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ENGELHARDT ON KANT’S MORAL FOUNDATIONS AND HEGEL’S CATEGORY OF THE STATE

I. PREFATORY

Stuart Spicker’s genius, as Laurence McCullough has remarked, is that in a half-hour conversation he can point to at least a half-dozen implications in one’s ideas, each worth pursuing, and none of which their owner had previously realized. “Critical thinkers are commonplace,” McCullough epitomized, “original ones are not.”

Scholarly fields exist, Ludwig Fleck observed, only if they have a fabric of discourse to sustain them. Over the last quarter-century Stuart Spicker has helped create and sustain the discourse of bioethics, co-editing the more than 50-volume Philosophy and Medicine series, and now the HEC Forum. That there is in the field a balance of logico-linguistic-analytic, broadly positivistic, with non-analytic concerns that attend to the phenomenological contexts that shape meaning, is largely due to Stuart Spicker’s influence. His stress on the importance of philosophical anthropology has pointed to the value-laden contexts within which scientific medicine labors (ten Have, 1997). He has thus drawn our attention to the task of philosophy in medicine, to explicate, explain, and evaluate these values (Spicker, 1990). These efforts have also called attention to the subtler phenomenological contexts which bioethical analysis methodologically disregards, but which are necessary to uncover analyses’ tacit presuppositions.

Spicker also recognizes of the fact that philosophical anthropology is not the only conceptual context necessary to understand philosophy of medicine and bioethics. Philosophical anthropology does not attend to the human qua “personal agent” (Spicker, 1975, p. 198). This is the aspect of man most relevant to the theoretical framework of bioethics, and — insofar as human agents are intrinsically social — to the social and political philosophy necessary to understand health care policy. In what follows I should like to analyze critically the bioethical and social-and political-philosophical thought of Spicker’s co-editor in the Philosophy and Medicine series. H. T. Engelhardt, Jr., as articulated in

H. T. Engelhardt, Jr. (ed.), The Philosophy of Medicine, 195-221.
the second edition of his *Foundations of Bioethics*. Because no one has had as many philosophical conversations with Spicker as his closest friend Engelhardt, I trust that Spicker will enjoy, and hope that he will not have already foreseen and rebutted, some of the implications of Engelhardt’s philosophy I try to draw.

II. THE CRITICAL BASIS OF ENGELHARDT’S FOUNDATIONS

Engelhardt critically questions the secular moral warrant for public policy, political or legal, unless it is licensed by the actual or clearly implied consent of those upon whom it is binding, or is directed against those who use force against unconsenting innocents, i.e., force that is not so licensed. He does not think that theory can provide a basis in reason, and so normative for the relevant moral agents, for enforcing morals or public policy. Sound rational theory cannot legitimate either one notion of morals rather than some other or one notion of social or political arrangement rather than some other — unless it depends upon premises with which one may reasonably disagree. Nonetheless, where one’s reason cannot do so, one’s will can, by deciding to live peaceably with others and therefore not to engage in actions using unconsenting innocent others without their consent. This is the principle of permission. It provides a procedural basis binding all moral agents to the ideal of peaceable co-existence. The principle for content in morality is that of beneficence. This gives content to morally binding goals of action. It is morally authoritative, however, not because it is cogently argued for, but because it is responsibly consented to.

The theoretical center of his book thus has two parts. one negatively critical, and the other positive. The critical center is the argument that secular reason, i.e., philosophical theory, cannot show the normativity of any moral content. It is a critique that is also intended to undermine any claim that states have secular moral authority to enforce positive policy that does not rest upon the explicit — or clearly implicit — consent of those moral agents whom the states govern. The radicality of the criticism has not in general been taken seriously by the philosophical community, as the introduction to the second edition of his *Foundations* makes clear. I want to try to do so now.

Engelhardt’s contention is that one cannot in principle resolve moral controversies by sound argument, because one cannot rationally defend the (set of) first premise(s) — the ultimate foundation in virtue of which