

Commentary: The Cost of Converting Religious Morals Into Politics

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Theologically informed positions are grounded in core beliefs and may be rationally discussed. We analyze Dr. Norko's suggestion on how, in the public square, to address moral disagreements. We point out the dangers of "deliberative democracy" as an approach to resolving conflicts over basic values. We suggest an alternative approach, better grounded in reason, as a way of bringing religious and secular views into a discussion of the death penalty.

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The thought-provoking paper by Michael Norko¹ suggests applying a postmodern method of "deliberative democracy"² and "intellectual solidarity"³ to arrive at a secular and religious consensus on the death penalty. He is optimistic and rejects the inherent contradictory worldviews (metaphysical positions), proposing that the tension can be resolved through the use of deliberative democracy.

Development of the Roman Catholic Teachings on the Death Penalty

Norko advocates for the inclusion of religious worldviews more prominently in the public sector process of forming policy on the death penalty. To that end, he begins his paper with an excellent overview of the development of Roman Catholic views concerning the death penalty, from early Church patriarchs to Pope Benedict XVI. This informative historic background, so often missing in the postmodern approach, illustrates the tension inherent in this religious analysis and the development of a slow rejection of the use of the death penalty.

He chronicles the Church's history of ambivalent and even conflicting views regarding the death penalty. Saint Augustine is a good example of that tension; Augustine accepted the right of the civil authorities to inflict capital punishment but also urged clemency. Another example of tension within the

Roman Catholic faith tradition is that which exists between Augustine's neo-Platonic teachings, with the primacy of love as the way to know God, and the teaching of Saint Aquinas, an Aristotelian and empiricist, who espoused the primacy of reason as the path to God. Clement, Aquinas, and other theologians analogized the death penalty to the amputation of a diseased limb.

Discussing the writings of John Paul II and referencing the comments of Pope Benedict XVI, Norko underscores the development of Catholic teaching on the death penalty. His treatment of the development of Roman Catholic teachings on the death penalty provides an excellent course outline. It summarizes the tension within a faith tradition and the continuing potential for growth and development in the theologic world view.³

Medical Ethics and the Death Penalty

Perhaps because the Catholic argument makes much use of a medical analogy (amputation of a diseased limb to save the collective human body, for example), Norko then looks at medical ethics in the public sector. Here, however, he does not outline a full history of medical ethics and its significant change in the 1960s and 1970s.^{4–6} Space limitations may have truncated his treatment of the history of medical ethics but there is peril in not acknowledging the oath of Maimonides, the Hippocratic tradition, and the role of theology in the development of medical ethics. An understanding of how medical values changed to policy-making and political science, and the decline of the Hippocratic corpus in medical eth-

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ics^{7,8} would have offered a more skeptical view of deliberative democracy. Here, the replacement of moral rationality and natural law is more clearly seen, and the change to a narrative method of persuasion rather than objective knowledge stands out. In the postmodern view, all narratives are equal, but some may be selected against, based on popularity or political power, an inherent tension common in this new medical ethics.

We suggest that there is a significant danger in reducing religious and medical ethics to political process (even if it could be a democratic process, with which we have serious reservations in practice), and the cost of their inclusion in the policy-making in the public square may be too high. We propose a less political and more philosophic analysis of the questions surrounding the death penalty. We also propose that taking a second look at the current move to reduce all social institutions, processes, and behaviors to a political model is necessary. Requiring, as do Gutmann and Thompson,² that all human beings be political and that our culture be a “deliberative democracy” attempting to create “an economy of moral disagreement,” is a narrow view of human potential. The move to a bureaucratic economy culture could not be more plainly stated.

The Danger of Deliberative Democracy

Norko’s approach to the death penalty question and his suggestion of using deliberative democracy reminds us of the critique by Richard Rosner⁹ of the rational status of medical ethics. Rosner outlined the lack of any rational base for the proposed theories in medical ethics, none being justified by firm grounding in reason or empiricism. His suggested alternative is very much like Norko’s deliberative democracy solution: the medical ethics committee meetings, through a discussion by participants of the cases, will somehow (it is optimistically assumed) lead to the right conclusion about the case. These approaches illustrate another problem with using a postmodern framework to resolve such problems as the death penalty debate. At its core, Postmodernism is a “radical agnosticism.”^{10,11} Although Gutmann and Thompson² do not appear to be concerned, and Norko does not discuss this retreat in ethics to a position that Thrasymachus argued against Socrates, we think Postmodernism can introduce unexamined prejudices, moral relativism, and the final appeal to power, as well as undermine the possibility of any

knowledge. It is true that in a bureaucratic committee of ethics,¹² participants need not be concerned with grounding hypotheses or making good arguments, and all does become political strategy (as we would expect with such a circular argument that assumes grounding is not necessary). However, this also makes everything meaningless as the overarching worldview and is not consistent with human nature.

We must begin with a definition of “deliberative democracy,” which Gutmann and Thompson² call political theory and which is seen as a solution to the assumed fact that there is still no adequate way to cope with conflicts over basic values in America’s multicultural society. Their purpose is to develop a concept of democracy that grants a place for “moral discussion in political life.” The core definition for such a democracy is that citizens or their representatives who disagree morally should “reason together to reach mutually acceptable decisions” (Ref. 2, p 1). However, this definition does not provide the possibility of a grounding or of a comprehensive theory of morality. We suggested a case approach to bioethics in earlier papers, one that combined generalizing from cases to develop core concepts and using core concepts that are then modified by further cases.¹³ This is not too different from casuistry, a method developed in Roman Catholic ethics to give empirical meaning to abstract moral principles when applied to the natural world. The difference is a focus on naturalistic ethics and its empirical grounding for moral generalizations. Gutmann and Thompson’s position has only the practical goal of showing what kind of deliberation is “possible and desirable.” How one deliberates without a grounding theory, relying only on a process that is political and not moral in the traditional sense of ethics, is not really answered by Norko’s application of deliberative democracy.

Gutmann and Thompson do suggest that the substance of deliberation is in theoretical principles that “should guide moral argument and their implications for actual moral disagreements about public policy” (Ref. 2, p 8) and call this democratic politics (confirming the reduction of ethics to politics). Those principles are reciprocity (“fair terms of social cooperation for their own sakes”; Ref. 2, p 2) publicity (“open government”), and accountability (attention to claims of moral constituents, citizens of other countries, future generations).

These principles are not from world culture, but are based on current American society and are ahis-

toric. Deliberative democracy also contains three other principles: basic liberty, basic opportunity, and fair opportunity. They are also assumed and defined by Gutmann and Thompson within the current American society (the public square). One of the best descriptions of the public square is given by Francis Fukuyama.¹⁴ His theory of the end of history is that history is culminating in liberal (as currently defined), democratic (similarly motivated), economies (a substitution of trading economies for nationalistic and cultural societies, and by definition ahistoric and amoral).

All of these assumptions underlie Norko's use of deliberative democracy, and this is not merely academic irrelevance or empty theorizing. It is a significant practical concern, to which we will return. How does Norko apply this to the death penalty argument?

His fine presentation of Roman Catholic positions on the death penalty illustrate two major objections to its use that run through both sides of the argument and give hope for his goal of resolving moral disagreements: the value of and respect for human life and the value of allowing time for redemption (growth and change of character). These two moral values may be found in both religious and secular theories of ethics, from Natural Law to Neo-Kantian to nontheistic Naturalism. They offer a common and objective value system, evolved over time and implied in Hume's "moral sentiments."¹⁵ They are not part of a radical agnosticism about knowledge, but are an objective answer to Thrasymachus' criticism of Socrates' position on ethics. Both the religious and secular values share a common global root and were foundational values of the U.S. Declaration of Independence and Constitution.

Norko is on strong footing here, and the very founding of the United States demonstrates that religious worldviews and secular worldviews can both contribute without appealing to a bureaucratic and ungrounded process of deliberative democracy and intellectual solidarity. The difficulty is that in a true democracy (the traditional definition and not Rawls' attempt at Justice and "reflective equilibrium"),¹⁶ state policy-making should be minimal and for very serious concerns, rather than interventionist for the purpose of creating a total political culture.³ The separation of Church and State becomes ambiguous when specially selected advocates or experts begin micromanaging the public sector and arriving at un-

grounded conclusions from ungrounded premises. In fact, Engelhardt,¹² himself an activist in reframing medical ethics, finally had serious concerns about the lack of grounding in medical ethics and the reduction of the physician from a Hippocratic healer to a postman civil servant. There is no assurance that the deliberative democratic process would not become coercive: enact a State religion; arrive at preordained outcomes based on a manipulative agenda; select centrists; and rely on small-group dynamics. This distortion of intellectual solidarity, which Hollenbach³ intended to mean open-mindedness, disenfranchises most citizens whose conscience disagrees with the accepted view. There does not appear to be any mechanism in deliberative democracy to prevent this coercive outcome. There is no Supreme Court of deliberative democracy, to counteract the pressure of committees, which can be considerable.

How would deliberative democracy handle the logical inconsistency or false analogy used by the one side in Roman Catholic arguments on the death penalty? That analogy Norko identifies as a medical analogy. The criminal is identified as a diseased limb that needs to be amputated for the good of the human body system. But a diseased limb is not a sentient being, nor a functioning system apart from the larger system. Killing the limb is not logically equivalent to killing the person, the criminal who could cause the death of the body politic, the commonweal, or collective. Whether we define the criminal as a public health disease, an infectious heresy, or a pestiferous man, the logical fallacy remains the same. What deliberative democracy also hides is the Utilitarian argument that the collective good always has precedence over the individual's good and the demonization of the criminal in contrast to the respect for the sinner, although not for the sin. However, deliberative democracy need not use the standard of logic and cannot identify or deal with this false analogy.

The medical model is rapidly approaching an overriding social utility standard in combination with a medical futility standard (AMA Code of Ethics, 2005: "A physician, as a member of a profession dedicated to *preserving life when there is hope of doing so*, should not be a participant in a legally authorized execution" [emphasis added]).¹⁷ This basic change in medicine was the result of the imposition of the deliberative democracy process on its practice and values. There are presently several cases using the Med-

ical Futility standard against the family's and/or patient's wishes. Some patients and families are claiming violation of their religious rights or human rights, and bioethicists are arguing that physician determination of medical futility overrides religious rights.^{18,19} This is a serious practical concern, as well as a moral theory concern. Medicine has its own serious problems with the deliberative democracy process and needs to struggle to prevent itself from becoming reduced completely to a political process. Medicine may not be able to make the contribution Norko hopes it can make.

The APA's conclusion defaulted to the "basic requirements of due process."²⁰ Its and AAPL's²¹ calls for a moratorium were concrete and practical, partly resolved in the legal system when the U.S. Supreme Court decided in *Atkins v. Virginia*²² and *Roper v. Simmons*²³ that the mentally retarded and minors at the time of the crime could not be executed. These are basically legal system solutions, but within a legal system whose moral grounding is also being eroded. There is an internal battle ongoing in the legal system, with proponents of a Utility or Cost-Effective solution and of a "Living Constitution" theory attempting to displace the Aristotelian concept of justice with a current Rawlsian or postmodern concept.^{24–26} The latter redefines justice as cost-efficient policy-making or creative politics.

Norko's suggestion to use Gutmann and Thompson's deliberative democracy process masks major problems in its application to many areas including medicine, law, and religion. Here are some major concerns that arise when one considers using deliberative democracy to resolve differences in world view:

Organized religious views cannot (and should not) tolerate opposing views on core values or worldviews by working to implement such views. It is one thing to have an educational dialogue; it is another to have a policy-making function. The blurring of these two very different processes may have bad consequences.

Compromise in many cases may not be the rational or ethical goal, but instead may be irrational and unethical. Core views should not be compromised; the actual price is too high.

Discussion or deliberation requires a standard for rationality, not narrative. Otherwise, it becomes political power strategies.

Open-mindedness is preferred to activist solidarity as both the means and the end of dialogue.

Compromise may foster incrementalism (as it has in the history of medical ethics).

The major ethics question of a balance between public good and individual good cannot be decided by process and cannot be ignored. The deliberative democracy process favors the public good over the individual good.

The postmodern lack of a rational basis for values, its radical agnosticism and consensus fallacy, is a major problem for policy planning and imposes an ungrounded resolution of questions in favor of power bases or biases.

The lack of standards for reason makes all discussion a narrative and not an analysis.

Conclusion

The history of the Roman Catholic Church's views on the death penalty, while filled with tensions, is based on reason and faith. Theologically informed positions are grounded in core beliefs and may be rationally discussed. Those holding these positions can inform and educate while trying to persuade and convince. Philosophic discourse may or may not have grounding. Without a grounding and unable to present a position that is the result of reasoning from principled underpinnings, such discourse results in decisions that are dictated by power, sometimes appearing clothed in kind words or a caring attitude. However, the long history of philosophy indicates that the humanistic and naturalistic theories of ethics, updated with scientific understanding, share similar basic inductive conclusions about values, the common experiences of human nature transacting with its environment.^{3,15,27,28}

There is no need, we argue, for the despair of radical agnosticism and reliance on narrative and bureaucratic process when moral disagreements occur. These disagreements can be discussed within a true rational perspective (an objective one, if all parties are willing). We find the suggestion of Parens *et al.*²⁹—that synthetic biology issues do not need a "synthetic bioethics"—to be an example of the problem of the lack of grounding for ethics.³⁰ The authors are concerned that a "balkanization" of bioethics is occurring. They desire a secular conclusion that is centrist intellectually and political ideologically. Such a cen-

trist ethics excludes outliers and the least popular ethics views, but is not grounded on reasoned and empirical ethics theory. Instead, it is highly politicized, demonstrating that current discussion of moral disagreements requires rational grounding or deteriorates into politics and balkanization. The authors do not have such a rational grounding for ethics, and can only hope bioethics can do without this. Clements¹¹ has argued for the rational requirement of a grounded ethics for some time, and Dacey,³⁰ the secularist representative of Centers for Inquiry to the United Nations, has also made this argument in his book, *The Secular Conscience*. Dacey's conclusion that no side is addressing the "moral heart" of the issue has been supported by Newhaus.³⁰ Many religious leaders have felt their exclusion from the public square, and so have many secularists who do not agree with Postmodernism's radical agnosticism and belief that bureaucratic processes are inherently democratic. There remains the caveat that respect and freedom must be mutual. A long history of the absence of such respect can be found on religious traditions, dating far earlier than Gibbon's historical analysis in *The Decline and Fall of the Roman Empire*.³¹

To bring the religious and secular together, what is required is that all such views be represented, including outliers; standards of rationality and empiricism be applied with respect and fairness; agendas of political strategies be identified and critiqued equally; separating expertise into fiefdoms be disallowed; and subtle sociopolitical coercion be mutually rejected.

Our conclusion is that the death penalty question cannot be answered by either the new medical ethics view or a postmodern deliberative democracy. It is better grounded in the reasoned arguments of respect for human life and its value and the requirement to give those convicted of crime the opportunity to grow and change (redemption). Life sentences without parole would accomplish these basic human values shared by religions, humanisms, and naturalisms, and at the same time ensure the public safety. This resolution would also avoid the lack of certainty about a defendant's guilt, a serious concern, given DNA results of convicted criminals and the irreversibility of the death penalty.

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Commentary

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