the very real sense that prudential judgments are ever more difficult to come by. Within certain academic conversations, to call into question any particular aspect of these technological developments is to simultaneously be labeled a "reactionary" and a "conservative."³⁴⁹ That these two monikers do not often comingle points to the power of statements like the one that opens Allen Buchanan's *Better Than Human*: "It's too late to 'just say no" to biomedical enhancements: They're already here and more are on the way."³⁵⁰ I have no interest in contesting this claim on a factual level. Use of the tools made available us through techno-medical developments to enhance, alter, and reconceive the processes of reproduction is occurring; and it will likely continue without any reference to the claims I have forwarded here.

Rather than awkwardly forcing the magisterial teaching office, Hauerwas, or O'Donovan into a direct conversation with Savulescu's conception of procreative

³⁴⁸ On the importance of place for O'Donovan, see the concluding essay of *Bonds of Imperfection*, "A Loss of a Sense of Place." On the notion of what constitutes a people, see *Common Objects of Love* (Grand Rapids: Eerdmans, 2009).

³⁴⁹ An exemplary Christian attempt to overcome this binary is Celia Deane-Drummond's important contribution, *Genetics and Christian Ethics* (Cambridge: Cambridge University Press, 2006.)

³⁵⁰ Allen Buchanan, Better Than Human: The Promise and Perils of Enhancing Ourselves (New York: Oxford University Press) 2011.

beneficence, the analysis provided in chapters 3, 4, and 5 has allowed each strand of Christian thought its own point of entry into an ongoing debate about the structure and shape of a faithful Christian reproductive ethic. This means that I have been more concerned with competing forms of reasoning in the development of a *reproductive* ethic than a discussion of the discreet interventions within reproductive medicine that comprise the eugenic mood. That mood, as I described in Part I, is characterized by the technologically assisted means of creating idealized human beings. Each of the approaches developed in Part II provides a template for how to address this mood.

The analysis I provide of each of these traditions begins by attending less to emergent forms of technological intervention towards the creation of *idealized* persons than the technologies that assist reproduction as such. I do this not simply to honor each tradition's point of entry into the discussion but also to avoid the temptation of tethering my analysis too directly to a particular or particularly novel form of technology. By giving an extended and, in some sense *general*, look at the *approach* these traditions take, I am laying the groundwork for the pronouncements a contemporary thinker working within that strand of thought could take. In this, I am tacitly in agreement with Buchanan's sense that it is too late to "just say no" to bioenhancements generally speaking, and trying to articulate how Christian communities of discourse will grapple with these developments as they continue to emerge.

What is most striking is not, however, the aura of inevitability that permeates the sentiment Buchanan's thought expresses, but, rather, the analogy he reaches for in this

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previous claim regarding inevitability – namely, America's failed "war on drugs."³⁵¹ Biomedical enhancements, the analogy suggests, resist resistance, not for any individual user, of course, *but precisely as a social phenomenon*. Likewise, whether or not the individual or couple makes use of a particular form of reproductive technology, the mere fact that one must decide – do I take this test, or not? – unveils a particular social order. The burden of Part I of the dissertation was to explicate just this – that is, how the proposals of the new eugenics work within a particular social order.

And yet, as the introduction to the project argued, the new eugenics comes to Christian ethicists as a challenge. It can be seen to do so, however, in two senses: first, as a form of *replacement* wherein direct theological claims regarding the relation of divine and human forms of agency are under threat, and, secondly, as a *provocation* – that is, as an invitation to think about reproduction again, as if for the first time.

Chapters 3, 4, and 5 presented a detailed taxonomy of complaint from three traditions of recent Christian thought. To state it once more, each of these approaches is just that – an *approach* – which means that certain views are opened up while others are placed out of frame. Each approach, for this reason, has distinct strengths and weaknesses. The first approach, ethics as act-analysis, provides a conceptually neat and tidy way of countering the challenge posed by the new eugenics almost before the discussion begins. In well-worn territory that is ably occupied by both the magisterial teaching office of the church and a series of philosophical defenders, the ethics of act-analysis insists that the conversation about *what we owe* children cannot be detached from how children are

³⁵¹ For a characteristically informative journalistic take on America's "Drug Wars," see a recent set of reports from PBS:

http://www.pbs.org/wgbh/pages/frontline/shows/drugs/video/

produced. This last phrase – *how children are produced* – does not quite fit, though, for even though this particular approach flirts with a mechanistic understanding of "nature" and "the natural," the ethic of act-analysis is, in the end, an attempt to circumscribe human agency in such a way as to protect divine agency. By determining what sort of act sex is and then building an ethic of that action from within its internal logic, this particular approach proceeds upon the logic that if we understand the act correctly, we will know how it should be used. For all its confidence, this is actually an attempt to protect humans from a kind of overreach. On this picture, those who disconnect sexual and procreative acts from one another are seeking to know and do more than they should.

The second approach, developed under the moniker of the "ethic of embrace," follows the communitarian turn in Christian ethics. Its leading lights, Stanley Hauerwas and Hans Reinders, rely on a rhetorical strategy of contrast that seeks to highlight the virtues of the church by calling attention to the fate of the disabled in contemporary societies. Their claim, forwarded with great rhetorical force, is two-fold: first, it is dependence, and not autonomy, that is most basic to the human condition; and, second, the Christian church is uniquely capable of rejecting the essential premise of the "better baby standard" – namely, that we know what constitutes "better" life in the first place. What is offered to the parishioner, on this picture, is neither directives for action nor a decision-making matrix regarding particular therapies or interventions; rather, what is offered is a community of friendship wherein virtue can be nurtured.

What this amounts to, however, is little more than a kind of affirmation through denial. Hauerwas, at times, gives the impression that the value of a gift increases because

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some choose not to embrace it. This means that the disabled, for Hauerwas, or more accurately, the paradox at the heart of liberal society's relation to the disabled, are most basically grist at the mill of modernity criticism. This is how he can at one point refer to the disabled as the "crack" he needs for his critique of modernity to carry on.³⁵²

Counsel carries forward and gathers up the essential strength of each of these positions without falling prey to their weaknesses. It is neither enamored with purity nor garish in its proclamations of the Church's virtue. Whereas the ethic of act-analysis insists that all that is required to determine the morality of a practice is an analysis of the internal logic of an act itself – say, IVF, for example – counsel, insists upon situating the action within a full context. And, whereas the ethic of embrace offers a vision of the church as a community of friends but fails to give an account of various medical developments as anything other than instantiations of a technological imperative, counsel can recognize the goods of medical development as goods while also registering significant moral concerns. As the analysis of O'Donovan's patient encounter with IVF in *Begotten or Made*? demonstrated, counsel is capable of detailed accounts of the inner mechanics of a particular medical practice as well as ways in which begetting may become "making."

What it does not do generally, and in this case in particular, is presume that strict act-analysis or an account of the Church's virtue is *all* that is required for guiding responsible action. Moreover, while counsel is an unashamedly ecclesial ethic – that is, it

³⁵² Hauerwas is clearly aware of this tension. In "Timeful Friends" he says he has always felt "duplicitous" when addressing the topic of disability and, moreover, that he is "haunted" by his use of their plight. And yet, the key sentence still reads, "Once I had been drawn into the world of the mentally handicapped, it did not take me long to realize they were the crack I desperately needed to give concreteness to my critique of modernity." Hauerwas, "Timeful Friends," in Swinton, page 14.

emerges from within the worshipping life of the Church and the Church's sources of moral authority – it does not prejudge the question of whether or not its concepts could be of use in a public outside its walls. This makes counsel simultaneously more flexible and, as I argued, more faithful to the moment in which we live. In this way, however provisionally, it gives us a way to answer the twin questions of what is going on and what should be done.

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