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**ORGAN ALLOCATION AND PATIENT RESPONSIBILITY:
RE-EXAMINING THE CONCEPT OF RESPONSIBILITY
IN LIGHT OF THE THOUGHT
OF
EMMANUEL LEVINAS**

**By
Nancy M. Burbidge**

**A Dissertation
Submitted to the Faculty of Theology
of Saint Paul University
in Partial Fulfillment of the Requirements for the Degree
Doctor of Philosophy in Theology**

**Ottawa, Canada
2001**

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To Scott and to Anne

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SUMMARY OF DISSERTATION

A persisting, unresolved debate in the bioethics literature was the impetus behind this work. The debate, which appears to reflect conflicting and strongly held beliefs in society at large, centres on whether scarce resources should be offered to those thought to be responsible for their own illnesses. The concern is that those so designated might be condemned by policies that rest upon unexamined concepts and beliefs. The intractable nature of this issue is related to a number of profoundly difficult questions: particularly those surrounding human freedom and responsibility; questions in the area of justice; appropriate goals for the enterprise that is medicine; issues of forgiveness; and meanings and responses surrounding death. It is thus of great interest for a thesis in theology.

The focus chosen was the need for replacement organs for those whose illnesses appear to be related to addiction to alcohol or tobacco. The initial section thus examines the more factual aspects of both addiction and organ transplantation. It indicates that there is as yet no agreement over the etiology of substance abuse, especially the role played by personal "free" decision in the development of an addiction. The history of organ transplantation is explored, focusing particularly on the attempts to frame criteria for reception of the scarce organs, and the concomitant attempts to increase the supply of donated organs; neither issue has been solved, although there is much research being focused on technical solutions in particular, for those awaiting scarce organs.

Within the bioethics literature, the issue of criteria for the reception of scarce organs has tended to be viewed as a question of justice. Thus this work peruses the varying conceptions of justice which appear within that literature, in an attempt to ascertain whether their applications have involved differing results for the population in

question. In fact, there appears to be little difference in the outcomes amongst those ascribing to one or other of the meta-ethical theories. A majority of writers suggest that, were it possible to ascertain the extent of patient responsibility, then that should in some way be taken into account by the health system (only those ascribing to a libertarian notion of justice felt able to suggest no treatment for the risk takers). The bioethics literature from three differing health systems was included in this survey (American, British and Canadian).

A perusal of recent attempts within bioethics to take greater cognizance of the contextual aspects of justice-related problems revealed more compassionate attitudes towards fragile populations in general, although no greater analysis of the concept of responsibility itself. Feminine voices, an ethic of care, feminist ethics, a virtue-based ethic, and phenomenological and narrative approaches move the debate forward in number of ways (making room for personal stories, or for the defining of one's own otherness, or suggesting that the prevalence of the distributive paradigm is inadequate for the distribution of self-esteem).

As noted above, in contrast to the extensive treatment of issues of justice within bioethics, the concept of responsibility is largely unexamined. This dearth suggested that an historical perusal of the concept of responsibility within a number of the disciplines to which bioethics turns would be appropriate. This survey suggested that the current usage of the notion of responsibility is a confusing amalgam of its varying historical meanings, resulting in divergent understandings that have the potential to spawn policies destructive of human dignity. The survey did show, however, that the meaning of the concept has not always contained the implication of blame; for example in an early juridical use, the

focus was more the re-establishment of a just order within society. Other positive aspects are noted: Kant's caution against disrespectful treatment of the culpable, and his notion of responsibility as something taken rather than assigned; the more recent placing of the individual within sinful social structures in which all are implicated, and the calling for solidarity with those who struggle within them; critiques of many of our theories of punishment which argue that they rest on logically untenable assumptions; and finally, the radical calls for forms of non-reciprocal responsibility for other humans, indeed for the future of humanity and the planet itself.

In the end, the thought of Emmanuel Levinas appeared to offer the most fruitful approach to the topic under consideration. His work appears to be a profound challenge to rethink our relationships to others, as well as our approach to justice. Central to that thought is what Levinas calls the relationship of the one-for-the-other; the philosopher suggests that a response of profound responsibility for the other before one is called forth by the visage of that "wounded" other. The response is not dependent on, in fact comes before, the "knowing" of that being: a "knowing," (or, in the terminology used in this work, an assessment of the extent of that other's responsibility), which is potentially a diminishment of an other's mystery. An application of a meta-theoretical stance is eschewed, in favour of an "anarchic" approach.

The question of justice does arise for Levinas, since in the eyes of the other before one are all the others; thus needs must be weighed and choices made. The benchmark for this justice, however, is the relationship of the one-for-the-other: real justice implies, not a faceless, objectified totality, but an attention to the needs of all - the very antithesis of the utilitarian approach so prevalent within much of North American bioethics. In the

end, the Levinasian state is a limitation of the profound responsibility for the other, rather than an instrument guaranteeing the highest degree of freedom to a group of self-obsessed individuals.

While given its nature, the Levinasian thought could not be couched in terms of precise prescriptions for practice, this thesis has concluded that to at least draw a paradigm for practice would not be contrary to its intent. The Levinasian philosophy appears to have a number of implications for those potentially denied scarce resources (including the implication that so-called "irresponsibility" not remain a criterion). At the micro-level, it would suggest an attitude of profound welcome to any patient coming to the health care system: a covenantal approach meant to assure the preservation of personal integrity; and it would suggest a framework for the issues surrounding gatekeeping that would better preserve patient self-esteem. At the macro-level, the Levinasian thought could suggest alternatives in a number of areas: a focus on primary care and prevention, rather than the extreme focus on technological medicine; a focus on care, rather than the overwhelming attention on cure; and a stronger societal focus on conditions, such as poverty, which appear to be factors in addiction - all issues which, in the end, might lessen the need for scarce organs.

Finally, although in a number of areas acknowledged by Levinas, his thought differs from a theological approach, the convergence of the Levinasian "ethics as first philosophy" with the New Testament ethic is striking; and in the opinion of this work, the two are mutually supportive of a prophetic stance that would suggest a reassessment of the direction in which modern medicine appears to be rushing.

CHAPTER ONE

A QUESTION IN THE BIOETHICS LITERATURE

Introduction

The literature spawned by the twentieth century phenomenon that is bioethics has consistently, from its mid-twentieth century awakening, given evidence of an unresolved question: whether or not scarce resources should be given to those perceived to be responsible for their own ill-health. While the question is relevant to a number of different behaviours and their related effects on health, the question is most often posed in relation to the addicted: particularly those addicted to alcohol and tobacco, and particularly related to whether they should be offered scarce organs.

The question is of interest within theology, since it appears that its intransigent nature may well be consequent on its relationship to a number of much wider ethical and theological issues. This work will attempt to highlight those issues, with the hope of moving the question beyond the acknowledged impasse. It may be that the specific question will not be answered, but it is believed that assistance in coming to a heightened awareness of some of the intricacies of the interwoven dilemmas will at least point to more general paradigms for practice, and possibly, directions for further work.

I. Statement of the Problem

In the first place, the controversy in the bioethics literature over the extent to which

patients should be held responsible for poor health appears to reflect widely differing, often conflicting, and often strongly held beliefs about personal responsibility within society at large. Simply stated, there exists, at the same time, both widespread acknowledgement of the importance of taking responsibility for one's own actions (and bearing the consequences of not so doing); and, at the same time, growing awareness that there are many forces, beyond individual control, which seem to leave individuals less than free to act responsibly. As well, however, in a number of complex areas (not easily investigated in relation to chains of cause and effect), society appears both increasingly focused on seeking some 'one' to be held responsible, (when disasters such as deaths from polluted water strike communities, the initial question is often "Who is to blame?"); and at the same time, in equally complex areas such as automobile insurance, there is a move away from the assigning of individual responsibility towards a sharing of risks (no fault insurance).¹

Focusing on the specific area of interest in this work, society tends to give a mixed message about habits such as drinking and smoking; at the same time as warnings are issued about the dangers of abuse, governments both make use of substantial revenues from that abuse, and are seen to be strongly influenced by corporate lobby.² The ambiguity is all the more obvious when advertising that links the pleasures of both dangerous substances and dangerous sports is permitted: while one might be held responsible for poor health related to the former,

¹ The sociologist, observer, and interpreter of modern medicine, Renée C. Fox, notes the extent to which "in our society...we seem to be wrestling with our sense of cause and effect, responsibility and rights, innocence and blame...", in "Medical Uncertainty: An Interview with Renée C. Fox," *Second Opinion* 6 (November, 1987), 95.

² The situation has recently changed quite dramatically in relation to tobacco; strong corporate lobby has not been able to prevent the appearance of increasingly explicit warnings, and a diminished scope for "lifestyle" advertising.

the issue is rarely raised in relation to the latter.³ As a society, we are increasingly aware of the relationship between individual behaviour and ensuing health problems, an awareness that can be partly traced to the efforts from the public health movement. However when it is a question of responsibility and concomitant blame, there is a distinction made between behaviours such as substance abuse and others such as overwork, overeating or following an inadequate diet, indulging in dangerous sports, or dangerous occupations. As mentioned in relation to advertising, while the former may call forth moral disapprobation, a demand for blame and possibly some form of punishment, the latter may well be extolled and celebrated. In addition, rarely is a clear difference enunciated between the naming of a wrong, which is surely a necessity, and punishment for whoever appears to be culpable.

The ambiguity and confusion is mirrored in the health-related literature. In general, the focus is on the extent of the patient's responsibility, without, for the most part, much questioning about the adequacy of the concept of responsibility. Those advocating for a more compassionate stance mostly do so by positing a diminished responsibility for risky behaviour. Others recognize the dilemma of holding to the belief, both that patients should be held responsible and penalized in some way, and to the belief that there can be many factors mitigating against a freedom of choice; the dilemma is recognized, but left unresolved.⁴

In the seeking of a deeper level of analysis, a number of issues must be considered. In

³ In a recent article, written eleven years after that of Fox, James M. Gustafson notes that "the contradictory movements and impulses [in the area of responsibility and assigning blame] reflect inconsistency and border on becoming paradoxical," in "Ethics: A Growth Industry," *Perspectives in Biology and Medicine* 41, no. 2 (1998): 191-199.

⁴ The bioethicist, H. Tristram Engelhardt, Jr., resolves the issue by suggesting that it may make perfect sense to treat alcoholism as a disease, while at the same time regarding it as a moral problem," in *The Foundations of Bioethics*, 2nd ed. (New York: Oxford University Press, 1996), 224-225.

the first place is the vexed question of human freedom, and the concomitant question of the extent to which one may be held responsible for one's behaviour. Given even a rudimentary understanding of the forces impinging on what eventuates in human acting, it is difficult to posit enough individual choice to leave one with any substantial dignity; and yet it is the dignity of the human, and the positing of at least some human choice that must be insisted upon, otherwise the human project is in danger. It may, of course, be suggested that there could be bases for human dignity other than how "free," and thus how responsible we believe ourselves to be; that the question of human "sin" may have to be rethought; and that, in fact, when responsible action becomes the criteria for "human" action, or for personhood, then vast numbers of humans may be at risk of being treated as less than human. Just one of the many ironies related to the issue at hand, is that there is widespread belief, both within the medical community and beyond, that recovery from addiction requires that patients acknowledge both responsibility for their lifestyles and take responsibility for the recovery process. The belief, however, presupposes a certain theory of the etiology of addiction, and a particular theory of recovery: both have their detractors within the scientific community.

The question, however, involves much more than rational argument. Reactions towards others, particularly others considered to be "different" from current norms, are contingent upon a host of attitudinal factors, many subtle, unacknowledged, and difficult to change: factors such as the phenomenon of "blaming the victim," whereby there appears to be a proclivity, related to some deep-seated need, to censure those who, for a host of complex reasons, (many of them more related to sinful social structures), have not attained the standards of success in a given society.

One manner of addressing the question being asked would simply be to suggest that compassion, respect and equal treatment be shown no matter how responsible one appears to be for one's poor health. Such a stance might also be seen as the only one possible, given a commitment to Christian charity, which could be interpreted as constraining any notion of blame or punishment for the victims of social sin or structural evil. Bringing such a closure to the issue would, on the other hand, appear facile and disrespectful, in view of the devastating consequences of what can only be acknowledged as a situation of moral decline in our society. Such facile closure would also suggest an inappropriate negation of the countless magnificent and agonizing attempts over the centuries, both within theology and within other disciplines, to come to grips with the issues underlying the question.

In the light of the complexity, conflict, and confusion, there is concern that those patients thought to have taken unnecessary health risks could be denied both scarce resources and the care required to maintain personal integrity and solidarity within the community. It could be asked whether the appropriate questions are being put forward. One different posing of the question might be whether a denial of health care, essentially a conviction and a sentencing "without benefit of counsel" is appropriately carried out within medicine. It is ironic indeed that medicine, solidly founded on the care and/or cure of all who come before it, could be seen to be less concerned about due process for the individual than is the legal system. On the other hand, even if there were "due process," and a patient appropriately judged to be "responsible," the question remains as to whether a diminished level of health care is an appropriate response to the risk-taking behaviour.

Beyond this, should the health care system ask about the extent of personal

responsibility when it is a question of the allocation of scarce resources, or should the first question rather be: What is the nature of society's responsibility for the fragile others who come to the medical system asking to be considered for treatment? When the focus is on responsibility for the wholeness of the patient in question, it may be that wider questions will emerge, such as whether medicine's continued focus on the development of more and better technical resources is the best way to promote a society respectful of the human reality. It may be that such a focus would allow consideration of and creative resolution of some of the issues that arise from the distinct ethical moments in the complex of issues involved.

II. The State of the Question

The Allocation of Scarce Resources

The question of the allocation of scarce resources is, of course, not unique to the specific issue discussed in this work; some of the negative effects of shortages fall on any patients excluded from the benefits of life-saving resources. On the one hand, resources such as organs are scarce because the need for them far surpasses the numbers donated. On the other hand, resources such as emergency beds, the supply of new cancer drugs, or the availability of organ transplantation technology can be scarce related to factors such as cutbacks in the amounts allocated for health care, shortages when any new technology is introduced, or the ageing of the population and the consequent increase in the incidence of chronic illness requiring high-tech treatment.⁵ It is clear that unless the decision is made to give the scarce resources to no patients, (mostly rejected as a viable solution), in all areas of shortage, there is an undisputed

⁵ John F. Kilner, *Who Lives? Who Dies?: Ethical Criteria in Patient Selection* (New Haven: Yale University Press, 1990), 3-12.

need for some form of choice.

There is dispute over the appropriate terminology for the process of choosing patients: "rationing," "triage," and "allocation" all appear in the literature. While James Childress, in the 1978 edition of the *Encyclopedia of Bioethics*, used "rationing" and "allocation" interchangeably,⁶ in the second edition of the same encyclopedia, John Kilner takes exception to the use of "rationing" for two reasons. He believes that it is used ambiguously in the literature, and also that its use is more appropriate to the short-term handling of goods in temporary shortage, as in wartime, and hence a misleading term for the "long-term task of health-care provision."⁷ Kilner prefers the terms "macroallocation" (for decisions regarding the distribution of available funds amongst different health care services), and "microallocation" (for decisions affecting individual patients). The use of "triage" has been criticized for similar reasons. Its use arose in wartime; scarce medical resources, and the impossibility of treating all patients immediately, led to various ways of "sorting" patients so that the resources would be used most effectively. Winslow notes the inappropriate use of the term, (and the inappropriate use of the process), "except in circumstances of temporary crisis requiring quick decisions about the critical care of a pool of patients."⁸ Kilner's preferred terminology will be used in this study, although for ease of presentation, "allocation" will, unless indicated, mean "microallocation."

The allocation of scarce resources becomes of particular concern when those not chosen to receive the scarce resource will die, as is the case with many of the patients with heart and liver failure; (hemodialysis is at least a temporary solution for those with kidney failure). The

⁶ James F. Childress, "Rationing of Medical Treatment," in *Encyclopedia of Bioethics*, 1st ed.

⁷ John F. Kilner, "Health-Care Resources, Allocation Of," in *Encyclopedia of Bioethics*, 2nd ed.

⁸ Gerald R. Winslow, "Triage," in *Encyclopedia of Bioethics*, 2nd ed.

question, thus, is who should live, and who should die, and by which criteria should they be chosen? The criterion of patient willingness to engage in behaviour risky to health is only one of those potentially considered in the literature, along with others which are typified by Kilner as either social, sociomedical, medical, personal (which includes willingness to engage in risky behaviour), or experimental.⁹ Willingness to engage in risky behaviour will be the focus in this project; for manageability, the scarce resources in question will be organs, and the risky behaviours the abuse of either alcohol or tobacco.

The Question in the Bioethics Literature

It should not be surprising that the bioethics literature evidences a wide range of attitudes towards the criterion, given the multidisciplinary nature of bioethics, the intransigence of the issue, and the strength of the personal attitudes which it evokes. In spite of their widely divergent systems of health care provision, there is an initial noting of a surprising convergence in attitude in the relevant American and British literatures: in both a range of attitudes, with the clinical literature appearing to be somewhat more insistent than the bioethical on exacting some penalty from those considered to have endangered their own health. One striking divergence in attitudes within the literature appears between philosophers and theologians, with the former less ready than the latter to treat the "risk-takers" with compassion.¹⁰ This initial impression will be verified during the project.

A range of policies is noted amongst those who would penalize those responsible; in an

⁹ Kilner, *Who Lives?*, 221-230.

¹⁰ It is interesting to recall Christianity's long-standing involvement in the provision of compassionate care for the sick; see Darrel W. Amundsen and Gary B. Ferngren, "Philanthropy in Medicine: Some Historical Perspectives," in *Beneficence and Health Care*, ed. Earl E. Shelp, *Philosophy and Medicine*, no. 2, ed. H. Tristram Engelhardt, Jr. and Stuart Spicker (Dordrecht: D. Reidel Publishing Company, 1982), 1-27.

important overview, Daniel Wikler details that range.¹¹ The least stringent policy level would suggest an increase in efforts to inform the populace of risks to health, offer advice on the achieving of healthier lifestyles, and attempt to induce favourable attitudes towards keeping fit.¹² A more active level would increase taxes on cigarettes,¹³ or, in an extreme form, threaten loss of employment for risk-takers. A third level would attempt to change the basis on which premiums for health insurance are assessed; (and the possibility exists for this to be masked by higher general fees, with "incentives" for the prudent).¹⁴ A fourth level advocates more drastic measures, involving actual denial of care; when resources are in short supply, then those considered to be "irresponsible" could be the last to be considered, if at all.¹⁵ The final level noted by Wikler considers global policy measures that might follow the assignment of responsibility for health to the individual: potentially ending in loss of support for public provision of care, and ultimately, loss of support for the medical enterprise as a whole.¹⁶

¹¹ Daniel Wikler, "Who Should be Blamed for Being Sick?" *Health Education Quarterly* 14, no. 1 (1987): 11-25.

¹² This raises the question of health promotion and prevention, with the attendant ethical concerns about imposition of norms in areas in which some would consider certain measures too limiting of individual autonomy. See T. Abelin, "Ethical Issues in Health Promotion," in W.W. Holland, R.G. Detel, and G. Knox, eds., *Oxford Textbook in Public Health*, Vol. 3, 2nd ed. (Oxford: Oxford University Press, 1991), 580-585.

¹³ For example, Robert Veatch would fund health care for smokers through the creation of separate insurance pools from fees for tobacco, in "Case Studies in Bioethics: Who Should Pay for Smokers' Medical Care?" *Hastings Center Report* 4, no. 5 (1974): 8-9, (hereafter cited as HCR).

¹⁴ Anthony R. Moore, an Australian surgeon, would penalize the "stupidity" of patients with economic penalties such as an increased charge on their bill, a decreased rebate, or use the positive incentive of a no-claim bonus for those who maintain their health, in "Letter from Australia: The stupidity of patients," *Journal of Medical Ethics* 5, no. 4 (1979): 207, (hereafter cited as JME).

¹⁵ Moss and Siegler suggest lowering the priority for liver transplantation for alcoholics (particularly for those who did not seek treatment once the diagnosis of alcoholism was made), in Alvin H. Moss and Mark Siegler, "Should Alcoholics Compete Equally for Liver Transplantation?" *Journal of the American Medical Association* 265 (1991): 1295-1298, (hereafter cited as JAMA). The Canadian philosopher, Eike-Henner Kluge, notes that the University Hospital in London, Ontario has written guidelines for allocation of donated organs: drinkers have placed at the bottom of the list, in "Drawing the Ethical Line Between Organ Transplantation and Lifestyle Abuse," *Canadian Medical Association Journal* 150, no. 5 (1994): 745.

¹⁶ The phenomenon is evident in a recent article by the Canadian philosopher, Walter Glannon. Written in response to Arthur Caplan's concern that "sin" could be a test increasingly applied at the bedside, given the heightened focus on personal responsibility, (in Arthur Caplan, "Ethics of Casting the First Stone: Personal

Wikler suggests that many of the assumptions underlying the assigning of responsibility for health to the individual are not defensible when carefully examined, however he notes the difficulties of changing entrenched attitudes at either the metaphysical, or the clinical level.¹⁷ In this regard, Boyd and Potter, one an ethicist, the other a general practitioner, detail, from Britain, an interesting phenomenon noted in a research project carried out in their ethics seminars for medical and nursing students. Asked to choose between four patients for one hemodialysis machine, the students consistently placed an unemployed alcoholic in his fifties at the bottom of a list that included three others for whom risk-taking was not an issue: this, in spite of the fact that the students believed that their choices could not be defended on moral grounds.¹⁸

In fact, this apparently instinctive response in a simulated situation highlights the tragic dilemmas that reality presents. Faced with a choice between a life that is commonly felt to be wasted, to have little worth, and another thought to have merit, what are the decision makers to do? Writing from within the European (German) situation, Volker Schmidt is disquieted about a system of organ transplantation wherein the choice of criteria for deciding amongst patients is partly determined by the personal idiosyncrasies of individual physicians, but which

Responsibility, Rationing and Transplants," *Alcoholism: Clinical and Experimental Research* 18, no. 2 (1994): 221), Glannon *would* allow moral considerations to be invoked in assigning priorities in liver transplantation - but considerations that he asserts are not grounded in sin and vice, but in personal control and responsibility. Since no matter how far back one looks, a moment of free personal decision can be found, the patient has him or herself brought on the consequence of a weakened entitlement to scarce organs. Glannon sees that this view has broad applications for the way we evaluate claims of need for medical treatment in general, since the assertion is that forty or fifty percent of total health care, measured in financial terms, involves behaviourly-caused needs; in "Responsibility, Alcoholism, and Liver Transplantation," *The Journal of Medicine and Philosophy* 23, no. 1 (1998):31-49.

¹⁷ Wikler, "Who Should be Blamed," 22.

¹⁸ K.M. Boyd and B.T. Potter, "Priorities in the allocation of scarce resources," *JME* 12, no. 4 (1986): 197-200.

is too often rationalized in medical terms.¹⁹

Turning to those less willing to focus so exclusively on personal responsibility, the American health policy analyst, Dan Beauchamp, believes that it is the prevalence of a market justice in health care that encourages a focus on individual behaviour and an inattention to the social preconditions of that behaviour. Beauchamp is an example of one more willing to acknowledge the power of societal factors in the etiology of poor health, and less willing, therefore, to ask the victims of such forces to pay. He suggests that the phenomenon of "blaming the victim" serves to protect the wider society from identifying and acknowledging the actual sources of public hazard: among them poverty, racial discrimination, poor housing, unemployment, abandonment of the aged, unsafe workplaces, inadequate modes of transportation, poorly regulated consumer goods, inadequate distribution of medical care, and unhealthy physical environments.²⁰ While John Kilner presents a similar argument, he would, in the end, allow the use of the "willingness to risk illness" criterion, in the unlikely event that it could be determined that a patient could be blamed.²¹

A number of writers, among them Kilner, note the injustice of penalizing one group of risk-takers when others, possibly considered less "unworthy" than addicts, could also be held responsible.²² Those who might be included in this group have been mentioned above. What makes the difference between the two groups will be interesting to explore; it is possible that

¹⁹ Volker H. Schmidt, "Selection of Recipients for Donor Organs in Transplant Medicine," *The Journal of Medicine and Philosophy* 23, no. 1 (1998): 50-74.

²⁰ Dan E. Beauchamp, "Public Health as Social Justice," in *Ethical Issues in Modern Medicine*, compiled by John Arras and Robert Hunt, with a forward by Robert M. Veatch; 2nd ed. prepared by John Arras (Palo Alto, California: Mayfield Publishing Co., 1983), 516-527.

²¹ Kilner, *Who Lives?*, 171-172.

²² Ibid., 168-169; and see Nancy S. Jecker and Robert A. Pearlman, "An Ethical Framework for Rationing Health Care," *The Journal of Medicine and Philosophy* 17 (1992): 79-96; Arthur L. Caplan, "Ethics of Casting the First Stone," 219-221.

the effects of alcoholism, in particular, offend at a deep-seated level; the risk-takers are thus marginalized and oppressed as are other groups marked as different from the norm.

Although they retain, for the most part, a focus on the extent of patient responsibility, those writing from a theological perspective appear to, in general, advocate a more compassionate stance. For example, Robert Sevensky points to the focus on freedom and responsibility being only empty words unless those working in both medicine and religion seek to increase the options for freedom, in order to give everyone the chance to choose freely among real alternatives; "for both [medicine and religion], this may mean involvement in social, and even political, action."²³ Charles Curran, writing in an earlier stage in bioethics, mirrors present-day ambiguity; he specifically mentions the difficult question of how to integrate "meritarian concerns" into a theory of distribution of health care resources, suggesting initially that some consideration must be given to the extent of personal exposure to health risks. Given the difficulty of monitoring all the aspects involved, and thus devising an equitable plan, he therefore notes that meritarian concerns might be best left unconsidered.²⁴ Other theologians, without specifically focusing on risk-taking, emphasize the Christian understanding of any other as made in the image of God, as worthy of care and respect, regardless of past conduct.²⁵

²³ Robert L. Sevensky, "The religious foundations of health care: a conceptual approach," *JME* 9, no. 3 (1983): 167.

²⁴ Charles E. Curran, *Transition and Tradition in Moral Theology* (Notre Dame: University of Notre Dame Press, 1979), 165-166.

²⁵ Among those writing at an earlier stage, when the concern within bioethics was more obviously to integrate a profound care for the whole person, were Earl E. Shelp, and Richard McCormick. See the former's "Justice: A Moral Test for Health Care and Health Policy," in *Justice and Health Care*, ed. Earl E. Shelp, *Philosophy and Medicine*, no. 8, ed. H. Tristram Engelhardt, Jr. and Stewart F. Spicker (Dordrecht: D. Reidel Publishing Company, 1981), 219; and the latter's "Theology and Bioethics: Christian Foundations," in *Theology and Bioethics: Exploring the Foundations and Frontiers*, ed. Earl E. Shelp, *Philosophy and Medicine*, no. 20, ed. H. Tristram Engelhardt, Jr. and Stewart F. Spicker (Dordrecht: D. Reidel Publishing Company, 1985), 108-109. Hubert Doucet is one of the few noticeable voices in the Canadian bioethics literature, in *Au pays de la bioéthique: L'éthique biomédicale aux États-Unis* (Genève: Labor et Fides, 1996), 204-205; and from the more recent U.S. literature, see for example, Allen Verhey,

As mentioned, a third trend is noted in the literature: the dilemma is understood, but no resolution is proposed. Thus, Roy, Williams, and Dickens note the "unfairness" of penalizing some individuals for "lifestyle diseases," since some have a genetic component, while others are the result of social deprivation or addictions beyond the control of individuals. At the same time, they assert the responsibility we all have to prevent the development of these diseases as much as possible.²⁶ They state:

These questions are subjects of vigorous debate among medical specialists and ethicists at the present time, and so far no consensus has been achieved. Part of the difficulty is in determining whether addiction to alcohol or tobacco is to be regarded as a moral or personal failing, a socially-conditioned behavioural characteristic, or a morally neutral disease or disability that should not attract a discriminatory response.²⁷

However the above-mentioned question remains: even if there were a consensus that addiction is a moral failing, would an appropriate response to that fragility be a discriminatory response affecting the patient's health, actually a veritable sentence of death? It may be that continuing to ask the questions that Roy, Williams, and Dickens pose will not resolve the dilemma, at least if a compassionate society is of value; there is a perception that continuing to focus on the extent of responsibility cannot but contain the possibility of censure from some quarter, given the many uncertainties, and the many deep-seated attitudinal responses provoked by addiction. Patients are potentially at the mercy of the uninformed or the morally outraged.

ed., *Religion and Medical Ethics: Looking Back, Looking Forward* (Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 1996); Edmund D. Pellegrino, John Langan, and John Collins Harvey, eds., *Catholic Perspectives on Medical Morals: Foundational Issues* (Dordrecht: Kluwer Academic Publishers, 1989); Stephen E. Lammers and Allen Verhey, eds., *On Moral Medicine: Theological Perspectives in Medical Ethics* (Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 1998).

²⁶ David J. Roy, John R. Williams, and Bernard M. Dickens, *Bioethics in Canada* (Scarborough, Ontario: Prentice Hall Canada Inc., 1994), 353.

²⁷ *Ibid.*, 375.

III. An Alternate Framing of the Question

A Number of Different Foci

Some writers, such as Wikler, express pessimism about the intractable nature of the fundamental moral and philosophical questions involved in this issue.²⁸ Others, such as Kilner, suggest the need for a renewed grounding for an approach to patient selection in a "story" that all could accept; he suggests that the Judeo-Christian "story" merits more attention, for its "ability to provide a coherent way forward."²⁹ Other voices pose more radical suggestions, pointing to a different manner of ethical deliberation within bioethics, one that could lead beyond a focus on individual rights and responsibilities, (and on the principlism that has characterized North American bioethics for so long). Hubert Doucet is one such voice. For him, the overriding concern, in the face of radically new and profoundly disturbing situations in health care, is: what will be the nature of the humanity that our policies and our projects will produce? He points to a number of philosophers who invite us in the West to re-evaluate our extreme focus on autonomy, and on an individualism that belies our fundamental natures. Among them, he notes Emmanuel Levinas, who challenges us to rethink our relationship to the other, and our approach to justice.³⁰

Levinas is of interest, in that he offers another manner of posing the question: his first interest is not the extent of the patient's responsibility, but the extent of the responsibility for the wounded other. Could it be that an initial putting aside of the complex issue of the extent of personal responsibility (at least in relation to poor health) serves to protect the dignity and

²⁸ Wikler, "Who Should be Blamed," 25.

²⁹ Kilner, *Who Lives?*, 232-234.

³⁰ Hubert Doucet, "Changer la manière dont nous pratiquons l'éthique," a keynote address given at the Canadian Bioethics Society Annual Meeting on October 17, 1997.

integrity of the other, prevents further injustice being done, refocuses efforts on social conditions that may have been strong contributing factors, and offers better insurance that society will not become a harsher place? The question could possibly be avoided, not because it is complex, but because in attempting an answer, there is a danger that others will be violated. It may be that if the focus becomes responsibility *for* the other who seeks assistance from the system, the chances of rehabilitation for those such as the addicted would be greater than they are when blame and forms of punishment are sought. Asking the question in another manner is potentially preservative of the physician/patient relationship implied in both the best traditions of health care, and in the Judeo-Christian care for the fragile. While, as Ricœur cautions, there is not a specific Christian morality,³¹ the "new perspective" supplied by Biblical faith - that there is compassion, indeed the ultimate sacrifice, in the face of sin - would appear to have relevance for the impasse herein expressed.

It is obvious that the question that is of concern in this project is one of justice, as well as of responsibility: that is, of the just manner of distribution of a scarce resource. It is also one of social justice, if the implications in the literature about the application of inappropriate criteria are correct. The concept of justice admits of a variety of interpretations within the bioethics literature, dependent upon the particular meta-ethical theory, or the particular theory of justice espoused by the ethicist in question. It is of interest to this study to ask whether different theories would manifest different responses to those thought to be risk-takers with their health. An initial impression is that any resolution of the impasse must involve a creative juxtaposition of some interpretation of justice with a notion of responsibility that is not destructive of personal

³¹ Paul Ricœur, *Oneself as Another*, trans. Kathleen Blamey (Chicago: The University of Chicago Press, 1992), 25.

integrity. The thought of Emmanuel Levinas appears to be a possible answer in each of these areas.

The Philosophy of Emmanuel Levinas

Levinas would oppose the incessant focus within philosophy on the "knowing of being"; would oppose the ontological understanding that "first philosophy" is representation, thematization, the "knowledge measuring beings,"³² the grasping of the world and others through conceptual constructions: in his view, self-centered "totalistic" thinking that can only lead to control over nature and possession of others, by reducing them to the limits of our own understanding - that is, to the limits of the "same."³³ The Levinasian thought is a firm refusal of the "celebrated 'right to existence' that Spinoza called the *conatus essendi* and defined as the basic principle of all intelligibility"³⁴; for Levinas, one's "duty to respond to the other" suspends one's "natural right to self-survival."³⁵ Indeed the self is defined, constituted, not in tautological self-definition,³⁶ but in the offering of one's being to the other: in the ethical response to the other.³⁷ Levinas speaks of "election":

Le moi de celui qui est élu à répondre du prochain....Unicité d'élection! Par-delà

³² Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority*, trans. Alfonso Lingis (Pittsburg: Duquesne University Press, 1969), 34, (hereafter cited as TI); *Totalité et infini: Essai sur l'extériorité*, Le Livre de Poche (La Haye: Kluwer Academic, 1971), 23, (hereafter cited as TeI).

³³ TI, 45-46; TeI, 36-38. Nietzsche's philosophy might be quoted as the quintessential example of a "totalizing" ontology - concerned with "*being in its entirety*"; Karl Jaspers notes Nietzsche's contention that the philosopher's own self must serve as the model and "abbreviation" of the whole world, in *Nietzsche: An Introduction to the Understanding of His Philosophical Activity*, trans. Charles F. Wallraff and Frederick J. Schmitz (Tucson: The University of Arizona Press, 1965), 182.

³⁴ Emmanuel Levinas, "Emmanuel Levinas and Richard Kearney: Dialogue with Emmanuel Levinas," in *Face to Face with Levinas*, ed. Richard A. Cohen (Albany: State University of New York Press, 1986), 24.

³⁵ Ibid., 24. The translation as "duty" could be misleading, in that the response to the other is called forth before any assessment of duty or obligation.

³⁶ Emmanuel Levinas, *Otherwise than Being or Beyond Essence*, trans. Alfonso Lingis (The Hague: Martinus Nijhoff Publishers, 1981), 124, (hereafter cited as OB); *Autrement qu'être ou au-delà de l'essence*, Le Livre de Poche (La Haye: Kluwer Academic, 1978), 197-198, (hereafter cited as AE).

³⁷ TI, 183; TeI, 200.

l'humanité se définissant encore comme vie et *conatus essendi* et souci d'être, une humanité dés-inter-essée. La priorité de l'autre sur le moi, par laquelle l'être-là humain est élu et unique, est précisément sa réponse à la nudité du visage et sa mortalité. C'est là que se passe le souci de sa mort où le "mourir pour lui" et "de sa mort" a la priorité par rapport à la mort "authentique." Non pas une vie *post-mortem*, mais la démesure du sacrifice, la sainteté dans la charité et la miséricorde.³⁸

The other comes before the self not as totally known or totally knowable, but as a visage,³⁹ the "trace of an absence," behind which he or she remains infinitely transcendent, infinitely foreign, refusing to be encompassed.⁴⁰ The mystery of the other is known only to the extent that it is manifested by the other in a discourse Levinas calls ethical.⁴¹ The other comes before the "same" from the height of an ethical imperative not to destroy him or her, and from the depth of human fragility⁴²: the frailty of the widow, the orphan, and the stranger. There is no possibility of evading the call to responsibility from the other - it is prior to any voluntary decision to be responsible, any will to sacrifice oneself, or any wish to be generous; nor is it action *per se* to which Levinas refers, but an extreme passivity, as one is passive in the wake of pain that interrupts enjoyment and tears one from oneself.⁴³ The relationship is asymmetrical, there is no consideration of reciprocity before the response to the other; nor is there the

³⁸ Emmanuel Levinas, "Mourir Pour...", in *Entre nous: Essais sur le penser-à-l'autre*, Le Livre de Poche (Paris: Éditions Grasset & Fasquelle, 1991), 214.

³⁹ Levinas's *visage* is often translated as "face," however the English "visage" is felt to be closer to the Levinasian meaning. "Visage" has a long usage from the early 1300's, and a range of meanings both literal and figurative. Of interest is its early use as a verb (Chaucer, 1386): to face or confront, and in 1450: to regard, observe; and thus, in 1500: "visaging" - meeting, encountering, which has echoes of the Levinasian sense; from *The Oxford English Dictionary*, 2nd ed. Le Grand Robert de la Langue Française gives a similar range of meanings in French: "the person considered in his face" and the "ensemble of aspects that show the character" having some relevance for the Levinasian use: for example Levinas speaks of visage as "signification," or "meaning" (but without context), in *Ethics and Infinity: Conversations with Phillippe Nemo*, trans. Richard A. Cohen (Pittsburg: Duquesne University Press, 1985), 86, (hereafter cited as EI); *Éthique et Infini: Dialogues avec Philippe Nemo* (Paris: Librairie Arthème Fayard et Radio-France, 1982), 80, (hereafter cited as Eel).

⁴⁰ OB, 93; AE, 148.

⁴¹ TI, 206-210; TeI, 226-231.

⁴² TI, 75-77; TeI, 72-75.

⁴³ OB, 54-55; AE, 91-94.

possibility of the drawing of redemptive value from any suffering experienced in responding to the other, nor is there any question of another replacing me - I alone am being summoned: *me voici* is the only acceptable response.⁴⁴

The response to the call of the other is described as being for-the-other to the point of being responsible for the other's responsibility,⁴⁵ of being held "hostage" in a situation of substitution for the other, whereby subjectivity is freed from enchainment to self, an undoing of being's essence, "otherwise than being."⁴⁶ There is no question of generalizing the imperative for everyone (demanding as much from others as I do for myself).⁴⁷

However, "in the eyes of the Other" are all the others⁴⁸; the exclusive focus on the needs of the suffering "one" must give way to a consideration of the needs of all the others; hence will arise the question of justice. The presence of the multiple demands the weighing of competing needs, thematization, the development of laws, in a word, the inevitable "totalizing" structures of organized society. However, the "one-for-the-other" remains the benchmark for justice - justice is only justice if it is based on the essential asymmetry of the radical nature of the responsibility for the other, only if the equality of all is borne by my inequality, wherein there is, for me, a surplus of duties over my rights. It is in keeping this relationship ever in view that entities such as the state (or the health care system) are prevented from "having their center of gravity in themselves," thereby weighing justice with their own interests to the fore.⁴⁹

Levinas expresses this in an other manner; he makes a distinction between the

⁴⁴ OB, 142; AE, 222.

⁴⁵ OB, 84; AE, 134.

⁴⁶ OB, 117; AE 185-186.

⁴⁷ Levinas, "Dialogue," in *Face to Face*, 31.

⁴⁸ TI, 213; Tel 234.

⁴⁹ Ibid., 158-159; AE, 246-249.

moral/political order, and its ethical foundation. The morality that operates in the former to organize and improve the human situation, is ultimately founded on ethical responsibility, the one-for-the-other, although as "first philosophy," ethics cannot legislate changes to rules whereby society might be transformed. The "ethical norm of the interhuman" is a form of "vigilant passivity to the call of the other....that must continue to inspire and direct the moral order." When the moral/political order loses this ethical foundation, it has no basis for rejecting destructive political projects. "Ethical philosophy must remain the first philosophy."⁵⁰

The Relevance of the Levinasian Thought to the Question in the Literature

If "first philosophy" cannot legislate specific rules for conduct in areas such as the allocation of scarce resources, it may be that its vigilance to the call of the other would point to parameters from which recommendations for the moral order, the institutional world, could be drawn.⁵¹ Were parameters to suggest the tenor of the relationships to be established with all the fragile who approach the health care system - the importance of preserving self-esteem, allowing the other to manifest his or her own reality, assuring that care will be offered even if cure is not possible, and so on; and were the parameters to prompt a creative focus on how health dollars might be distributed in a manner that best respects the call from all the fragile others not to be in any way destroyed; then the possibility might exist for a more creative consideration of the question of how scarce resources are to be distributed to the patients so easily blamed. The creativity may well involve recommendations that have repercussions beyond the patient population in question: as an example, it can be asked whether the incessant push for more and

⁵⁰ Levinas, "Dialogue," in *Face to Face*, 30.

⁵¹ The inspiration of the Centre for Techno-Ethics at St. Paul University is acknowledged, regarding the use of "parameter" (introduced in its project: "Technology and Chronic Illness: An Ethical Challenge," published in 1995).

better technical resources is the best way to respect the finite human reality.

IV. Research Hypothesis and the Methodology

Hypothesis

This work will therefore propose that continuing to focus on the extent of a patient's responsibility for poor health, in relation to the question of the allocation of scarce resources, is both unproductive, and ultimately, unethical. The contention will be made that when the question is posed in the manner of Emmanuel Levinas - What is the nature of the responsibility to which we are called by the visage of the other? - then there is a philosophical basis for a framework for allocation that is more respectful of the dignity of persons. Such a framework could be more consistent with a Christian understanding of love of neighbour, and could potentially encompass the fact that a measure of human freedom can lead to devastating choices, while retaining the possibility of compassion and care for those who have so chosen; and one that makes a contribution to the understanding of what justice in our health care system might mean.

Methodology

The hypothesis dictates the exploration of a number of related areas. Setting the stage for the more substantive issues, and given the focus on addiction, there will be an initial attempt to understand the most recent range of theories about its nature and etiology, followed by a short history of organ transplantation. Given the supposition that the varying attitudes to the addicted, in relation to the question, are linked to varying understandings of the concepts both of justice and of responsibility, there will ensue an attempt to carefully detail the manner in which such understandings have influenced the answer to the question (for the most part, in the

bioethics literature). Since "justice" in the relevant literature admits of a number of varying meanings, related to differing meta-ethical theories, or to differing specific theories of justice, an attempt will be made to discern whether varying theory makes any difference to the answer given to the question of the taking of risk. Given that the literature, both in bioethics and in the social sciences, increasingly contains critiques of the adequacy of comprehensive theory to take into consideration the complexities of the individual situation, there will follow a summary of the more prominent new approaches, with an accompanying focus on what relevance they might have for the population in question. As well, there will be an attempt to discover whether the differing health care systems in Britain, Canada, and the U.S. make any difference for the allocation to risk-takers.

The rather scant discussion of the concept of responsibility within bioethics will be noted, followed by an historical approach to the use of the concept in philosophy, and to a lesser extent, in theology. Such a survey is felt to be essential for an understanding of its current usage, in that the concept appears to be somewhat of a confusing amalgam of its various uses over time.

In light of the intuition that the thought of Emmanuel Levinas might be fruitful for the question, his work will be analyzed, with the goal of coming to an understanding of his notion of responsibility as "one-for-the-other," his interpretation of justice as based on the "one-for-the-other," and his eschewal of an initial application of comprehensive "totalizing" theory in attempting to understand persons. There will be consideration of whether more practical proposals, in the form of a framework, or parameters, for health policy may be drawn from his "ethics as first philosophy"; if it is found that they may, they will be applied to the patients in question: in other words, the question will become: What is the nature of the responsibility to

which we are called by the visage of the wounded other - actually of *any* other? If it is found to be appropriate, suggestions will be drawn for both the micro and the macro levels of allocation. If it is not, it is hoped that at least some creative direction might be given for further work, in an area which has not admitted of easy solution.

Finally, there will be consideration of whether the last word should be left with philosophy, or whether theology has anything to add to the Levinasian insights: particularly in an area embracing such profound meanings, and including, potentially, such devastating consequences for all the persons involved.

CHAPTER TWO

SETTING THE STAGE

Introduction

Addiction is the subject of a vast literature, a cursory perusal of which is sufficient to indicate that the field of study is highly complex, and traverses many different disciplines. In fact it is unsurprising that there is little unanimity within bioethics regarding the question of whether those thought to be responsible for their poor health should receive scarce health resources, since, within that vast literature, there appears to be no agreement over the role played by personal "free" decision, nor is there any real agreement on the meaning and use of the concept of "addiction," or of the etiology of substance abuse. This section will review some of the literature concerning the extent of the problem of substance abuse in Canada, note the outlines of the debates over etiology, and note some of the implications they have had for policy regarding the use of tobacco and alcohol. Since much of the bioethics literature reviewed is American, and to a lesser extent British (there is a dearth of Canadian writing in bioethics), it will be of particular interest to trace the attitudes toward the use and misuse of the two substances, and the resultant differences in policy initiatives between the two countries. It is of interest to note, on the other hand, that one of the most comprehensive summaries of the main theories of causation has been written by two Canadian scholars,¹ and published by the

¹ C. Douglas Chaudron and D. Adrian Wilkinson, eds., *Theories on Alcoholism* (Toronto, Canada: Addiction Research Foundation, 1988).

Addiction Research Foundation of Canada.

This chapter will, as well, briefly outline the history of organ transplantation; again, it will be heavily focused on the American experience, given its initiating role, and given the aforementioned predominance of an American bioethics literature focused on that role and its ethical implications.

I. What are They Saying about Addiction to Alcohol and Tobacco?

Extent of the Problem

To, first of all, detail the extent of the problem of substance abuse in Canada, as outlined by the Addiction Research Foundation (ARF), it notes (1997) that the use of tobacco "is considered Canada's greatest health problem," in that each year, at least 35,000 Canadians die early as a result of smoking - more than the combined deaths caused by drug abuse, AIDS, murder, suicide, and motor vehicle accidents. Of Canadians over 15 years of age, 28% smoke regularly, and they are among the world's heaviest smokers, although between 1966 and 1986, the percentage of males who smoke fell from 54% to 31%; the rates for females declined more slowly, from 32% to 26%. Teenagers are more likely to smoke than adults, and "daily cigarette use is most prevalent among blue-collar workers and the unemployed."

The ARF notes the components of tobacco and their known effects: nicotine, the "extremely toxic" mood-altering substance (a CNS stimulant, experienced as essentially a relaxant), leading to both physical and psychological dependence; tar, a combination of hundreds of chemicals, many of them cancer-causing; and carbon-monoxide (CO), formed when tobacco is burned. CO in smoke replaces the oxygen in red blood cells, forming

carboxyhemoglobin (COHb), which deprives the heart of the extra oxygen needed when nicotine increases the heart rate. The long term effects of smoking are mainly on the bronchopulmonary and cardiovascular systems; it is estimated to be related to 90% of all lung cancers (an average smoker is 10 times more likely to get lung cancer than is a non-smoker); it is estimated to be responsible for 30% of all cancer deaths, associated particularly with cancers of the mouth, throat, colon, pancreas, bladder, kidneys, stomach and cervix; and related to 75% of chronic cases of bronchitis and 80% of emphysema cases; is implicated in gastric and duodenal ulcers, slower-healing skin wounds, and possibly less effective immune systems; and smokers have nearly twice the risk of heart attack, and five times the risk of stroke. Combined with heavy use of alcohol, the risks of tobacco increase.²

In relation to beverage alcohol (ethyl alcohol or ethanol), the ARF notes that Canada-wide surveys indicate a wide use of alcohol amongst both adults and those under the drinking age (for example, in 1985, a survey recorded 73% of 12 to 19 year olds using alcohol within the past year); in short, there is a high degree of social acceptance for its use. "Total consumption in 1988\89 reached 202.9 million litres" for those over 15. The ARF unequivocally states that there is "a direct relationship between the overall level of consumption within a population and the number of alcohol-dependent people"; and that "most researchers agree that one in 20 drinkers in North America has an alcohol dependency problem." The concentration of alcohol in the bloodstream (rapidly absorbed from the small intestine, less rapidly from the stomach and colon) causes a decrease in the activity in the brain and parts of the spinal cord.

² Addiction Research Foundation, *Facts About Tobacco* (Toronto, Canada: Centre for Addiction and Mental Health, 1997).

The concentration depends on the amount consumed in a given time, one's size, sex, build and metabolism, and the type and amount of food in the stomach. As with any drug, however, the effects of alcohol can also vary with past drug experience and factors such as one's psychological and emotional stability, the presence of others, and the manner in which the drug is taken. Dependence can be both psychological (a craving for its psychological effects, which does not necessarily infer serious intoxication, but does imply regular use), and physiological (occurring in heavy drinkers who suffer withdrawal symptoms if drinking is terminated suddenly).

Some of the long-term effects of exposure to alcohol are primary - a direct result of its toxic effects - such as heart and liver disease or inflammation of the stomach; others are secondary - indirectly related to chronic abuse - such as loss of appetite, vitamin deficiencies, infections, sexual impotence or menstrual irregularities. The ARF notes that:

The risk of serious disease increases with the amount of alcohol consumed. Early death rates are much higher for heavy drinkers than for light drinkers or abstainers, particularly from heart and liver disease, pneumonia, some types of cancer, acute alcohol poisoning, accident, homicide and suicide....

According to 1988 figures from Statistics Canada, 2,828 deaths were directly attributable to alcohol in that year. There were, however, an estimated 13,870 more deaths - five times as many - indirectly caused by alcohol.³

Theoretical Differences

It has been suggested that by 1960, there were at least 200 different definitions, conceptual constructs and etiological theories about the phenomenon of alcohol abuse alone.⁴

³ Addiction Research Foundation, (hereafter cited as ARF), *Facts About Alcohol* (Toronto, Canada: Centre for Addiction and Mental Health, 1997).

⁴ Reid K. Hester and Nancy Sheehy, "The Grand Unification Theory of Alcohol Abuse: It's Time to Stop Fighting Each Other and Start Working Together," in Ruth C. Engs, ed., *Controversies in the Addictions Field: Volume One*, American Council on Alcoholism (Dubuque, Iowa: Kendall/Hunt Publishing Company, 1990), 2.

A short summary of the main theories will suffice to indicate the diversity. The question arises as to whether the theories apply as well to addiction to tobacco. Chaudron and Wilkinson suggest, first of all, that alcoholism has been the most intensely studied of all the addictions, and secondly, that if alcoholism could be said to be a *bona fide* addiction, "then the elucidation of theories on alcoholism should illuminate the field of addictions generally."⁵ The latest edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV; 1994) lists nicotine with other addictive substances; nicotine produces dependence and withdrawal, (other substances have a longer list of associated effects).⁶ As well, Slade reports that a study focused on the effects of alcohol, cocaine, heroin and nicotine showed nicotine to be a "potent agent of addiction"⁷; its potency has been shown, in another study, to be a complex interaction of environment, host, and agent factors.⁸

Turning to one description of addiction, it would appear that it could apply to both tobacco and alcohol. Graham Oddie suggests three notable features of an addiction: first, the addictive disposition and the desires it generates must be resilient - difficult to dislodge; second, the resilience must be inconsistently sensitive to one's overall interests or of overall value; and third, lack of fulfilment of the desire ensures lack of satisfaction - lack of the characteristic

⁵ Chaudron and Wilkinson, "Introduction," in *Theories*, xxx.

⁶ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington, DC: American Psychiatric Press, 1994), in Appendix B, Section 2, "Summary of the DSM-IV Diagnostic Criteria," in Allan W. Graham and Terry K. Schultz, eds, Bonnie B. Wilford, assoc.ed., *The Principles of Addiction Medicine*, 2nd ed. (Chevy Chase, Maryland: American Society of Addiction Medicine, Inc., 1998), 1287-1288.

⁷ J.E. Henningfield, C. Cohen, and J.D. Slade, "Is nicotine more addictive than cocaine?" *British Journal of Addiction* 86 (1991): 565-569, in John Slade "The Pharmacology of Nicotine," in Graham and Schultz, *Principles of Addiction Medicine*, 148.

⁸ E.B. Fisher, E. Lichtenstein, and D. Haire-Joshu, "Multiple determinants of tobacco use and cessation," in C.T. Orleans and J. Slade, eds., *Nicotine Addiction: Principles and Management* (New York: Oxford University Press, 1993), in John Slade, "The Pharmacology of Nicotine," 148.

subjective sense of release from the desire.⁹

Although there are different ways of classifying the various theories of alcoholism, Chaudron and Wilkinson's manner of classification will be noted here. They suggest that it is now generally considered that alcoholism is a multiply determined phenomenon: a "biopsychosocial" entity, and that proponents of various theories tend to emphasize one or another slice of the biopsychosocial "pie." Their edited collection includes the main theoretical positions as outlined by a number of different contributors. For clarity and conciseness, this thesis has imposed a table format on the different positions.

Biopsychosocial Theories of Addiction

Theory	Content / Discussion
Genetic	Transmitted via the genes; not so accepted today as the single cause, ¹⁰ although there is more recent focus on genetic markers for alcoholism. ¹¹ For many years, acceptance of the theory justified the sterilization of "drunkards." ¹²
Neurobiological	Inherited disturbances in the frontal midbrain predispose one to a range of cognitive, affective and behavioural processes known to have connections to this region of the brain. Speculative, needing more research. ¹³
Psychoanalytic	Pathological behaviour originates in environmental conditions that in infancy and early childhood distort the "normally adaptive motive to seek pleasure and avoid pain." ¹⁴

⁹ Graham Oddie, "Addiction and the Value of Freedom," *Bioethics* 7, no. 5 (1993): 383

¹⁰ *Ibid.*, 23.

¹¹ D. W. Crabb, K. M. Dipple, and H. R. Thomasson, "Alcohol Sensitivity, Alcohol Metabolism, Risk of Alcoholism, and the Role of Alcohol and Alcohol Dehydrogenase Genotypes," *Journal of Laboratory and Clinical Medicine* 122, no. 3 (1993): 234-245; in Jeffrey Spike, "A Paradox about Capacity, Alcoholism, and Noncompliance," *The Journal of Clinical Ethics* 8, no.3 (1997):306.;

¹² David Lester, "Genetic Theory - An Assessment of the Heritability of Alcoholism," in Chaudron and Wilkinson, *Theories*, 3.

¹³ Doris Tabakoff and Paula L. Hoffman, "A Neurobiological Theory of Alcoholism," in Chaudron and Wilkinson, *Theories*, 92.

¹⁴ Herbert Barry, III, "Psychoanalytic Theory of Alcoholism," in Chaudron and Wilkinson, *Theories*, 103.

Classical Conditioning	Pavlovian principles are relevant for acquired preferences or aversions for alcohol-associated stimuli. Suggests that such an emphasis could help minimize evaluative judgements, and focus attention on treatment aimed at modifying the acquired association and the problematic response. ¹⁵
Systems	Behaviour is determined and maintained by the dynamics of the key systems in which the individual interacts (the family being paradigmatic); behaviour is less a reflection of unique psychological or physiological variables, and more a response to vicissitudes of the interactional systems ¹⁶ ; causality is circular not linear: change in one element of the system brings compensatory changes in all elements, thus the use of alcohol could be seen as an adaptive, and meaningful response to "interactional dynamics," and thus a potential problem for the systems involved rather than for the individual alone. ¹⁷
Availability	Prevalence and severity of alcohol-related problems is directly related to availability (both physical and economic accessibility); not a "grand theory" <i>per se</i> . Even low levels of intake can incur risks, e.g. there is a heightened risk of cirrhosis with moderate drinking over a prolonged period. On the other hand, reduced availability decreases drinking even on the part of those whose consumption level is associated with clinical alcoholism. Other factors associated with addiction are not denied, but are beyond its public policy focus, which includes control laws at all levels of government (including general economic regulations affecting all market commodities). ¹⁸
Anthropological and Sociological	Comprising social and cultural variables which this author believes are overlooked or presumed to be more uniform than is the case. Shared beliefs, attitudes and values in relation to alcohol vary from one population to another; analysis and comparison are possible ¹⁹ ; familiarity with cultural norms and expectations are useful for both diagnosis and treatment. ²⁰ Rather than one theory, there are a number of different models depending on the emphases - whether on rules and deviance, relative deprivation, conflict-over dependence related to child-training, social learning, the benefits and costs of occurrence and continuity of patterns, and so on. ²¹

¹⁵ Jack Edward Sherman, Douglas E. Jorenby, and Timothy B. Baker, "Classical Conditioning with Alcohol: Acquired Preferences and Aversions, Tolerance, and Urges/Craving," in Chaudron and Wilkinson, *Theories*, 224-225.

¹⁶ Sheldon Pearlman, "Systems Theory and Alcoholism," in Chaudron and Wilkinson, *Theories*, 290-291.

¹⁷ *Ibid.*, 317.

¹⁸ Eric W. Single, "The Availability Theory of Alcohol-Related Problems," in Chaudron and Wilkinson, *Theories*, 325-330.

¹⁹ Dwight B. Heath, "Emerging Anthropological Theory and Models of Alcoholism Use and Alcoholism," in Chaudron and Wilkinson, *Theories*, 357.

²⁰ *Ibid.*, 499.

²¹ *Ibid.*, 358ff.

Economic	An acknowledged partial theory with a focus on the economic factors (such as price, advertising, and retail controls) that influence consumption, and how alcohol-related problems are linked to consumer levels. ²² One boundary of such a theory is the "implicit assumption of rationality and full information as a basis for behavior"; a subset of chronic alcoholics may not be influenced by economic factors. ²³
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The one theory that Chaudron and Wilkinson have omitted, and which others have included,²⁴ is the "disease theory"; the omission is related to their belief that it is less a theory *of* alcoholism than an organizing descriptive framework - a theory *on* alcoholism, as is the framework labelled "biopsychosocial."²⁵ Where it *is* discussed as a theory, alcoholism is believed to be a progressive, irreversible condition, characterized by loss of control over drinking; it cannot be cured, only arrested by total abstinence. One of the symptoms is considered to be denial of the problem. As a disease, it requires medical treatment, although other alcoholics are seen as important agents of intervention. One suggested advantage of the popularity of the model is that it tends to foster more humane treatment of the alcoholic than those attempting to prove deficits in moral or spiritual strength.²⁶ While this may be true, it may also be the case that the disease model leads to discouragement. Herbert Fingarette has written a polemic against the use of the model,²⁷ and while some of his arguments against the disease concept are not convincing,²⁸ there would appear to be merit in his contention that to continue

²² Christine Godfrey and Alan Maynard, "An Economic Theory of Alcohol Consumption and Abuse," in Chaudron and Wilkinson, *Theories*, 411-412.

²³ Ibid., 431.

²⁴ For example, see Hester and Sheehy, in Engs, *Controversies*, 3.

²⁵ Chaudron and Wilkinson, "Introduction," in *Theories*, xxxi.

²⁶ Hester and Sheehy, in Engs, *Controversies*, 3.

²⁷ Herbert Fingarette, *Heavy Drinking: The Myth of Alcoholism as a Disease* (Berkeley: University of California Press, 1988).

²⁸ See the critique by J. Angelo Corlett, "Fingarette on the Disease Concept of Alcoholism," *Theoretical Medicine* 11 (1990): 243-249. Corlett suggests that Fingarette, while he may be correct in asserting that alcoholism is not a disease, fails to prove, logically, that this is so. Corlett also suggests that Fingarette is working with a thirty year old, less sophisticated definition of what a disease concept of alcoholism might

to perceive it as a disease obscures the fact that there are many heavy drinkers without the characteristic signs of alcoholism who are also in need of help.²⁹ To persist with the model means, in his view, that there is little acknowledgement of individual responsibility for the drinking behaviour, and a continuing emphasis on the drinker as victim³⁰; and it also means that efforts continue to be focused on the individual, rather than on more preventive social policies.³¹

More integrative models of alcoholism have been suggested; one promising comprehensive model - the public health model - is detailed by Hester and Sheehy:

Public health professionals conceptualize health problems in terms of an interaction among three factors: the agent, the host, and the environment. Most often the agent is an organism (e.g., a virus) but, in this case, it is ethanol. This involves such issues as the chemical action of alcohol at a cellular level, its impact on organ functions, and its interaction with disease processes. The second factor in the model is the host. As a causal factor, the host involves intraindividual consideration of the many biological, sociological, and psychological variables which influence drinking behavior and mediate its effects. Subjects for investigation within this category include genetic predispositions to the effects of alcohol, personality disorders, and an individual's positive expectancies about drinking. The environment includes the social, cultural, political, and economic variables which affect alcohol use and its consequences. Issues of concern here include sociocultural norm for drinking and availability of alcohol.³²

Addiction and Public Policy

While the development of public policy has mostly not been concerned with the specific

mean. That such lack of sophistication can still carry weight is illustrated in Glannon, "Responsibility," 39; he cites a U.S. Supreme Court ruling disallowing extended benefits to a veteran, based on Fingarette's contention that alcoholism should be considered a willfully incurred disability.

²⁹ Fingarette, *Heavy Drinking*, 4ff.

³⁰ Ibid., 129. An expanded discussion of Fingarette's understanding of responsibility may be found in his *On Responsibility* (New York: Basic Books, 1967). The arguments do not appear to be well supported from the point of view of the complexities of human acting; as well, Fingarette's notion of obligation towards others appears to be excessively minimalistic.

³¹ Ibid., 133ff.

³² Hester and Sheehy, in Engs, *Controversies*, 7.

focus of this work, (with notable exceptions like the experience in Oregon, detailed below), it is of interest to look very generally at that development as background for the more theoretical discussions found in the bioethics literature, given the complex connections between theory and policy. The area of addiction presents particular difficulties for the fashioning of policy. To the above-mentioned lack of consensus about etiology and definition, is added behavioural variability (especially in relation to alcohol, of which a wide range of use must be accommodated); and the fact that the relevant policies limit freedom within areas felt to be quite private only adds to the less than ideal conditions for acceptable and useful policy formation.³³ It should of course be noted that at the beginning of the initiatives in public health, the focus tended to be governmental attempts to eliminate sources of contagion and sickness by developing sanitary and hygienic measures, rather than putting the onus for change on individuals³⁴; and the widely-known Lalonde Report, although it did suggest that lifestyle is a factor in health, did not take a moralistic stand in relation to the individual.³⁵

It is suggested that, at this point, the prevailing wisdom at the level of policy formulation, both in the U.S. and Britain, is that "life-style" diseases are self-inflicted - the result of foolish behaviour or a "weak" character; hence the "moral posturing" that is a feature of the health promotion debates.³⁶ The lack of unanimity as noted above is no doubt a factor in the lag between scientific work and the understanding of the general citizenry, (although it is worth

³³ Howard M. Leichter, *Free to be Foolish: Politics and Health Promotion in the United States and Great Britain* (Princeton, New Jersey: Princeton University Press, 1991), 148.

³⁴ Hubert Doucet et Nancy Burbidge, "Le patient "irresponsable" a-t-il droit aux soins de santé?" *Église et Théologie* 30 (1999): 79.

³⁵ Department of National Health and Welfare, Canada, *A New Perspective on the Health of Canadians: A Working Document*, by Marc Lalonde, (Ottawa, 1974), hereafter cited as the Lalonde Report. The report notes that improving the health of Canadians should include "moderating self-imposed risks," 18.

³⁶ Leichter, *Free*, 11-13.

noting that policy changes in both countries were largely sparked by health-related warnings from bodies such as the British Medical Association, the Royal College of Psychiatrists, the Royal College of Physicians, and in the U.S., the Center for Science in the Public Interest, the Surgeon General, the American Medical Association, the U.S. Public Health Service, and the American Cancer Society³⁷). However the focus on individual responsibility is also in line with both a political shift from a collectivist to an individualist political orientation, (in both the Thatcher and the Reagan-Bush administrations, the focus was away from corporate responsibility for health problems), and a growing health consciousness amongst the general public.³⁸ As well, it must be noted that, in both countries, the strength of the tobacco and alcohol lobbies, as well as their close ties to the centres of power, have played a huge part in both the content and the timing of policy. Another overwhelming feature in both countries is the ambivalent nature of the entire enterprise, in that significant, if diminishing, proportions of government revenue come from the manufacture, sale and export of tobacco and alcohol. Ambivalence is also obvious within some of the groups that appear to be particular targets for advertising campaigns, such as women and blacks. Various publications from these groups have been reluctant to give up the lucrative support, from tobacco companies in particular, in spite of the evidence of a disproportionate health burden for both groups.³⁹

While there is apparently policy diffusion between the U.S. and Britain, in health-style modification policy at least, the movement of ideas has more often been from the former to the latter - Britain's goal being both emulation and avoidance. There are significant differences in

³⁷ Ibid., 102-104, 158.

³⁸ Ibid., 8-9.

³⁹ Ibid., 106-109.

the resultant policies.⁴⁰ A number of factors account for the differences: the first is political structure. While the British centralized system facilitated earlier adoption of seat-belt legislation, for example, since there was no strong automobile lobby, that same system meant that tobacco interests have been able to maintain greater control over smoking and health policy, with the result that less aggressive measures have been adopted than in the U.S. The decentralized American federal system, unquestionably more chaotic and intuitively less efficient, has meant that various states have taken the lead in areas such as restriction of smoking in public places, since the tobacco interests have not been as well represented at that level.⁴¹ On the other hand, the threat of loss of federal funds was used as a lever in the central government's pressure to have the drinking age raised to 19 years of age.⁴²

Other factors are "political style, culture and ideology."⁴³ Given the British tendency to view government with deference and confidence, there has been far more tolerance for policy-making through regulatory, voluntary agreements between government and industry, with the result that negotiations have often been prolonged, the agreements must be periodically renegotiated, and they carry no penalties, hence are often not kept. While the American system of formal, coercive arrangements is potentially more antagonistic and divisive, it can be more effective, nor would voluntary agreements likely be possible in the American system, "where an adversarial relationship exists between government and the people on life-style modification issues."⁴⁴ Different social values account for differences in policy: the most striking being the

⁴⁰ Ibid., 256.

⁴¹ Ibid., 140.

⁴² Ibid., 160-164.

⁴³ Ibid., 258.

⁴⁴ Ibid., 260.

important social role played by alcohol and the pub in British society, which has meant that measures to limit advertising and to control drinking and driving have lagged behind the American efforts; in fact, in 1988, in spite of opposition from those in health promotion, a British law extended pub hours.⁴⁵ In contrast, an American moralistic "neotemperance sentiment" has furthered the cause of alcohol control policies, in spite of the traditional thrust of the conservative sentiment to minimize government interference in the private realm.⁴⁶

The Canadian experience appears, predictably, to fall somewhere between that of the U.S. and Britain: although there is a less individualistic, more collectivist mentality than is evident in the U.S.- the relative success of our health care system one manifestation of this - there is by no means the level of trust in government benevolence shown in Britain. Thus formal regulation and legislation appear to have been the preferred route for policy change in Canada. As well, Canadian public policy appears to reflect the fact that level of tolerance falls somewhere between the wide social acceptance of alcohol in Britain, and the American conservative "resurgent prohibitionism."⁴⁷ As in the U.S., there is relevant legislation at both the federal and provincial levels.

In relation to tobacco, Parliament passed two pieces of legislation in 1988 - one dramatically limiting tobacco advertising, and the other restricting smoking in federal workplaces and transportation facilities. The purchase or possession of tobacco by anyone under 16 years of age was deemed a federal criminal offence, whereas the selling or supplying

⁴⁵ Ibid., 164-173.

⁴⁶ Ibid., 261-262.

⁴⁷ Ibid., 261.

of tobacco to minors came under provincial legislation.⁴⁸ In 1997, the Tobacco Act gave the federal government authority to set provisions for the composition of tobacco products, and the labelling of packaging, as well as to restrict advertising, promotion and sponsorship on the part of tobacco companies. The relevant regulations were agreed upon in June 2000; they will come into force in June 2001. Of note are the regulations around the warnings that must appear on packaging: health warnings must appear on at least 50% of the principal display surfaces; other information must include both the toxic emissions and the toxic constituents of the products contained within. Billboard publicity has been prohibited, and magazine advertising has been restricted to those aimed principally at adults. Provincial legislation varies in such areas as the control of sales to minors, and the provision of smoke-free areas.⁴⁹

Alcohol legislation is also a joint federal/provincial responsibility. The federal criminal law is focused on drinking and driving offences,⁵⁰ but, for example, the Ontario Highway Traffic Act has broad powers to stop drivers and issue suspensions to those suspected of having an unacceptable blood alcohol level. Nova Scotia's Conservative government, on December 1, 1999, instituted a more severe test of whether a driver should be allowed to stay behind the wheel: a blood-alcohol consumption level of .05 or higher means an immediate temporary suspension of one's licence. Provincial acts also target marketing and consumption: in most provinces, it is an offence for anyone under 19 years of age to possess, consume or purchase

⁴⁸ ARF, *Facts About Tobacco*.

⁴⁹ Information obtained from The Ontario Tobacco Research Unit, and the Tobacco Control Programme of Health Canada, with the assistance of the Canadian Council for Tobacco Control.

⁵⁰ It is of interest that the blood alcohol concentration allowed in Canada is similar to that in Britain: under .08 per cent, while in the majority of the states it is .10 per cent. See Leichter, *Free*, 168; and ARF "Facts."

alcohol.⁵¹

It is suggested that although national policies will continue to reflect their unique social and cultural situations, common responses to health problems will increase with advances in communication technology, but especially with the advent of "better scientific evidence linking particular behavior patterns to disease."⁵²

While public policy informed by up-to-date research will unquestionably be useful in the formulation of legislation, it is a different question as to whether it will assist those who must make decisions about allocation of scarce healthcare resources. It may be that, to the extent that a degree of personal responsibility for choice remains ascribed to the individual, to that extent there will be censure and licence to extract some form of payment. Whether it is appropriate to extract a payment that touches one's person as deeply as does healthcare, is beyond the scope of scientific evidence, and possibly beyond the application of one all-encompassing moral theory.

The Addicted and Societal Attitudes

To the public policy discussions must be added another aspect of addiction: the vulnerability of the addicted to be oppressed and devalued by society. This work will suggest that the addicted, particularly alcoholics, are subject to a number of the characteristic responses to other oppressed groups in society, including marginalization, devaluation, stereotyping, fear and aversion, and control.⁵³ In her discussion of oppressed groups Iris Marion Young suggests

⁵¹ ARF, *Facts About Alcohol*.

⁵² Leichter, *Free*, 262.

⁵³ Iris Marion Young, *Justice and the Politics of Difference* (Princeton, New Jersey: Princeton University Press, 1990), 48ff.

that our aversion and contempt of others who are different, or appear to be out of control, are partly related to the structure of modern reason, and its opposition to desire, body and affectivity.⁵⁴ Also, in the 19th century, bodily difference became medicalized and measured on a single scale; degeneracy was thought to be manifest in observable signs on the surface of the body, and to apply to those indulging in deviant sexual behaviour, and other physical pleasures.⁵⁵ While there has been a decided move away from at least publicly affirmed oppressive stances, and a commitment to formal equality, Young suggests that reactions of prejudice and preference are fuelled by meanings and reactions operating at an unconscious level:

Judgements of beauty or ugliness, attraction or aversion, cleverness or stupidity, competence or ineptness, and so on are made unconsciously in interactive contexts and in generalized media culture, and these judgements often mark, stereotype, devalue, or degrade some groups.⁵⁶

The consequent avoidance, aversion, condescension, and stereotyping experienced by the oppressed are not easily named; "the liberal imperative that differences should make no difference" means that the oppression must, for the most part, be experienced in silence. Young argues that unconscious devaluations can be detected in public policymaking, and in the mass entertainment media as well as in social interactions. She notes a process of displacement, whereby aversion to certain groups is displaced onto a judgement of individual character supposedly unconnected to group characteristics.⁵⁷

⁵⁴ Ibid., 124. Young suggests that modern philosophy and science established unifying reason in opposition to mastery over the body, then identified some groups with reason, and others with the body.

⁵⁵ Ibid., 128-129.

⁵⁶ Ibid., 133.

⁵⁷ Ibid., 133-136.

Although Young's arguments are focused on identifiable groups such as women, blacks, the aged, and the poor, it is difficult not to believe that they are relevant to the addicted, particularly those addicted to alcohol.⁵⁸ If it is indeed the case that advertising of addicting substances has targeted groups such as women and blacks, and if it is indeed the case that stress related to social situation is one factor in one's becoming addicted, then it could be postulated that those who happen to be addicted, in addition to belonging to oppressed groups, are doubly at risk for the devaluation of which Young speaks. Those addicted to alcohol would be particularly at risk of being shunned as unreasonable, out of control, disorderly, and the very antithesis of "respectability."

II. Organ Transplantation: A Short History

Limit or Success?

If one concept were to be chosen to characterize the history of organ transplantation, it would be that of limit. From the beginning, and continuing today, the supply of available organs has been limited; scarcity and high cost are inevitable at the introduction of any new technology; both are usually overcome with time. Neither has happened in this field, although, to be sure, renal transplantation is less costly for a particular patient than on-going dialysis. The need for transplantation points to both human limit - to our finite nature, and to the limits of medical process in effecting any ultimate change in that fact, notwithstanding the on-going attempts.

⁵⁸ Beresford details a number of studies which point to the stereotypical picture of the alcoholic as alone, on the streets with no support; the reality is far different: "the vast majority have a stable residence, maintain contact with their families and have means of earning a living." Thomas P. Beresford, "Liver Transplantation," in Graham and Schultz, *Principles of Addiction Medicine*, 893-894.

On the other hand, organ transplantation has been described by enthusiastic proponents as one of critical care medicine's "modern success stories":

Improvements in transplant immunology, surgical techniques, anesthesia, and postoperative management have transformed transplantation from an experimental treatment to the therapy of choice for many patients with organ failure.⁵⁹

The first successful transplant - of a kidney, between identical twins - was performed at the Peter Bent Brigham Hospital in Boston, in 1954; that between non-identical twins followed in 1959; and in 1960, in France, a non-related donation of a kidney was successful. In 1967, the heart and liver were successfully transplanted. During the 1960's, lung, bowel, and pancreas transplants were attempted, but their failures ended many of the programs.⁶⁰ From the early 1980's, the discovery and use of the immunosuppressant drug cyclosporine meant a huge expansion in the number of solid organs transplanted, and in the numbers of combinations of tissue and organ transplants. The most common multiple transplants were pancreas-kidney-duodenum for those with end-stage renal failure or juvenile diabetes; other combinations were double-lungs, liver-kidney, and various radical "cluster transplants," of different combinations of the stomach, small intestine, colon, pancreas and liver. It is estimated that more than 6,000 heart transplants were carried out worldwide in 1988; in 1990, it was reported that in the U.S. the total number of the six most frequent solid organ grafts (kidney, heart, heart-lung, liver, and pancreas) had risen from 9,176 in 1985 to 15,164 in 1990.⁶¹

The latest statistics available in Canada suggest increasing activity. In the decade prior

⁵⁹ Robert M. Arnold *et al*, "Ethical Issues in Organ Procurement," *Critical Care Clinics* 12, no. 1 (1996): 29.

⁶⁰ Calvin R. Stiller, "Organ and Tissue Transplants: Medical Overview," in *Encyclopaedia of Bioethics*, 2nd ed.

⁶¹ Fox and Swazey, *Spare Parts*, 7-8.

to 1997, the year for which the latest figures are available, total transplant activity increased by 44 %. In that year, there were 1,566 single organ transplants (1,010 kidneys, 340 livers, 161 hearts, 52 double lungs, 34 single lungs, 7 heart/lung, and 3 pancreas). An additional 44 combination transplants were performed, of which 30 were kidney/pancreas, 8 were kidney/liver and 6 were other combinations. Apparently the liver transplant rate is below that in the U.S., reflecting a lower donation rate in Canada. Of the 1,010 kidneys donated, 725 were cadaveric, and the remainder from live donors. The majority of transplant recipients are between 18 and 64 years (86 %); males constitute the majority of those (64 %), with a particular predominance in heart transplants (73 %).⁶²

Behind the successful statistics is a somewhat different story. In the first place, the progress of transplantation has not been a straight line; it was marked by moratoria, (particularly in the 1980's), and on-going questions from both the medical community and the public, occasioned by a concern that there might be more of an element of experiment on human subjects than was acceptable.⁶³ Moreover, there is concern, in spite of the missionary-like zeal of the transplant community, that there is an "overidealization of the quality and duration of life" that can be procured by transplantation.⁶⁴ The use of cyclosporine, with or without a combination of other immunosuppressive drugs, has not been free of a concerning toxicity with prolonged use: since the body's immune response is affected, there is heightened risk of infection; kidney function may be impaired; and there is an increased risk of hypertension and

⁶² Canadian Organ Replacement Register (CORR), *Transplant Statistics*, last revised November 12, 1999 (Ottawa: Canadian Institute for Health Information, 1999), 1-3.

⁶³ Fox and Swazey, *Spare Parts*, 23.

⁶⁴ *Ibid.*, 204; and the authors had earlier noted that dialysis was a good example of technology imposing huge psychological and physical burdens on persons, in *Courage*, 270.

cancer.⁶⁵ Other "miracle" immunosuppressive agents such as FK 506 (introduced in October, 1989) are being introduced as replacements.⁶⁶

Also, while the increasing success rates have meant more patients on waiting lists, the expanding lists have not been matched by a growth in the numbers of available organs. Various attempts to remedy this situation have been tried. From an administrative point of view, the computerized network for organ sharing in the U.S. has not made a dramatic difference, given its voluntary nature, and the fact that there is no universally shared criteria, (amongst the 90 local procurement agencies), for determining how organs should be distributed.⁶⁷ Medically, there have been innovations such as research into a temporary artificial lung and heart⁶⁸; more recently, the use of an implantable left ventricular assist device as a bridge to transplantation⁶⁹; implanting a lobe from either a cadaveric or a live donor into a child smaller than the donor; using damaged cadaveric hearts as bridges to keep patients alive until stronger or better-matched hearts become available⁷⁰; or indeed permanently implanting organs from "marginal" donors - those of advanced age, or with pre-existing disease.⁷¹ There is currently vigorous discussion at many levels around xenotransplantation; the predictable ethical, psychosocial and public policy concerns are pitted against the "breakthroughs in genetic engineering and

⁶⁵ Calvin R. Stiller, "Organ and Tissue Transplants: Medical Overview," *Encyclopaedia of Bioethics*, 2nd ed.

⁶⁶ Fox and Swazey, *Spare Parts*, 6-7, 203, 209.

⁶⁷ Renée C. Fox, *The Sociology of Medicine: a Participant Observer's View* (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1989), 259.

⁶⁸ *Ibid.*, 95-193.

⁶⁹ See Daniel J. Goldstein, et al., "Implantable Left Ventricular Assist Devices," *NEJM* 339, no 21 (1998): 1522-1533; and Joseph J. DeRose, et al., "Improved Results From Postcardiotomy Cardiogenic Shock With the Use of Implantable Left Ventricular Assist Devices," *The Annals of Thoracic Surgery* 64 (1997): 1757-1763.

⁷⁰ Fox, *Sociology of Medicine*, 8.

⁷¹ A. W. Avolio, S. Agnes, and M. Castagneto, "Ethical Implications in Donor - Recipient Allocation," *Transplantation Proceedings* 32 no. 1 (2000): 81-82.

immunology...likely to facilitate cross-species transplants."⁷² Debate also continues about the morality of parents conceiving a child to serve as a bone marrow donor for another of their children.⁷³

The question as to when a donor can be declared dead remains a crucial, but a vexed one for organ transplantation; given that death is both a "biologically based and [a] socially constructed notion,"⁷⁴ it is not surprising that there is apparently widespread ambiguity, in both the medical and the lay communities. In the U.S., for example, there is no consensus or uniformity of practice regarding how long after cardiopulmonary function is lost one must wait to ensure that spontaneous recovery will not occur.⁷⁵ While the transplant community urges, in order to preserve optimal organ quality, that declaration of death be pushed ever closer to the loss of circulatory function, Younger et al. suggest that there has not been adequate data-based justification for its reasoning.⁷⁶ Furthermore, in relation specifically to the criterion of brain-death, Robert Truog cautions that technological developments have "unwittingly undermined one of the central ethical justifications" for its use: the functions of the brainstem, as well as of the cardiopulmonary systems, are technologically replaceable, thus cardiac arrest will follow brain-death only if it is allowed to occur. The original rationale for allowing the criterion of brain-death had been that cardiac arrest would inevitably follow within a short period of time.⁷⁷

⁷² Arthur L. Caplan, "Organ and Tissue Transplants: Ethical and Legal Issues," *Encyclopaedia of Bioethics*, 2nd ed.

⁷³ Fox and Swazey, *Spare Parts*, 209.

⁷⁴ Stuart M. Younger, Robert M. Arnold, and Michael A. DeVita, "When Is 'Dead'?" HCR 29, no. 6 (1999): 20.

⁷⁵ *Ibid.*, 15.

⁷⁶ *Ibid.*, 20. The authors, in fact, suggest that there has been a lack of "process" in relation to organ procurement - a lack of research, education, and of dialogue (with both the medical and the lay communities) - which has been detrimental to the supply of transplantable organs.

⁷⁷ Robert D. Truog, "Is It Time to Abandon Brain Death?" HCR 27, no. 1 (1997): 30-31.

Suggestions have also been advanced for using less rigorous criteria for "harvesting" organs from anencephalic infants, or from those in a permanent vegetative state: allowing, in other words, a higher-brain criterion for death.⁷⁸

Other attempts are centred on persuading the public to donate more liberally. One of the most untiring champions of transplantation has been the bioethicist, Arthur Caplan⁷⁹; a perusal of his on-going proposals for expanding the numbers of available organs is instructive. In 1983, in view of an apparent failure of voluntary donation, Caplan advocates a policy of presumed consent, whereby organs are automatically harvested unless there has been prior objection from the patient⁸⁰; in 1984, he cites the failure of strong presumed consent policies in countries such as France (along with concerns about loss of trust between the public and the medical community, and the dangers of coercion of family members) as reasons for preferring required request for organs (the two versions of this being strong: whereby every citizen would be asked to indicate a willingness, or not, to donate; and weak: whereby there would be a requirement that family members be asked about the possibility of donation).⁸¹ By 1985, the supply of cadaver organs was still inadequate (one-third of transplanted kidneys were still coming from

⁷⁸ Renée C. Fox notes the discussion amongst American bioethicists in this area: some suggesting that such children do not have status as persons, and should be considered as dead; while others find such attempts at procuring organs overly aggressive, and worry about the real possibility of the "slippery slope" implications, in "The Entry of U.S. Bioethics into the 1990's: A Sociological Analysis," in Edwin R. DuBose, Ronald P. Hamel, and Laurence J. O'Connell, eds., *A Matter of Principles? Ferment in U.S. Bioethics* (Valley Forge, Pennsylvania: Trinity Press International, 1994), 42-44. See also Truog "Is It Time," 32-36; the author makes a tentative suggestion that "killing [ie.allowing a higher-brain criterion for organ donation only] may sometimes be a justifiable necessity for procuring transplantable organs," provided that the principles of consent and nonmaleficence are upheld, 36.

⁷⁹ It is noted again that Caplan does not believe that responsibility for one's illness should be a factor in selection. See Arthur L. Caplan, "Ethics of Casting the First Stone: Personal Responsibility, Rationing, and Transplants," *Alcoholism: Clinical and Experimental Research* 18, no. 2 (1994): 219-221.

⁸⁰ Arthur L. Caplan, "Organ Transplants: The Costs of Success," HCR 13, No. 6, (1983): 29.

⁸¹ Arthur L. Caplan, "Organ Procurement: It's Not In The Cards," HCR 14, no. 5 (1984): 9-12.

live donors). Caplan and Siegler suggest that measures such as better education of the public, the presence of regulatory agencies, improving the communication amongst transplant centres, and banning the sale of solid organs for transplant would not strike at the heart of the problem of shortage. Success is predicated on ensuring that every state has a statutory definition of death, and that policies of both weak and strong required request be adopted.⁸² By 1987, Caplan suggests that a lack of trust in the equitable distribution of scarce organs has adversely affected donation; he advocates that decisions should not be made in secret, standards should be consistent across the country (for example, in questions of whether psychological criteria should ever be used in assessing candidates), and there should be nonmedical input in policy formation where appropriate.⁸³

In 1988 it is clear to Caplan that, in spite of some required request legislation having been passed, medical professionals' resistance to compliance remains a significant problem; he therefore suggests that monies be made available to train professionals to feel more comfortable in approaching families of the dying or recently dead, thus "discharging their obligations to the dead and those who are dying."⁸⁴ Caplan's rejoinder to concerns about the costs of transplantation is to point to expenditure as an inadequate standard by which to measure our moral obligation to those with terminal illness; ways must be found to reduce the costs of transplants.⁸⁵ In an overview article in 1989, Caplan is again pointing to the importance, for both procurement and commitment of public and private funds, of the public's perception that

⁸² Arthur L. Caplan and Mark Siegler, "Risks, Paternalism, and the Gift of Life," *Archives of Internal Medicine*, 145, no. 7 (1985): 1188-1190.

⁸³ Arthur L. Caplan, "Organ Transplant Rationing: A Window to the Future?" *Health Progress* 68, no. 5 (1987): 40-45.

⁸⁴ Arthur L. Caplan, "Professional Arrogance and Public Misunderstanding," *HCR* 18, no. 2 (1988): 37.

⁸⁵ *Ibid.*, 37.

there has been equity at each stage of the process of allocation. He again advocates public debate in relation to the many issues involved in rationing.⁸⁶ These concerns remain in his *If I were a rich man could I buy a pancreas? and other essays on the ethics of health care*, published in 1992.⁸⁷

One suggestion in Caplan's volume is of interest in relation to the work of Fox and Swazey. He is of the opinion that it is inappropriate to conceive of organ donation as the giving of a "gift," as has been their overwhelming contention; he equates some forms of gift-giving with "preference and whim,"⁸⁸ whereas they place great stress on the psychological, social, cultural, and spiritual meanings associated with the gift-exchange aspects of organ donation and reception. While this is more obvious in relation to live-donor transplants (the possibility of being enmeshed in relationships complicated by creditor\debtor components), the authors contend that even with an unknown, cadaveric donor, there could be feelings that the recipient could never repay the gift. They suggest that the giving of parts of ourselves so that others may live is not just an ethical act, but also a religious act:

It is not just a question of what is right, what is wrong, what I should do or not do. Giving literally and ultimately a part of oneself to another, particularly in giving to a stranger a cadaver organ after one's death - that act perfectly exemplifies the ultimate values of the Judeo-Christian tradition....it turns out that we have deeper feelings about taking organs out of our body, and receiving into our body the parts of other people, than our present state of rational scientific understanding would lead us to suppose.⁸⁹

That aspects of gift-giving, and the deeper feelings it provokes, have been emphasized

⁸⁶ Arthur L. Caplan, "Problems in the Policies and Criteria Used to Allocate Organs for Transplantation in the United States," *Transplantation Proceedings* 21, no. 3 (1989): 3381-3387.

⁸⁷ Arthur L. Caplan, *If I were a rich man could I buy a pancreas? And other essays on the ethics of health care* (Bloomington: Indiana University Press, 1992).

⁸⁸ *Ibid.*, 155.

⁸⁹ Renée C. Fox, "Medical Uncertainty: An Interview with Renée C. Fox," *Second Opinion* 6 (November 1987):100-101.

less over time, is due, partly, to the fact that those with more of a psychosocial focus (social workers and psychologists) tend less often to be members of the transplant team; eventually the crisis in supply of organs came to be seen as a social policy program of supply and demand, altering the theme of the gift.⁹⁰ The "aggressivity" of those like Caplan is seen as falling into such a framework.⁹¹ Equally condemned are the signs of a shift to a market-model of donation, with the implications that moral obligations to others are best satisfied by first satisfying the obligations to self. They note that by the end of the 1980's, even a leading proponent of the gift-exchange model - James Childress - was expressing some positives about some form of financial incentives (such as coverage of a donor's medical expenses, compensation of a living donor's lost wages, or payment for the burial expenses of a deceased donor).⁹²

This change of focus parallels, in an interesting way, discernible changes or phases in the field of bioethics. While the early foci in that community, in relation to transplantation, tended to be the rights and interests of living donors, particularly those incompetent to give

⁹⁰ Fox and Swazey, *Spare Parts*, 31-46.

⁹¹ Ibid., 63-64. It is of interest that Fox notes elsewhere that while many medical professionals engaged in the fields of dialysis and transplantation have been responsive to the sociological studies such as those conducted by herself and Judith Swazey, bioethicists have not been as interested, including those at the Hastings Center, who have tended to look to Caplan as the primary author, source person and referent in this area; in Fox, *Sociology of Medicine*, 260, and 260 n. 164.

⁹² James F. Childress, "Ethical Criteria for Procuring and Distributing Organs for Transplantation," in J. F. Blumstein and F. A. Sloan, eds., *Organ Transplantation Policy: Issues and Prospects* (Durham, N. C.: Duke University Press, 1989), 101; quoted in Fox and Swazey, *Spare Parts*, 71-72. It is not difficult to understand the urgency to procure organs on the part of those who are close to the situations of patients dying while waiting for a transplant. This urgency is detected in a plea for paid organ donation from Dr. A.S. Daar, a transplant surgeon with a strong interest in bioethics. Dr. Daar suggests that all the familiar arguments against payment are flawed, and based mainly on emotions such as "revulsion and disgust," which should not become the basis of accepted behaviour. See "Paid Organ Donation - the Grey Basket concept," *JME* 24, no. 6 (1998): 365-368. On the other hand, Mary Midgley asserts that it is important to articulate the solid rationality that may underlie negative feelings: heart and mind are complementary aspects of a single process; strong feelings are too often dismissed. See "Biotechnology and Monstrosity: Why We Should Pay Attention to the 'Yuk' Factor," *HCR* 30, no. 5 (2000): 7-15. Thus the "revulsion and disgust" of which Dr. Daar speaks may spring from deeply held and important aspects of our human ethos that need to be articulated more clearly.

informed consent,⁹³ there was also, from theologians such as Paul Ramsey, both a placing of justice within a Christian framework of the "ultimate covenant of righteousness and faithfulness among men,"⁹⁴ and a prescient call for "learning wisdom concerning the acceptable death of all flesh."⁹⁵ In a later stage in bioethics, from the mid 1970's to the end of the 1980's,⁹⁶ a stage whose watchword was the autonomy of the individual patient, and a stage in which questions such as those of Fox and Swazey seem to have been silenced, the concerns in relation to transplantation could hardly have had the wider community's good as a focus. Deliberations abound about the point in the dying process when it would be acceptable to "harvest" organs, and there are agonizing debates over how to decide which individuals should be transplanted.

The Question of Allocation

Process and Criteria

As noted above, Caplan suggests that there are four stages to the process of allocation, and that at each stage nonmedical criteria and/or value-laden decisions come into play. In the first stage, *eligibility*, groups such as the poor, the disabled and the elderly, who are less likely to have high-quality medical care, are targets for disagreement over the efficacy of transplanting them, and thus are less likely to be referred to a transplant centre. When it comes to the actual *admission* to such centres, (at least in the U.S.), there is under-representation of minorities,

⁹³ Arthur L. Caplan, "Organ and Tissue Transplants: Ethical and Legal Issues," in *Encyclopaedia of Bioethics*, 2nd ed.

⁹⁴ Paul Ramsey, *The Patient as Person: Explorations in Medical Ethics* (New Haven: Yale University Press, 1970), 262-263.

⁹⁵ *Ibid.*, 272-275.

⁹⁶ Characterized by Doucet as the "golden age," and described in *Au pays*, 43-59. The concerns such as those raised by Fox and Swazey - the posing, again, of wider questions about the use of technology and the meaning of life and death, and the return of theology to the field, are seen in the third phase of bioethics; see Doucet, *Au pays*, 59-62.

women, the elderly and the handicapped relative to their rates of end-stage organ failure. The policies that govern *distribution* of organs and the fourth stage of *patient selection*, are weighted toward factors such as size of donor organ and of recipient, blood and tissue matching, medical urgency, and time on the waiting list. Caplan suggests that these are not uncontroversial, since, for example, the focus on tissue type can serve to penalize those with rare tissue types, or members of racial groups for whom there are few closely matched donors; (there is apparently only a weak empirical basis for employing tissue matching).⁹⁷ The advantage of such criteria is their apparent objectivity, clarity and near indisputability.⁹⁸

Beyond Caplan's list of the more objective measures, there are a host of criteria, many covertly applied, which have been documented as having been used in allocative decisions. John Kilner appears to have produced the most comprehensive list of those he suggests have the greatest potential to elicit social consensus; he includes *social criteria* (including determinations of social- value; a favoured-group criterion, such as veterans; a resources-required criterion, one form of which would prioritize those requiring fewer resources; and a special-responsibilities criterion - saving those required for their crucial roles); *sociomedical criteria* (including determinations of psychological ability, whether or not the patient's environment is supportive, and age); the explicitly *medical criteria* (of which there are five: medical benefit, immanent death, likelihood of benefit, length-of-benefit, and quality-of-benefit); and the *personal criteria* (which include willingness to accept treatment, willingness-to-risk-illness, ability to pay, and

⁹⁷ And see Fox and Swazey, *Spare Parts*, 78.

⁹⁸ Caplan, "If I were a rich man could I buy a pancreas? Problems in the policies and criteria used to allocate organs for transplantation in the United States," in *If I were a rich man*, 170-173.

random selection: either a lottery or first-come, first-served).⁹⁹

An oft-cited, and much-criticized example of attempts to apply other than strict criteria of medical benefit or utility, or placement on the waiting list, is that of the deliberations and decisions, in the early 1960's, of an anonymous committee at the Seattle Artificial Kidney Center (the Seattle Artificial Kidney Patient Selection Committee). Factors such as church membership and Scout leadership were used to determine social worth or predictions about future contributions to the community. Those not conforming to the social standards of the presumably bourgeoisie-laden committee apparently had little chance of a replacement cadaver kidney.

The Oregon Experiment

A more open public policy deliberation in relation to allocation occurred in Oregon in the 1980's. Early in the decade, there were attempts to both educate the public about the dilemmas in health provision, and to elicit suggestions for remedying the situation. An ensuing report appeared to emphasize prevention, collective financing of health care, and an accompanying community involvement in allocation and rationing decisions. The eventual

⁹⁹ Kilner, *Who Lives?*, 221-226. Kilner himself suggests that, if preserving personal self-esteem is a value, and if productivity is valued only in service of the common good, then only the following criteria should be applied: eligibility should be based on medical-benefit, and willingness-to-accept-treatment; then available resources should be used first for those in danger of imminent death, and then for those who satisfy stringent requirements of the special-responsibilities or the resources-required criterion; then if resources are still available, recipients are to randomly selected from the remaining eligible patients - Kilner favours a lottery. Ibid, 230-231. It must be noted, however, that "medical benefit" is not necessarily a neutral measure for allocation decisions. David Orentlicher observes that the treatments that benefit patients are related to a large extent, to decisions about where resources will be directed: surgical approaches have tended to be more richly funded than medical therapies; and when treatments are developed for a particular disease, they are often based on the norm of a patient without any coexisting illnesses, thus those with multiple illnesses are less likely to benefit from treatment. See David Orentlicher, "Deconstructing Disability: Rationing of Health Care and Unfair Discrimination Against the Sick," *Harvard Civil Rights - Civil Liberties Law Review* 31, no. 1 (1996): 70-75. Following from Orentlicher's discussion, and from Iris Young's concerns about marginalization and oppression, one might wonder whether addiction has had the same level of resourcing as has had other disease entities.

legislation, adopted in 1987, reflected the view that the state could not afford to pay for all the health care available for anyone who might want it; among the provisions was the elimination of Medicaid payment for all transplantation procedures except kidneys and cornea - the funds to be diverted to prenatal care for 2,000 "indigent" women.¹⁰⁰ The Oregon experience raises many questions which will not be discussed here¹⁰¹; it is cited as a unique attempt to grapple with difficult issues in a less covert manner than appears often to be the case.

Allocation in Canada

A recent study sponsored by the Canadian Coordinating Office for Health Technology Assessment (CCOHTA) gives disquieting details about allocation in Canada. The study sought to ascertain the criteria used for listing patients on the waiting lists at Canadian solid organ transplant centres. Thirty-two centres participated (94% of the total).¹⁰² Although in general, the centres have similar methods of listing patients, variability was found in selection criteria both within a particular organ group, and between organ types. Besides differences in the importance given to recipient age (for kidneys), employment status (heart), nationality and mental competence (liver), variation was also found amongst the centres in the degree of importance given to alcohol abuse, active tobacco use and illicit drug use, although, in general, most centres were "very" concerned about substance abuse.

¹⁰⁰ Richard A. Rettig, "The Politics of Organ Transplantation: A Parable of Our Time," *Journal of Health Politics, Policy and Law* 14, no. 1 (1989): 219-221.

¹⁰¹ For example, see Robert M. Veatch, "Should Basic Care Get Priority? Doubts About Rationing the Oregon Way," *Kennedy Institute of Ethics Journal* 1 (September 1991): 187-206, in which Veatch expresses concerns about what the application of cost-effectiveness analysis means for the worst-off, and that equity is only a minor consideration compared to efficiency.

¹⁰² Hussein J. Noorani and Lynda McGahan, *Criteria for selection of adult recipients for heart, cadaveric kidney, and liver transplantation* (Ottawa: Canadian Coordinating Office for Health Technology Assessment, 1999), 5.

All heart centres consider abuse of these three substances to be of significant importance: 78% require that the patient follow a formal treatment program prior to activation on the list; 29% ask for a formal contract regarding this; six months of abstinence before transplantation, on average, is required for those with recent substance abuse. All sixteen of the kidney centres consider alcohol abuse and illicit drug use to be of relative importance; and 56% also considered tobacco use in the decision, (although of a lesser degree of importance). Sixty percent of the centres require a formal treatment program prior to being actively considered (22% ask for a formal contract). An abstinence period of from 6 to 12 months is recommended for those abusing alcohol or illicit drug use. All seven liver centres consider alcohol abuse and illicit drug use to be of great importance in listing; 71% of the centres require that a patient follow a formal treatment program prior to active listing, however only one requires a formal contract. A six-month abstinence period appears to be the norm for those with recent alcohol abuse or illicit drug use.¹⁰³

The authors of the CCOHTA report suggest a number of reasons for considering such criteria problematic: it is overwhelmingly a "fault-based" position, problematic in their view, since the question of individual responsibility is not clear-cut, and because it would not be consistent with current medical practice, in that many others who have engaged in risky behaviours are routinely treated; also, they note that the use of an abstinence period on the rate of post-transplant substance use is controversial.¹⁰⁴ It is of interest, in relation to the discussion

¹⁰³ Ibid., 5-7. It is interesting to note that research reported by Beresford indicates that the six-month pre-operative abstinence period bears no statistical relationship to the length of post-transplant abstinence (for liver grafts); furthermore, one third to one half of non-alcoholic dependent recipients had used alcohol in the post-operative period. Beresford, in *Addiction Medicine*, 896.

¹⁰⁴ Ibid., 11.

in the preceding section, that the authors appear not to question whether the "routine" categorization of alcoholism as a disease is an appropriate one to make.¹⁰⁵ They are correct to note that assigning responsibility is difficult, however this particular basis is not so widely accepted as they suggest, at least in the scientific community. However, it may be that this is still a prevalent belief in the transplant community; it may be that Fingarette is correct in suggesting that the disease concept, with its focus on the fact that the disease is incurable, leads the community, if not the heavy drinkers themselves, to despair of much hope for improvement.¹⁰⁶

Beyond Principle

The history of transplantation indicates that the making of "tragic choices" has not always rested on principle. One of the oft-stated complaints is that the decision making process can be seized by compelling media and even White House interventions on behalf of those unable to pay, or those for whom an organ does not become available.¹⁰⁷ Four adverse effects of such coverage are suggested: the patient's situation is no longer private; since public relations campaigns have practically become the norm, there is a fear that we will become inured to such spectacles; the campaigns tend to complicate what should be a more carefully thought out process; and decisions are skewed toward allocating "expensive, highly publicized procedures for a few identified lives [rather than] using those resources to finance basic health care for a larger number."¹⁰⁸ Furthermore, as Havighurst and King note, for those who lack the limelight,

¹⁰⁵ Ibid., 11.

¹⁰⁶ Fingarette, *Heavy Drinking*, 3ff.

¹⁰⁷ Fox and Swazey, *Spare Parts*, 76-77; Rettig, "The Politics of Organ Transplantation," 204; Clark C. Havighurst and Nancy M. P. King, "Liver Transplantation in Massachusetts: Public Policymaking as Morality Play," in Blumstein and Sloan, *Organ Transplantation Policy*, 236-237.

¹⁰⁸ Rettig, "The Politics," 209.

the effects of elected officials "crowding onto the stage of this morality play" could only be left to the imagination.¹⁰⁹ As Rettig suggests, there may be effects on us all, (and possibly more sinister than he has envisioned, since it has been suggested that when there is public perception that one life is being chosen over another, and thus that some lives not worth saving, then it is difficult for a society to maintain the value that life is priceless¹¹⁰). It could be suggested that the addicted who are not offered organs suffer from the same sense of being devalued as any other unsuccessful group, and that their exclusion has a similar corrupting influence on the community.

The funding for transplantation, at least in the U.S., has been inconsistent, decisions being made on organ-by-organ, disease-by-disease, and patient-by-patient bases. The much-touted federal coverage for end-stage renal disease (ESRD), enacted in 1976, which includes coverage for organ acquisition, the transplant procedure, twelve months of postoperative care, the return to dialysis if necessary, and the certification of transplant centres, has not been repeated for the transplant of other organs. It should also be noted that the federal program has not removed all the costs to patients, for example the costs of the lifelong immunosuppressive drugs are reimbursed for only one year; and about 7% of ESRD patients are ineligible for Medicare coverage, related to their status under Social Security: the poor and minorities are disproportionately represented in this group.¹¹¹ Furthermore, Calabresi and Bobbitt suggest that in attempting to provide "kidneys for everyone," the government has sent a message to the public that it prizes the lives of those dying from renal failure more highly than the lives of those

¹⁰⁹ Havighurst and King, "Liver Transplantation in Massachusetts," 237.

¹¹⁰ Guido Calabresi and Philip Bobbitt, *Tragic Choices* (New York: W. W. Norton & Company, 1978), 39.

¹¹¹ Fox and Swazey, *Spare Parts*, 76.

dying from other diseases¹¹²; society is obviously attempting to preserve essential, yet conflicting values.¹¹³

One very interesting study, reported as the 1990's drew to a close, gives some indication of why there is concern when the market enters the provision of health care. Dialysis in the U.S. is provided at both for-profit and not-for-profit facilities; the authors wished to determine whether for-profit ownership had any effect on either patients' survival or the likelihood of their being placed on a waiting list for a renal transplant. The study suggests that those being treated at for-profit facilities have both a higher mortality rate, and are less likely to be referred for a transplant; concern is therefore aroused "about the current system of payment for dialysis services that rewards efforts by the facility to control costs and maintain patient volume but does not provide incentives to maximize clinical outcomes."¹¹⁴ It is suggested elsewhere that imposing standards of quality has been a problem for a number of years in relation to the American ESRD program, related to the limits of current knowledge, and fear of the punitive use of standards and federal intrusion into clinical practice.¹¹⁵

Grave Concerns

One further disquieting aspect of organ transplantation is related to concerns about technology assessment. Given a lack of consensus about human good and human ends, Callahan asserts that assessment could have little substance in relation to the moral or social worth of

¹¹² Calabresi and Bobbitt, *Tragic*, 189.

¹¹³ *Ibid.*, 196.

¹¹⁴ Pushkal P. Garg, Kevin D. Frick, Marie Diener-West, and Neil R. Powe, "Effect of the Ownership of Dialysis Facilities on Patients' Survival and Referral for Transplantation," *The New England Journal of Medicine* 341, no. 22 (1999): 1659, (hereafter cited as NEJM).

¹¹⁵ Norman G. Levinsky, "Quality and Equity in Dialysis and Renal Transplantation," *NEJM* 341, no. 22 (1999): 1693.

proposed advances in technology. He writes:

All it can do, at its best, is develop some figures and projections, some more or less raw data on economic (and social) costs and benefits. It can assess the relative efficacy, and point out the economic consequences and implications of both old and new technologies. But it cannot, by its purported value-neutral methods offer any help whatsoever in judging whether it would be justifiable to bear those consequences. It cannot quantify, or in any way evaluate, the selection of appropriate goals for the use of a technology or determine what costs are humanly and societally *worth* bearing.¹¹⁶

At the end of Fox and Swazey's more than thirty year involvement in both quantitative and qualitative research regarding many aspects of organ transplantation, they wrote:

The largest, most enduring significance of transplanting organs and of devising artificial ones to take their place still resides in the triple themes of uncertainty, gift-exchange, and the allocation of scarce material and nonmaterial resources, in their interrelations, and in the ways they open onto megaquestions of life and death, identity and solidarity, purpose and meaning.¹¹⁷

In 1974 they had written:

...we believe that the largest and perhaps most enduring significance of organ transplantation and dialysis lies in the ethical and existential questions they raise. Problems of uncertainty, meaning, life and death, scarcity, justice, equity, solidarity, and intervention in the human condition are all evoked by these therapeutic innovations. Transplantation and dialysis have played an important role in making such moral and metaphysical concerns more visible and legitimate in present-day medicine.¹¹⁸

The questions and the concerns had remained; the authors, in spite of their appreciation for the immense technical progress with transplants and artificial organs, had decided to leave a field which, in their view, represented "an obdurate, publicly theatricalized refusal" to accept the ageing process and the mortality to which we are all subject. They quote Paul Ramsey's

¹¹⁶ Daniel Callahan, *What Kind of Life: The Limits of Medical Progress* (New York: Simon & Schuster, 1990), 92.

¹¹⁷ Fox and Swazey, *Spare Parts*, xiv.

¹¹⁸ Renée Fox and Judith P. Swazey, *The Courage to Fail: A Social View of Organ Transplants and Dialysis* (Chicago: The University of Chicago Press, 1974), xv.

prophetic argument that we need to "recover a religious sense that death is not an evil that ought always to be opposed."¹¹⁹ Fox and Swazey are concerned by the powerful determination to procure organs, accompanied by a "predatory obliviousness " about the deaths that have contributed the organs.¹²⁰ The tendency to minimize the theme of gift is a concern, as is the related commodification of organs, and a "biological reductionism" by which it is barely acknowledged that organs are living parts of a person that "resonate with the symbolic meaning of our relation to our bodies, our selves, and to each other...."¹²¹ They add:

By our leave-taking we are intentionally separating ourselves from what we believe has become an overly zealous medical and societal commitment to the endless perpetuation of life and to repairing and rebuilding people through organ replacement - and from the human suffering and the social, cultural, and spiritual harm we believe such unexamined excess can, and already has, brought in its wake.¹²²

Thus two knowledgeable and respected authors and researchers separate themselves from a field that has been described as "a parable of our time."¹²³ In relation specifically to the persons who are the focus of this work, it would appear to be no less a "parable," in that, as will be seen in the following chapter, the manner in which they are treated, or not treated, serves as one illustration of the vast range of competing attitudes, values, assumptions and theoretical positions that abound in the West today. Chapter Three will attempt to detail the most prevalent positions - those from both meta-ethical theory, and from a number of the more contextually-specific theories: the overriding interest being the import of the various positions for those willing to take health-related risks.

¹¹⁹ Ramsey, *The Patient as Person*, 238; in Fox and Swazey, *Spare Parts*, 204-205.

¹²⁰ Fox and Swazey, *Spare Parts*, 206.

¹²¹ Ibid., 207.

¹²² Ibid., 210.

¹²³ From the title of Rettig, "The Politics."

CHAPTER THREE

ORGAN TRANSPLANTATION FOR THE ADDICTED ?

The allocation, or not, of organs to those who have engaged in risky behaviour would appear to be a question of both justice and the meaning and implications of the concept of responsibility. The many questions surrounding justice that abound in the bioethics literature appear to many to have, as yet, no resolution; in fact one philosopher has called its meaning, within bioethics, a "mystery."¹ While there is far less examination of the concept of responsibility within that literature, there is a similar lack of resolution of the issues in relation to that concept. What follows in this chapter will not be a resolution of the disputes, rather a focus on the tenor of the discussion in the two areas, first in relation to justice, then to responsibility, with the interest being its effects on the population in question.

I. When the Focus is Justice

Introduction

"Justice" is used in a number of different ways in the bioethics literature. In the first place, it is used to refer to any one of a number of the theories of justice emanating from the comprehensive moral theories to which bioethicists might appeal in the construction of principles or rules for action, the assumption being that comprehensive moral understanding is

¹ Earl Winkler, "Moral Philosophy and Bioethics: Contextualism versus the Paradigm Theory," in L.W. Sumner and Joseph Boyle, eds., *Philosophical Perspectives in Bioethics* (Toronto: University of Toronto Press, 1996), 74.

both possible, and useful, in solving issues at the contextual level. However, many of the references in that literature are not to comprehensive theories, but to the principle of justice - one of the four principles, more popularly referred to as the "Georgetown mantra": autonomy, beneficence, maleficence, and justice. An appeal to these principles, a discernment of the ways in which the principles might be opposed, or how they might be seen to be in interaction in specific dilemmas, has been a large part of North American bioethical procedure since their first articulation in 1978-1979.² Some authors do not distinguish between "justice" and "distributive justice"³; others use the term to refer, as well, to the virtue of justice⁴; and further, when it is a question of social justice, it may still be distribution that is the issue.⁵

The difficulties may partly be due to the fact that North American society, and the bioethics which arose in and which reflects that society, have largely moved away from any unifying moral foundation that would allow consensus on what "complete virtue" or "the other's good" might mean.⁶ As is noted by Doucet, in his history of bioethics in the United States, the

² Initially articulated in the *Belmont Report* as respect for persons, beneficence, and justice. National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, *The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research* (Washington, D.C.: U.S. Government Printing Office, 1978), in *Source Book in Bioethics: A Documentary History*, ed. Albert R. Jonsen, Robert M. Veatch and LeRoy Walters (Washington, D.C.: Georgetown University Press, 1998), 22-28. The following year, the principles were expanded to the four mentioned above, in the first edition of Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics* (Oxford: Oxford University Press, 1979); later editions appeared in 1983, 1989 and 1994.

³ Earl Shelp, "Justice: A Moral Test for Health Care and Health Policy," in Shelp, ed., *Justice and Health Care*, 224.

⁴ *Ibid.*, 226.

⁵ Many of those writing in bioethics appeal to John Rawls's attempt to find a fair scheme for the distribution of primary social goods, in *A Theory of Justice*, (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 1971), 7. It should be noted that the authors cited in this thesis have all based their discussion on this first edition of Rawls's work.

⁶ Aristotle, *The Nicomachean Ethics*, trans. with an introduction by Sir David M. Ross (London: Oxford University Press, 1954), Book V, Chap. 1, 108. The bioethics literature makes reference to Alasdair MacIntyre's *After Virtue*, 2d ed. (Notre Dame, Indiana: University of Notre Dame Press, 1984). The thrust of MacIntyre's thesis is that, without such a foundation, there is no basis for coming to moral agreement.

principles could hardly, in the pluralist, liberal American society, be founded on any clearly articulated, widely accepted overarching theory.⁷ In such a milieu, a broader understanding of justice, such as Aristotle's initial conception, would be difficult to achieve. As well, the milieu, in spite of its "religious resonance," has not been conducive to the contributions from theology and religion, related partly to the "sacredly secular principles of separation of church and state and freedom of belief."⁸ Discussion of "more-than-medical" ethical matters has suffered:

Siphoning off their religious content and framing them in as secular a way as possible provides an institutionally supported, reductionistic way of defining them, which is compatible with the ethos of bioethics and makes them more amenable to logical analysis and technical solution. The problem is that, in the end, this masks their essential nature....⁹

More recently, both within the discipline and within philosophy in general, doubts are arising as to whether a top-down approach is most helpful, and also, whether the "distributive paradigm," should be privileged. There have been recent suggestions that more contextually cognizant approaches, such as an ethics of care, a virtue-based ethics, or a narrative ethics arising from phenomenology, approaches that eschew an unvarying application of some overarching theory or set of principles, can offer far more creative solutions to unique, personal dilemmas.¹⁰ Many feel that such approaches are, in the end, more respectful of persons, more compassionate; others suggest that the distributive paradigm has been the occasion of oppression and distress for many.¹¹ The following sections will focus initially on the comprehensive theories, then on a number of the voices calling for a different approach.

⁷ Doucet, *Au pays*, 63.

⁸ Fox, *Sociology of Medicine*, 233.

⁹ *Ibid.*, 233.

¹⁰ Such as Larry R. Churchill, "Theories of Justice," in *Ethical Problems in Dialysis and Transplantation*, ed. Carl M. Kjellstrand and John B. Dossetor (Dordrecht: Kluwer Academic Publishers, 1992), 24.

¹¹ See Iris Marion Young's *Justice and the Politics of Difference*.

The "Meta - Ethical" Approaches

Turning initially to comprehensive theory, there are a number of related issues: in the first place, which theory of justice to privilege, and in the second and third places, the questions of macroallocation - what percentage of a society's total budget should be apportioned for health, and within health, what portion should be allotted to particular areas; and of microallocation - selection criteria for the specific individuals who should benefit from the scarce resource. Although questions of macroallocation have much relevance for those of microallocation, the focus here will mainly be the latter, since the rationale for including, or not, those thought to be responsible for their poor health are most clearly enunciated at that level, and it is obviously at that level that more subtle discrimination and judgement occur. Questions of macroallocation may well be the focus later in this study, in considering conclusions and recommendations. This section will initially note the various theories of justice which have traditionally appeared in the bioethics literature, and detail the content of that literature where it appears to have a relationship to allocation to the addicted, (with some consideration of differences amongst the American, British and Canadian practices). The section will finally note a number of the new voices that call for a change from the meta-ethical approach: many of them suggesting a less punitive stance toward the "irresponsible."

A Variation in the Manner of Classification

By no means is there agreement, within the relevant literature, on the manner of classifying either the major ethical theories or the theories of justice pertinent to the distribution of scarce health care resources. For example, Earl Shelp, theologian and editor of a number of early texts on health care, appears to have conflated the "major theories of justice" with the

"four ethical traditions" - listing them as 1) utilitarian; 2) contractarian (under which he includes the Rawlsian theory); 3) egalitarian (encompassing a number of bioethicists, such as Frankena, Outka and Veatch); and 4) the Judeo-Christian (of which he believes his own work, as well as that of Charles Curran, are examples).¹²

Beauchamp and Childress, who, in the earlier editions of their foundational text, *Principles of Bioethics*, had divided what they considered to be the well-developed ethical theories into two types: consequentialist (particularly utilitarianism), and deontological (concentrating on the monistic theory of Kant and the pluralistic theory of Rawls),¹³ have, in response to their critics, made subtle changes in terminology and included a number of other "defensible" theories. Thus they now list utilitarianism (a consequence-based theory); Kantianism (obligation-based theory); character ethics (virtue-based theory); liberal individualism (rights-based theory); communitarianism (community-based theory); ethics of care (relationship-based accounts); casuistry (case-based reasoning); and principle-based (common-morality theories).¹⁴ None of these, they suggest, is perfect,¹⁵ although the last, their choice, avoids overarching theory for the middle ground of more-easily accepted principles.¹⁶ They subsequently suggest that the major influential theories of justice include the utilitarian, libertarian, communitarian, and egalitarian.¹⁷

The philosopher, Allen Buchanan, discriminates clearly between comprehensive moral

¹² Earl E. Shelp, "Justice: A Moral Test for Health Care and Health Policy," in Shelp, *Justice and Health Care*, 215-219.

¹³ Beauchamp and Childress, *Principles*, 3rd ed., 25-44.

¹⁴ Beauchamp and Childress, *Principles*, 4th ed., 47-109.

¹⁵ *Ibid.*, 47.

¹⁶ *Ibid.*, 110.

¹⁷ *Ibid.*, 334-341.

theory and theories of justice; he mentions 1) the utilitarian theory of justice (but a part of the comprehensive utilitarian theory - the most influential teleological theory; 2) John Rawls's theory of justice - justice as fairness, (in Buchanan's view, "perhaps the most influential current instance of a deontological theory"); and 3) another deontological theory, Nozick's systematic and influential theory of justice: a version of libertarianism.¹⁸

James Sterba, in the second edition of *The Encyclopedia of Bioethics*, lists five major conceptions of justice: 1) a libertarian conception; 2) a socialist conception, under which he subsumes those theories espousing equality; 3) a welfare liberal conception, whether contractarian (which would include the theory of Rawls), or utilitarian; 4) a communitarian ideal of the common good, which Sterba relates to both Aristotle and to Alisdair MacIntyre; and 5) a feminist conception of justice.

H. Tristram Engelhardt, Jr., in one of the foundational texts in bioethics, focuses his commentary on what he notes are the two radically opposed principles of justice, represented by the conceptions of Robert Nozick (a freedom-based, historical justice), and John Rawls (a goals-based, ahistorical justice).¹⁹

Robert Veatch,²⁰ theologian and bioethicist, has used a classification that is of interest, given that both bioethics and the wider North American culture have moved beyond a sure Christian foundation, but that neither, in his view, has jettisoned entirely its understanding of the good based on that foundation. Thus rather than rigidly separating the Judeo-Christian from

¹⁸ Allen Buchanan, "Justice: A Philosophical Review," in Shelp, *Justice and Health Care*, 4-14.

¹⁹ Engelhardt, *The Foundations of Bioethics*, 1st ed., 349-354. Engelhardt has retained this focus in the second edition (1996) of his text; see pages 391-398.

²⁰ Robert Veatch, *The Foundations of Justice: Why the Retarded and the Rest of Us Have Claims to Equality* (New York: Oxford University Press, 1986).

the egalitarian theories of distributive justice, as does Earl Shelp, Veatch categorizes the egalitarian conceptions of justice as either implicitly or explicitly founded on Judeo-Christian thought. He believes that the former, those espousing a contemporary, secular, pluralist thought that wish to opt for human equality, have a difficult task justifying their position. Their assertions, he suggests, are based on "faith moves," beyond rational thought, and "compatible with, if not based upon, those of the Judeo-Christian tradition."²¹ (One could suggest that Beauchamp and Childress are making such a move in their espousal of a principle-based theory which takes its basic premises from the common morality: "ordinary shared moral beliefs," that transcend merely local customs and attitudes - "unphilosophical common sense and tradition," requiring, they feel, no further foundation.²²)

Veatch further distinguishes the egalitarian theories by their various interpretations of equality: whether equality of respect or worth, of opportunity, of resource commitment, or of outcome.²³ Libertarian and utilitarian theories are listed as explicitly non-egalitarian.

The Veatch Classification

The classification used below to detail the various attempts at comprehensive theory will be that of Veatch. This in no way implies agreement with the policies he derives from his egalitarian theory, however it is of interest, since his foundations are similar to the foundations of this thesis; and since he makes a notable attempt to build a bridge with some of the secular theorists; appears to have a detailed grasp of the significant bioethical writings in this area; and

²¹ Veatch, *Foundations*, 94-95. John Kilner, writing after Veatch's classification, also seeks a Christian foundation for his bioethics: his watchwords are "God-centered, reality-bounded, and love-impelled," in *Life on the Line: Ethics, Ageing, Ending Patients' Lives, and Allocating Vital Resources* (Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 1992), 13-29; and *Who Lives?* 234.

²² Beauchamp and Childress, *Principles*, 4th ed., 100.

²³ *Ibid.*, 119-120.

since his thought raises the important questions of the contribution of theology to secular debates, and of whether there is a distinctively Christian ethic.

Veatch suggests that from Biblical teaching, and from the history of the tradition since the early church, there has been drawn the image of persons as equal, finite, bonded children of a loving, infinite God; and that there is ample recognition that the resources provided both in the original creation, and in on-going co-creation, are to be used in the alleviation of human suffering: humans are but stewards of the gifts which could maintain and restore equality.²⁴ The position he has drawn from this foundation could be considered a radical approach: equality of persons means an equality of outcome, measured over a lifetime. What this means, in practice, for groups such as the retarded (his terminology), is that resources are legitimately drawn from the more fortunately endowed (who, at any rate do not have clear title to those benefits), in order, as far as is possible, to "exactly compensate for the handicap so that all have a chance for equality."²⁵ It could be suggested, against this position, that a greater acceptance, indeed a celebration of difference (provided that all receive the resources best suited to their particular needs), might be more in accord with Christian charity than the attempt to bring all to the same level.

It is clear that Veatch makes a distinction between voluntary and nonvoluntary conditions, in that he suggests that retardation, for example, "is a pure case of a nonvoluntary, objectively disvalued condition, a condition that produces the clearest demand for compensatory

²⁴ Ibid., 21-75. Veatch notes the interesting difference of opinion which was evident from the time of Paul - whether property could, in fact, be held temporarily by individuals, but with conditions attached regarding provision for the less fortunate, or whether property must be held in common.

²⁵ Ibid., 152.

support in an effort to give a better chance at equality."²⁶ When it is a question of individuals who have voluntarily chosen to "use their opportunities unequally," that is, those who can be shown to have voluntarily chosen risky lifestyles, such as smokers, then Veatch's radical egalitarianism would allow unequal treatment, in the form of taxation of the behaviour, or, in extreme cases, the prohibition of the risky behaviour.²⁷ Veatch makes it clear that all should have the choice and the power to make risky life-style choices, and so the intent of added taxes should be, not to prevent the resultant deaths, or to ban risk-takers from receiving health care, but to reimburse the treasury for the extra costs incurred by the behaviour.²⁸ "Truly voluntary" means those for whom it cannot be shown that there were social, psychological, or any other factors influencing one's freedom; it is acknowledged that multicausal theories of disease make such policy decisions difficult, but it is suggested that "the total elimination of voluntarism from our understanding of human behavior is quite implausible," and so for the element of the voluntary in the behaviour, just health care must take it into account.²⁹ (It is interesting that Veatch was writing in 1980, during one of the periodic American discussions of a change in funding for health. Later in this chapter, there will be a focus on whether differing styles of providing health care appear to make a difference to the manner in which those willing to risk are treated.)

a) *The Egalitarian Judeo - Christian Tradition (Explicit and Implicit)*

Veatch lists a number of bioethicists who have emerged from the Judeo-Christian

²⁶ Ibid., 197.

²⁷ Robert M. Veatch, "Voluntary Risks to Health: The Ethical Issues," in JAMA 243 (January 4, 1980): 54.

²⁸ Robert M. Veatch, "Justice and Valuing Lives," in *Life Span: Values and Life-Extending Technologies*, ed. Robert M. Veatch (New York: Harper & Row, Publishers, 1978), 220; and see "Who Should Pay for Smokers' Medical Care?" HCR 4, no. 5 (1974): 9.

²⁹ Veatch, "Voluntary Risks to Health," 50-55.

tradition, and who have based their work, mostly implicitly, on compatible presumptions: among them Ramsey, Outka, Shelp, Curran, Jonsen, Walters, and Childress.³⁰ Without dealing with Veatch's question as to whether there is an adequate foundation for the content of their views, a perusal of the work of some of those coming from that tradition reveals important commonalities: a rejection of a criteria of social worth in distributing scarce resources³¹; a caution against hiding social worth within medical criteria³²; a strong stand for a weighing of the needs of the suffering individual with the common good³³; and an acceptance of egalitarian theories of justice, with subtle differences in their emphases. For example, Outka and Kilner favour equal access based on medical need, while Curran stresses a "proportional" rather than a strict quantitative equality. Those who do mention "meritarian concerns," (Curran's term), are not in favour of taking them into account in relation to scarce resources - the main reason being the difficulty of assessing the degree of personal responsibility,³⁴ (the possible implication being that, could that be assessed, it might be permissible to take it into account). While Ramsey does not focus specifically on the issue, he asserts that the goal for the use of technology must be that

³⁰ Veatch, *Foundations*, 55-56. Stanley Hauerwas makes a similar point, noting that a number of "religious thinkers" (he names Fletcher, Ramsey, Gustafson, Curran and Childress) have done a great deal of work in medical ethics, but that it is often difficult to tell whether their religious convictions have made a difference to their methodology or their response to "specific quandries." They seldom raise questions of meaning, or the relation of salvation and health; in "Salvation and Health: Why Medicine Needs the Church," in Lammers and Verhey, *On Moral Medicine*, 76; from Stanley Hauerwas, *Suffering Presence: Theological Reflections on Medicine, the Mentally Handicapped, and the Church* (Notre Dame, Indiana: University of Notre Dame Press, 1986), 63-83.

³¹ Articulated particularly by Gene Outka, "Social Justice and Equal Access to Health Care," *The Journal of Religious Ethics* 2, no. 1 (Spring 1974): 11-32, in Lamers and Verhey, *On Moral Medicine*, 948-952; by Ramsey, *The Patient as Person*, 251-252; and Kilner, *Who Lives*, 27-41, 221-237.

³² See particularly Ramsey, *The Patient as Person*, 251-252; and Kilner, *Who Lives*, 116-119.

³³ For example, Outka, "Social Justice," 958; Curran, *Transition*, 158; Ramsey, noting the importance of "human life-in community" in *The Patient as Person*, 262-263; and Kilner, *Life on the Line*, 13-29.

³⁴ Curran, *Transition*, 165-166, 170 n. 44; and Kilner, *Who Lives?* 171-173. See also Kilner's *Life on the Line*, 227, and 227 n. 6.

of saving life: one might thus assume that withholding in order to punish or dissuade from risky behaviour would be anathema to him.³⁵ In a related vein, Shelp notes the inconsistency in government policies (and thus, presumably, the inconsistency were the government to deny equal access): it both places warnings about risks on cigarette packages, and subsidizes the farmers who grow tobacco.³⁶

The Influence of John Rawls To return to Veatch's theoretical classification, it is of interest that many of those whom he suggests are only implicitly basing their notions of justice on a Judeo-Christian foundation, appeal to what he characterizes as the "faint-hearted"³⁷ egalitarianism of John Rawls's contractarian theory. Rawls notes that justice, in his use of the term, refers to social justice, and that it is the distribution of the primary social goods that is his focus; his concern is that there can be deep inequalities in the way such goods are distributed, hence his attempt to insert fairness into the manner in which that distribution takes place.³⁸ He suggests that the principles decided upon must be chosen behind a "veil of ignorance," so that choices might not reflect "specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage."³⁹ Rawls suggests that the two principles that would likely be agreed upon,⁴⁰ with no reference to the specificities of particular situations, are

³⁵ Ramsey, *The Patient as Person*, 275.

³⁶ Shelp, "Justice: A Moral Test," 224-225.

³⁷ Veatch, *Foundations*, 80.

³⁸ Rawls, *Theory of Justice*, 1st ed., 7; 2nd ed., 6-9. The second edition clarifies Rawls's meaning of primary social goods as those goods that answer to one's needs as citizens in a well-ordered society, as opposed to their individual preferences and desires; see, *A Theory of Justice*, Revised edition (Cambridge, Mass: The Belknap Press of Harvard University Press, 1999), xiii, and 79-81.

³⁹ *Ibid.*, 1st ed. 136; 2nd ed. 118.

⁴⁰ The two principles, broadly stated, are first, that all primary social goods, including equality of opportunity, and income and wealth, should be distributed equally; and secondly, that inequalities would be tolerated only when they maximize, or at least contribute to, "the long-term expectations of the least fortunate group in society," and when they are attached to offices and positions open to all under conditions of "fair equality of opportunity." *Ibid.*, 1st ed., 150-151ff, and 302-303; 2nd ed., 130-131ff, and see 52-56ff,

those that would, in fairness, unwaveringly apply. As Rawls notes, his proposition belongs to a theory of justice, and that it is another question how well human beings in practical situations in everyday life, as compared to those defined "theoretically" behind the veil, could put aside personal inclinations and attitudes.⁴¹

An evaluation of Rawls's theory is a study in itself⁴²; suffice to note that in literature pertinent to this study, it is his very attempt at ensuring fairness which has been criticized as potentially productive of distress. Iris Marion Young, in her study of justice and oppression, suggests that the attempt at impartiality is an idealized fiction (which Rawls, of course, has pointed out); Young's contention is that the Rawlsian and all such foci on distributive issues can obscure social structures that are oppressive to various groups. Whereas the distributive paradigm assumes an atomistic and static social ontology, distributions in the real world are conditioned by relations and processes in which feelings, values and particular perceptions inevitably enter into the decision-making process.⁴³ It is unthinking and unchallenged structures which perpetuate oppression and domination; the voices of all must be heard in any attempts at redress.⁴⁴ Young contends that an impartial, "reasonable" point of view could not possibly

and 266-267.

⁴¹ Ibid., 1st ed., 147; 2nd ed., 127.

⁴² One interesting critique, that of Michael Walzer, suggests that Rawls incorrectly suggests that there could be one distributive principle for all social goods; he suggests that in a complex, pluralistic society, there could only be a multiplicity of distributive procedures to match the multiplicity of available goods; in *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, HarperCollins Publishers, 1983), 3ff.

⁴³ Young, *Justice*, 75-78. An insightful corroboration of this view occurs in Nancy S. Jecker and Alfred O. Berg, "Allocating Medical Resources in Rural America: Alternative Perceptions of Justice," *Social Science and Medicine* 34, no. 5 (1992): 467-474. The authors suggest that, in rural America, the reality is one of close communities of interrelating responsibilities and involvements, that call for "a richer, more fully encompassing approach to justice" than is possible in more impartial conceptions that separate justice and beneficence.

⁴⁴ Young, *Justice*, 95.

adequately represent the distress of tyrannized groups; where there are privileged groups, their particular experience tends to be universalized as the norm, and the differences tend to be constructed as deviance and inferiority. The partiality of the dominant outlook must be exposed. Real, participatory structures, with the involvement of real people bringing their particularities to the table, are required for real change.⁴⁵

Furthermore, Veatch suggests that Rawls has possibly made incorrect assumptions about how those bargaining in the original position behind the veil of ignorance would distribute resources. As well, Veatch, with Young, argues that, to the extent that it is the well off who are surrendering the claims of justice for the least well off, his principles might be called into question.⁴⁶ Courtney Campbell presents a pointed critique of the "veil of ignorance," suggesting that behind the veil, our morality towards others is but a projected image of rationality and self-interest - an alien morality, foreign to the embodied and relational persons we know ourselves to be.⁴⁷

Finally, Alasdair MacIntyre, in a comparison of Rawls and Nozick, suggests that neither gives any place to *desert* in relation to justice (nor he suggests, could their theories rationally include it). In MacIntyre's understanding, an appeal to desert is consistent with "an older, more traditional, more Aristotelean and Christian view of justice"⁴⁸; his point is that assessing desert is possible only within communities with common understandings of the good for persons and the good for the community. Rawls, on the other hand, makes it a "presupposition of his view"

⁴⁵ Ibid., 116.

⁴⁶ Ibid., 80-83.

⁴⁷ Courtney S. Campbell, "Principlism and Religion: The Law and the Prophets," in Dubose, Hamel and O'Connell, *A Matter of Principles?*, 191.

⁴⁸ MacIntyre, *After Virtue*, 251.

that in a pluralistic society, we must expect not to agree about what the good life, and therefore justice, mean.⁴⁹ It could be suggested, however, that it is MacIntyre who stands to be questioned here: are not love and compassion more distinctively Christian attributes of justice than is desert? It could be argued that if desert, without love, were the predominating notion of justice, the community might not be as cohesive as MacIntyre supposes; (see the related view of Edmund Pellegrino below).

James F. Childress One prominent bioethicist, characterized by Veatch as implicitly founding his thought on the Judeo-Christian tradition,⁵⁰ and who, in an early article, noted that his arguments were greatly dependent on Rawls's version of justice as fairness,⁵¹ is James Childress. His focus, in that article, is on values to be preserved: individual dignity, equality of opportunity, and the trust that preserves the "intrinsic worth" of the physician\patient relationship.⁵² He uses Rawls's veil of ignorance to suggest that amongst those who are medically acceptable, random selection, rather than any recourse to social worth criteria, would best preserve the values he holds⁵³; he takes the minimalist view that behind the veil, persons are self-interested.⁵⁴

It is of interest that by the late 1970's,⁵⁵ Childress has moved from the language of value to that of principlism. The focus is the application of the principles of autonomy, beneficence,

⁴⁹ Ibid., 250.

⁵⁰ Veatch, *Foundations*, 55.

⁵¹ James F. Childress, "Who Shall Live When Not All Can Live?" *Soundings* 54 (1970): 350 n*.

⁵² Ibid., 349.

⁵³ Ibid., 348-349. Childress would, in extreme situations of e.g., national emergency, allow social worth to enter. Ibid., 353-354.

⁵⁴ Ibid., 350.

⁵⁵ In 1979, Childress co-authored, with Tom Beauchamp, *The Principles of Bioethics* (New York: Oxford University Press); the theoretical foundations were clearly enunciated: Beauchamp's within rule utilitarianism and Childress's within rule deontology. Also see Childress's "Beneficence and Health Policy," in *Beneficence and Health Care*, ed. Earl E. Shelp, *Philosophy and Medicine*, vol. 11, ed. H. Tristram Engelhardt, Jr. and Stuart F. Spicker (Dordrecht: D. Reidel Publishing Company, 1982), 223-238.

nonmaleficence, and justice to questions such as governmental intervention in lifestyle and behaviour patterns. His conclusion in the *Shelf* volume is that coercive governmental intervention may be justified, but only after good empirical evidence of adverse effects and the voluntariness of such patterns.⁵⁶ With such evidence, Childress could support the individuals in question bearing the costs of the resulting ill health:

The principle of beneficence does not *require* that society bear the costs of ill health resulting from an individual's voluntary risk-taking. But society's conception of itself as benevolent, even as compassionate and caring, may lead it to provide medical care for the truly needy even if they voluntarily assumed major risks.⁵⁷

In this same volume, Childress stresses the importance of making a very clear distinction between enforcing a certain lifestyle in the name of health, from that in the name of morality; he suggests that morality may account for the choice of lifestyle risks chosen for policy direction: for example the upper middle-class appears to have a stronger opposition to smoking than to drinking.⁵⁸

The Principles of Bioethics contends that withholding societal funds from individual risk-takers can be justified only if causal factors in morbidity can be clearly identified, and if the personal activities can be shown to be autonomous. Although both are difficult, if not impossible - given the complexity of causal links,⁵⁹ the roots other than autonomous choice of much behaviour, lack of knowledge about health risks, and the concern about privacy were

⁵⁶ Ibid., 236.

⁵⁷ Ibid., 233.

⁵⁸ Ibid., 235. Childress quotes the language of vice used by John Knowles in his criticism of individual lifestyles: "the cost of sloth, gluttony...alcoholic intemperance...sexual frenzy," in John H. Knowles, "The Responsibility of the Individual," in John H. Knowles, ed. *Doing Better and Feeling Worse: Health in the United States* (New York: W. W. Norton, 1977), 57-80.

⁵⁹ The fourth edition of their *Principles* lays more stress than do the other three on the virtual impossibility of isolating causal factors for many cases of ill health, 359.

individual lives to be policed - the authors contend that it would not be unfair to exact some form of payment:

It would, nonetheless, be fair to require individuals who engage in certain risky actions that result in costly medical needs to pay higher premiums or taxes. Risk-takers might be required to contribute more to particular pools such as insurance schemes or to pay a tax on their risky conduct, such as increased tax on cigarettes....These requirements may fairly redistribute the burdens of the costs of health care, and they may deter risky conduct without disrespecting autonomy.⁶⁰

Beauchamp and Childress would appear to pay insufficient attention to the strong element of governmental ambivalence in the areas of addiction to alcohol and tobacco; absent, in the view of this thesis, is an element of compassion sufficient to truly accommodate the human condition ("all fall short...."). As well, there appears to be the acceptance of the common belief that restrictive measures deter risky conduct; this in fact, given the discussion in Chapter 2, appears to be a matter still being debated in the complex area of addiction.

One example of the specifically utilitarian aspect of the Beauchamp\Childress discussion is related to whether cost-benefit analysis (CBA) might be used to justify the exclusion of risk-takers. They note that CBA might actually show that the push to avoid health risks could be seen as increasing health expenditures rather than lessening them, since risk-taking may result in earlier, quicker, thus less costly, deaths.⁶¹ While the arguments cited are obviously meant to show that appeal to CBA could be tricky and counterintuitive, their inclusion in the discussion is, in the view of this thesis, an example of a minimalist ethic, and one example of why utilitarianism should not be the privileged theory in health care. On the other hand, the authors do take exception to Moss and Siegler's utilitarian contention that providing organs to those

⁶⁰ Beauchamp and Childress, *Principles*, 4th ed., 360.

⁶¹ *Ibid.*, 359-360.

who have engaged in risky behaviour would reduce support for programs such as liver transplantation: they suggest that it would be unjust to allow existing prejudices about alcoholics to determine who receives a transplant, particularly in relation to those who have shown some determination to change their "alcohol habits."⁶²

Another relevant suggestion of Childress is that if a patient's continued heavy use of dangerous substances might reduce the probability of a successful transplant, then neither "medical utility nor justice" requires that the patient receive an organ under conditions of scarcity⁶³: the assertion supposes that it can be known with certainty whether a patient will continue the heavy use, and it neglects to suggest that an act of love (as opposed to one of utility or justice) might be a motivating factor in ending the heavy use.⁶⁴

Still later, in 1996,⁶⁵ and echoing the altered discussion in the fourth edition of *Principles*, Childress notes the other principles, besides those included in the "Georgetown mantra," that must be balanced in relation to allocation of organs: the principles of liberty, equality, utility and community: "balancing" implies that to privilege any one principle could lead to injustice.⁶⁶ Of interest to a theme in this work which will be elaborated below, Childress maintains that organs belong to the community, and that their allocation must involve public

⁶² Ibid., 360-361. The authors refer to Alvin H. Moss and Mark Siegler, "Should Alcoholics Compete Equally for Liver Transplantation?" *JAMA* 265 (March 13, 1991): 1295-1298.

⁶³ James F. Childress, "Some Moral Connections Between Organ Procurement and Organ Distribution," *The Journal of Contemporary Health Law and Policy* 3 (1987): 101.

⁶⁴ In fact Beresford speculates that, in the giving of a liver graft to an alcoholic patient, the transplant team may have served the purpose of signalling their belief in the patient's human worth, thereby offering one of the factors shown to be necessary in helping the patient maintain abstinence post-operatively. In Beresford, "Liver Transplantation," in *Principles of Addiction Medicine*, 894.

⁶⁵ James F. Childress, "Ethics and the Allocation of Organs for Transplantation," *Kennedy Institute of Ethics Journal* 6, no. 4 (1996): 397-401.

⁶⁶ Ibid., 398.

participation, justification and accountability.⁶⁷

Norman Daniels Norman Daniels represents another egalitarian concept of justice, and another thinker making reference to Rawls. It is expressed as a fair equality of opportunity to attain what Daniels refers to as "species-normal functioning"; for his purposes, Daniels draws a fairly sharp line between health-care which meets important categories of need, and other uses which meet other social or individual goals, such as cosmetic surgery.⁶⁸ Daniels is basing his concept on Rawls's first edition, but extending it, since Rawls does not specifically include health on his list of primary social goods.⁶⁹ Daniels suggests that Rawls's focus on opportunity to compete for jobs and offices could be extended, in that poor health would be a "discriminatory impediment" to individual choice of life plan.⁷⁰ Daniels notes:

On this view, shares of the normal range will be *fair* when positive steps have been taken to make sure that individuals maintain normal functioning, where possible, and that there are no other discriminatory impediments to their choice of life plans. Still, fair shares are not equal, since individual talents and skills will still differ, and these form a natural baseline against which individual shares of the normal range are defined.⁷¹

It could be suggested that both Rawls and Daniels give insufficient attention to those whose talents and skills predispose them to fewer shares of this life's goods. Unless there is specific commitment to make sacrifices for the benefit of the least advantaged, the Rawlsian notion that inequality can be tolerated only if it benefits the least advantaged rings hollow. As Veatch notes, offering equality of opportunity is not necessarily just; it is extremely difficult to determine

⁶⁷ Ibid., 400.

⁶⁸ Norman Daniels, *Just Health Care*, Studies in Philosophy and Health Policy (Cambridge: Cambridge University Press, 1985), 30, ff.

⁶⁹ Rawls's list of primary social goods, "to give them in broad categories, are rights and liberties, opportunities and powers, income and wealth." A sense of one's own worth is also considered an important primary good, but is listed separately, in *A Theory of Justice*, 92.

⁷⁰ Ibid., 57.

⁷¹ Ibid., 57.

whether it has been provided, or whether extraneous factors have been influential in the provision of opportunity.⁷² Daniel Callahan offers cogent comment on Daniels' proposals; given the introduction of costly new technologies, the pursuit of the overly thin, formal concept of "species-typical functioning" can only be achieved for some, at the expense of the many. As well, medical progress has forced a redefinition of normality, and the possibility that normal may, in fact, mean optimal.⁷³ Technological developments have meant that medical "needs" can no longer be precisely defined.⁷⁴

Faced with the question of health care for those who engage in risky behaviour, Daniels appears caught between the American dream of freedom and acknowledgement that some behaviour is not fully under individual control. Thus the dilemma:

The worry that certain sanctions would be unjustifiably paternalistic stops us in one direction. The worry that redistributive measures would be punishing those not fully responsible stops us in another direction....We compromise by taking minimal steps toward making sure relevant information is present.⁷⁵

Daniels has recently admitted that general distributive principles such as his own "fair equality of opportunity" fail to yield specific solutions to rationing problems: they provide no adequate reasons for choosing among claimants.⁷⁶ Daniels has also become concerned that adequate justification for rationing decisions has not always been offered to the public, whether the system in question be private or publicly funded.⁷⁷ That this is particularly true for the tragic

⁷² Veatch, *Foundations*, 124-136.

⁷³ Daniel Callahan, "Is Justice Enough? Ends and Means in Bioethics," HCR 26, no. 6 (1996): 9.

⁷⁴ Daniel Callahan, "Symbols, Rationality, and Justice: Rationing Health Care," *American Journal of Law and Medicine* XVIII, nos. 1 & 2 (1992):10.

⁷⁵ Daniels, *Just Health Care*, 159.

⁷⁶ Norman Daniels, "Meeting the Challenges of Justice and Rationing," HCR 24, no. 4 (1994): 27.

⁷⁷ Norman Daniels and James Sabin, "Limits to Health Care: Fair Procedures, Democratic Deliberation, and the Legitimacy Problem for Insurers," *Philosophy and Public Affairs* 26, no. 4 (1997): 303-350.

choices around the use of expensive, scarce technology, and that it is particularly true in relation to organs for the addicted, will be discussed below. A more recent proposal of Daniels will also be mentioned below: an attempt to fashion a compromise between the "theorists," the "principlists," and the "contextualists" and "casuists."⁷⁸

b) *The Utilitarian Approach*

The utilitarian approach, whose adherents refer most frequently to Jeremy Bentham and John Stuart Mill, seeks, simplistically stated, to achieve the greatest balance of benefits over harms for the greatest number. This consequentialist view admits of at least two types: rule and act, although it is clear that, in the literature, there is a wide range of interpretations of the foundational tenets. One well-known, early appeal to a utilitarian concept of justice in bioethics is that of Nicholas Rescher, who contrasts his approach with an "unreconstructed utilitarianism" that does not sufficiently consider just individual claims to the particular good being considered for distribution.⁷⁹ In relation to the allocation of "exotic medical lifesaving therapy," he asserts that "moral philosophers of the present day are pretty well in consensus that the justification of human actions is to be sought largely and primarily - if not exclusively - in the principles of utility and of justice."⁸⁰ He uses these principles to construct a framework for rationing scarce resources; utility justifies the use of a factor such as "potential future contribution" as a criterion

⁷⁸ Norman Daniels, "Wide Reflective Equilibrium in Practice," in L. W. Sumner and Joseph Boyle, eds., *Philosophical Perspectives on Bioethics* (Toronto: University of Toronto Press, 1996), 115-142.

⁷⁹ Nicholas Rescher, *Distributive Justice: A Constructive Critique of the Utilitarian Theory of Distribution*, (Indianapolis: The Bobbs-Merrill Company, Inc., 1966), 48-58.

⁸⁰ Nicholas Rescher, "The Allocation of Exotic Medical Lifesaving Therapy," in *Ethical Issues in Modern Medicine*, ed., with an intro. by Robert Hunt and John Arras, 1st ed. (Palo Alto, California: Mayfield Publishing Company, 1977), 435. It is of interest that Rescher's article does not appear in the 4th edition, which is edited by Arras and Bonnie Steinbock (1995).

of selection, while justice would allow a factor such as "past services rendered"⁸¹; relative likelihood of success, life-expectancy and family responsibilities are also considered as final criteria. Rescher does acknowledge that there could be difficulties in applying such "distasteful" criteria, but accepts both that they are justified, and implicitly, that the technology which necessitates their use is also justified.⁸² In the event of there being scarce resources for a group of very similar potential recipients, Rescher would preserve at least the appearance of fairness, and a modicum of self-respect, by resorting to random selection.⁸³

More carefully reasoned discussions of utilitarianism appear in the introductory chapter of the book in which the Rescher article appears,⁸⁴ and particularly, in earlier editions of Beauchamp and Childress's *Principles of Biomedical Ethics*. In the former, Hunt and Arras discuss both utilitarianism and "Kantianism" as viable approaches in bioethics⁸⁵; they suggest both that it may be that one single ethical theory will not be adequate to solve all dilemmas, and that possibly a synthesis of the two mentioned could be useful: they do not elucidate such a synthesis.⁸⁶ Beauchamp and Childress, in the first three editions of their *Principles*, attempted such a synthesis by extracting a number of principles that would satisfy the demands of both. The authors noted that disagreements at the level of theory and its justification do not necessarily lead to disagreements in practical moral deliberation, but also that, at times, more

⁸¹ Ibid., 432-435.

⁸² Ibid., 434.

⁸³ Ibid., 440.

⁸⁴ Robert Hunt and John Arras, "Introduction: Ethical Theory in the Medical Context," in *Ethical Issues*, 1st ed., 2-24.

⁸⁵ It should be noted that, in the 4th edition of this book, Arras and Steinbock have also included consideration of contractarian ethical theory, rights theory, feminism and the ethic of care, communitarian thought, and virtue-based ethics, 17-33.

⁸⁶ Ibid., 44-45.

is made of the distinction than is necessary, since "some deontological theories are...closer in substantive principles and rules to some utilitarian theories than to other deontological theories."⁸⁷ In fact, it is the importance placed on principles and rules that appears to be the unifying factor for these authors:

Whether one takes the utilitarian or the deontological standpoint no doubt makes a significant difference in the moral life, especially for the theory of justification. Nevertheless, the differences between these two types of theory are exaggerated when they are presented as two warring armies locked in endless combat. We find that some (not all) forms of rule utilitarianism and rule deontology lead to virtually identical principles and rules and recommended actions. It is possible from both utilitarian and deontological standpoints to defend the same principles (such as respect for autonomy and justice) and rules (such as truth telling and confidentiality) and to assign them roughly the same weight in cases of conflict. These two types of theory can be drawn still closer if utilitarians take a broad view of the values underlying the rules and include indirect as well as direct and remote as well as immediate consequences of classes of acts, and if deontologists agree that moral principles such as beneficence and nonmaleficence require us to maximize good and minimize evil outcomes and to trade off some values for the sake of other values.⁸⁸

The conflation of these two approaches did not disallow the minimalist nature of the discussion of CBA's, noted above.⁸⁹

c) *The Libertarian Approach*

When one turns to a libertarian theory of justice, the author traditionally cited within the bioethics literature has been H. Tristram Engelhardt, Jr. The first edition of his well-known textbook, *The Foundations of Bioethics*, appeared to be widely based on the work of the libertarian political philosopher, Robert Nozick. In the second edition of his text, Engelhardt

⁸⁷ Beauchamp and Childress, *Principles*, 3rd ed., 46-47.

⁸⁸ Ibid., 44. In the authors' fourth edition, the focus on the principles and rules remains, however they suggest that "feelings, perceptions, case judgements, practices, parables, etc." should be linked with them in our moral thinking; in *Principles*, 4th ed., 111.

⁸⁹ See pages 14-15.

makes it clear that the designation was incorrect; neither book espouses a concrete moral perspective; neither "claims a value for individual choice, freedom, or liberty."⁹⁰ The perception arose, he suggests, from his assertion, echoed in the second edition, that in a pluralist, secular society (one no longer hearing God, and unable to find rational arguments to resolve moral controversies), moral authority can only be derived from the agreement established amongst the autonomous individuals involved. Peaceable negotiation is the only alternative to force. The resulting procedural ethic binding such moral strangers "has by default an unavoidably libertarian character"; he had himself assigned no value to freedom or individual choice.⁹¹

In the second edition of his book, as in the first, Engelhardt makes a clear distinction between humans and persons. Within a strictly secular ethic, "persons, not humans, are special."⁹² Only the former - members of the moral community - have intrinsic moral standing by reason of their self-consciousness, rationality, and ability to be concerned with the worthiness of blame and praise: the possession of a "minimal moral sense."⁹³ The latter - infants, the profoundly retarded, the severely senile, etc. - may be thought of as persons for "social considerations,"⁹⁴ however the author notes that the usefulness of the appellation "social sense of person" would have to be justified "in terms of various utilitarian and other consequentialist considerations,"⁹⁵ (a suggestion which highlights the minimal content of what Engelhardt assumes is possible in secular society, and a position which will be seen to be echoed by some analytic philosophers later in the thesis).

⁹⁰ Engelhardt, *Foundations*, 2nd ed., x.

⁹¹ Ibid., x.

⁹² Ibid., 135.

⁹³ Ibid., 139.

⁹⁴ Engelhardt, *Foundations*, 1st ed. 116-121; 2nd ed. 146-151.

⁹⁵ Ibid., 2nd ed. 147, and 1st ed. 116.

As noted earlier in this chapter, Engelhardt's discussion of justice is focused on the striking contrast between the work of Robert Nozick and John Rawls⁹⁶; Engelhardt notes that to contrast Nozick with Rawls is to juxtapose two radically different understandings of what counts as justice. Whereas Rawls presumes that just distributions are open to rational discovery, and further that "societally based entitlements are morally prior to privately based entitlements," Nozick suggests that just distributions depend on what free individuals have agreed to do with and for one another; plus private ownership is sacrosanct.⁹⁷ For Nozick, the results of the natural and social lotteries are unfortunate, but not unfair unless coercion is involved; thus given the presumption of mutual respect and the inviolability of private property, unfortunate outcomes do not create obligations in justice. Nozick summarizes his entitlement conception thus:

From each according to what he chooses to do, to each according to what he makes for himself (perhaps with the contracted aid of others) and what others choose to do for him and choose to give him of what they've been given previously (under this maxim) and haven't yet expended or transferred.⁹⁸

Based on this, Engelhardt can claim that, within a secular ethic, the fact that "some do not have funds to pay for health care does not of itself create a societal obligation of redress,"⁹⁹ and further, (in relation to this study), that it will be morally acceptable for a society to exclude patients who "through their own choices increase the cost of care": there is no invidious discrimination involved in setting limits to coverage, although societies may charitably decide

⁹⁶ It should be noted that Engelhardt's discussion in both editions is based on the first edition of Rawls's *A Theory of Justice*.

⁹⁷ Engelhardt, *Foundations*, 1st ed. 349-352; 2nd ed. 391-395.

⁹⁸ Robert Nozick, *Anarchy, State, and Utopia* (New York; Basic Books, 1974), 160.

⁹⁹ Engelhardt, *Foundations*, 1st ed. 352; 2nd ed. 395.

to provide care.¹⁰⁰

In summary, this focus on a number of theories and the bioethicists who subscribe to them with varying degrees of rigidity, was meant to ascertain whether there is a significant difference between them when the question is the provision of scarce resources to those willing to take risks with their health. The difference would appear to be minimal; most, if presented with clear evidence that risky behaviour is voluntary, suggest that there could be a penalty of some form, although amongst them, only the libertarians are able to suggest that "no treatment" is a morally defensible option. For the most part, there is some wish to penalize the risk takers in a variety of ways, although many are held back by the difficulties attendant on separating the causal factors involved in illness. Making a deliberate choice to offer treatment to this group - in order to redress the unfairness of the social and natural lotteries, or as an act of compassion and love that might spark an ability to make lifestyle changes, or simply as a loving response before a wounded "other" - is not often considered.

"Justice" in Health Care Systems Other than the American

Another manner of assessing differing response is to peruse the literature arising from quite different health care systems. Up to this point, the focus has been the American system, simply because the social, cultural, and intellectual "happening"¹⁰¹ that is bioethics arose within the American system and produced an abundance of theorists and writers whose works are widely disseminated throughout North America and beyond. It might be supposed that the

¹⁰⁰ H. Tristram Engelhardt, Jr., "Shattuck Lecture: Allocating Scarce Resources and the Availability of Organ Transplantation: Some Moral Propositions," *NEJM* 311, no. 1 (1984): 70.

¹⁰¹ Thus characterized by Renée C. Fox in "The Evolution of American Bioethics: A Sociological Perspective" in George Weisz, ed., *Social Science Perspectives on Medical Ethics* (Dordrecht: Kluwer Academic Publishers, 1990), 201.

literature arising from the apparently more compassionate British and Canadian systems would be less punitive than the American: an avowedly two-tier system, attempting equity, but only for those who happen to have coverage, and content to leave a large percentage with minimal care.¹⁰² There are interesting differences amongst the different literatures, but not dramatic in relation to this topic; and within any one system, there is a spectrum of attitudes.

The British Health Care System

Focusing initially on the British writing, it should be noted that not only does the health care system differ from the American, in that all are covered for a certain basic level of health under the National Health Service, but that difference is made possible by a different national ethos: a less individualistic focus, greater acceptance of hierarchical social relations, and little recourse to legal action to pressure the government for more resources (this partly the result of financial impediments to suit).¹⁰³ Macroallocational decisions have meant that far less is spent *per capita* on health than in the U.S.; the tightly regulated spending levels in the British system have meant that "both doctors and patients have adjusted to severe resource limitations"; this has meant the denial of "useful and even lifesaving care."¹⁰⁴ For example, in 1984, when Aaron and Schwartz were writing, the overall rate of treatment of chronic renal failure in Britain was one-half of that in the U.S., and although kidneys were transplanted at a comparable rate, dialysis was carried out at one-third the rate in the U.S.¹⁰⁵ The authors' research suggests that

¹⁰² Daniel Callahan has noted the increasing numbers of Americans without health insurance - "nearly 40 million" in 1989, in "Rationing Health Care: Will it be Necessary? Can it be Done Without Age or Disability Discrimination?" *Issues in Law and Medicine* 5, no. 3 (1989): 353; in the same year, Rettig mentions the "estimated 33 million or more" uninsured Americans, in "The Politics," 218.

¹⁰³ Henry J. Aaron and William B. Schwartz, *The Painful Prescription: Rationing Hospital Care*, Studies in Social Economics (Washington, D.C.: The Brookings Institution, 1984), 110-112.

¹⁰⁴ *Ibid.*, 100.

¹⁰⁵ *Ibid.*, 28.

some cost-cutting measures such as the age limit for dialysis are more unofficial than real, (perpetuated by family physicians who assume patients older than 55 will not be accepted, even if referred).¹⁰⁶ Nevertheless, painful decisions are made; Aaron and Schwartz speak of the manner in which this is rationalized:

Resource limits put doctors in a position that many of them find awkward. Trained to treat illness, they find they are unable to provide all the care from which their patients might derive some positive medical benefit. Even if such limits accurately reflect the social or political judgement that the expected benefit of care is worth less than the cost, balancing of costs and benefits is not part of the training or professional ethics of most physicians. Wherever possible, therefore, British doctors seem to seek medical justification for decisions forced on them by resource limits. Doctors gradually redefine standards of care so that they can escape the constant recognition that financial limits compel them to do less than their best.

By various means, physicians and other health care providers try to make the denial of care seem routine or optimal. Confronted by a person older than the prevailing unofficial age cut off for dialysis, the British GP tells the victim of a chronic renal failure of his family that nothing can be done except to make the patient as comfortable as possible in the time remaining. The British nephrologist tells the family of a patient who is difficult to handle that dialysis would be painful and burdensome and that the patient would be more comfortable without it....Cardiologists focus on the relatively narrow class of cases in which coronary artery surgery demonstrably increases survival rates, or in which anginal pain is disabling, and downplay the cases in which the pain is less severe.

In each instance, physicians are asserting that the treatment is *medically* optimal or very close to optimal, that patients denied care or provided alternative forms of care because of budget limits lose essentially nothing of medical significance.¹⁰⁷

This situation appears to have had predictable results for the content of the debate in British journals. A perusal of relevant articles, mainly in the *Journal of Medical Ethics*, over a 20 year period indicates, first of all, far less reliance on "principlism" than is evident in North American journals.¹⁰⁸ While there is reference to John Stuart Mill more than to other theorists,

¹⁰⁶ Ibid., 104.

¹⁰⁷ Ibid., 101.

¹⁰⁸ Although, *contra* this generalization, see Raanon Gillon's use of the "Georgetown mantra," in "On giving preference to prior volunteers when allocating organs for transplantation," JME 21, no. 4 (1995): 195-196; Gillon would not use "fault" as a criterion in distributing scarce medical resources - it is more useful in

there does not appear to be an overwhelming utilitarian ethos, especially in relation to risk-related illnesses.¹⁰⁹ Central government planning is an easy target for frustration in relation to scarce resources; while ageing and the high expectations for technological "fixes" are certainly noted as having been instrumental in raising costs,¹¹⁰ there is negative comment about the inadequate level of the rigidly fixed allotment for health,¹¹¹ with much discussion about how intimately the general public should be involved in setting the priorities within any given allotment.¹¹² As might be expected from Aaron and Schwartz's findings regarding the manner in which scarcity is justified, there appears to be, increasingly over the years, a call for more of a relation of partnership between physician and patient.¹¹³ For the most part, there is a view that those responsible for their poor health should not be penalized.¹¹⁴ The approach is both pragmatic (the presence of too many imponderables were risk takers asked to pay¹¹⁵), and based on fairness (if the use of tobacco and alcohol were to be curtailed, or if treatment were to be contingent on no risk taking, then many other lifestyle choices and behaviours should be

relation to legal justice.

¹⁰⁹ See, for example, Sir Douglas Black, "Paying for health," *JME* 17, no. 3 (1991): 117-123; however, for a utilitarian approach, see Michael J. Langford, "Who should get the kidney machine," *JME* 18, no. 1 (1992): 12-17; Langford is a bioethicist now practising in St. Johns, Nfld. See also a utilitarian rebuttal to Lamb, n.222 below: Gavin Mooney, "QALYs: are they enough? A health economist's perspective," *JME* 15, no. 3 (1989): 148-152.

¹¹⁰ For example, see Edward M. Meyer, "Help yourself to good health?" *JME* 5, no.1 (1979): 4-8.

¹¹¹ See David Lamb, "A plea for a touch of realism," *JME* 16, no. 3 (1990): 134-135; John Rawles, "Castigating QALYs," *JME* 15, no. 3 (1989): 143-147.

¹¹² For example, see two related articles: P. A. Lewis and M. Charney, "Which of two individuals do you treat when only their ages are different and you can't treat both?" *JME* 15, no. 1 (1989): 28-32; and David Lamb, "Response: Priorities in health care: reply to Lewis and Charney," in the same volume: 33-34; and Basil A. Stoll, "Choosing between cancer patients," *JME* 16, no. 2 (1990): 71-74.

¹¹³ Dame Elizabeth Ackroyd, "A rejection of doctors as moral guides," *JME* 10, no. 3 (1984): 147; and Neville W. Goodman, "Resource allocation: idealism, realism, pragmatism, openness," *JME* 17, no. 4 (1991): 179-180.

¹¹⁴ One of the exceptions is Roger C. Sider, "Patients' ethical obligation for their health," *JME* 10, no. 3 (1984): 138-142; doctors are "moral guides in the realm of health," and patients disregard their advice at the risk of "violating fundamental ethical obligations and invit[ing] justifiable disapproval": 142.

¹¹⁵ *Ibid.*, 147.

included,¹¹⁶ and there would have to be robust preventive measures and the banning of advertising and sponsorship¹¹⁷). One might wonder, however, whether, since many microallocational decisions appear to be made in a covert manner, and since they appear to be so easily justified under medical criteria, the addicted are actually denied life-saving technology more often than the bioethics literature would suggest.¹¹⁸

One interesting study focused specifically on whether an alcoholic workman who had expressed suicidal thoughts would be chosen for a scarce dialysis machine. Although he was consistently the last candidate chosen by the medical and nursing students participating in the research, (he was competing with a student with an acute condition, a mother with two children, and a professional man with chronic renal failure), there was eventual agreement amongst the group that their choice could not be defended on "rational moral grounds." (The real situation from which the study took its details was actually solved by juggling resources in such a way that all were accommodated.) It is of interest to note that the authors of the study point to the importance of the doctor's not denying to the workman his inherent value, a value they suggest that only the physician may be in a position to willingly defend. The authors also appeal to an early article by James Childress, wherein he upholds the values inherent in a relationship of trust between physician and patient:

Society may have a stake in protecting the patient-physician relationship and the delivery of health care from the economic language of investment and return. It may

¹¹⁶ Hugh V. McLachlan, "Smokers, virgins, equity and health care costs," *JME* 21, no. 4 (1995): 209-213.

¹¹⁷ Brian Smart, "Fault and the allocation of spare organs," *JME* 20, no. 1 (1994): 27-30.

¹¹⁸ In fact, when one turns to the medical journals, there is reported empirical evidence of a strong bias (amongst the general public, family doctors and gastroenterologists) against giving any priority for allograft to those whose liver disease appears to be related to alcohol consumption. In James Neuberger *et al.*, "Assessing priorities for allocation of donor liver grafts: survey of public and clinicians," *British Medical Journal* 317 (July 18, 1998): 172-175.

value the relationship of "personal care" even when it is not productive. If the physician looks through the patient to society and tries to realize society's goals, the relationship of personal care and trust would be radically altered.¹¹⁹

One might suggest that the authors' admirable concern for inherent value, and the importance of the physician/patient relationship did not require Childress's sanction. This points to another, increasing, feature of the British literature: as bioethics becomes more professionalized, and more international in scope, the references from other jurisdictions increase, particularly the American. This, in spite of what has been called the "American-ness," the "provincial" style, of American bioethics: it has been critiqued for ignoring its embeddedness in the American ethos, while assuming that its moral view is transcultural.¹²⁰ It is apparent that other cultures also make that assumption.

The Canadian Health Care System

The Canadian situation is an even more striking example of this trend than is the British. In spite of a health care system of socialized insurance based on the principles of comprehensiveness, universality, accessibility, portability and public administration,¹²¹ a perusal of both the bioethics literature and the content of conference presentations arising from that system reveals a strong reliance on the theoretical trends in vogue in the United States. The litany of instructive cases is largely drawn from the American experience, and the methodology is overwhelmingly based on the application of the "Georgetown mantra." One could wonder, with Hubert Doucet, whether this style of bioethics has not been one of the factors contributing

¹¹⁹ James Childress, "Priorities in the allocation of health care resources," in *No Rush to Judgement*, ed. D.H. Smith and L.M. Bernstein (Bloomington, Indiana: Poynter Center, 1978), 285, in K.M. Boyd and B.T. Potter, "Priorities in the allocation of scarce resources," *JME* 12, no. 4 (1986): 200.

¹²⁰ Fox, *Sociology of Medicine*, 231.

¹²¹ Roy, Williams, and Dickens, *Bioethics*, 95-96.

to the erosion of the importance of solidarity, so central to the foundation of the Canadian system.¹²² As illustration, one turns to the Canadian publication - *Ethical Problems in Dialysis and Transplantation*, in which some prominence is given to the views of the above-mentioned American scholar, H. Tristram Engelhardt, Jr. Although he is obviously writing for an audience beyond the Canadian borders, there is no acknowledgement that the Canadian experience offers any counter-argument to his views. In spite of the relatively successful Canadian experiment in redistributing funds to those most in need, Engelhardt reiterates the somewhat minimalist caution that there are limits to "secular moral reasoning and secular moral authority" - limits which would not justifiably forbid a private tier of access to healthcare such as hemodialysis and organ transplantation.¹²³

A number of the more prominent Canadian bioethicists suggest that measures of social worth or need are inadmissible as criteria for selection,¹²⁴ but that whether the addicted should be considered remains an issue upon which there is as yet no consensus. For example, in relation to the latter, Roy, Williams and Dickens suggest that the vigorous debate amongst both medical specialists and ethicists is partly related to determining whether addiction to tobacco and alcohol are to be regarded "as a moral or personal failing, a socially-conditioned behavioural

¹²²Hubert Doucet, "Changer la manière dont nous pratiquons l'éthique," a keynote address at the 1997 Conference of the Canadian Bioethics Society, in Halifax, N.S. Another illustration is noted in a recent Canadian bioethics text, which is heavily dependent on other than Canadian sources, at least in its discussion of theory and method. Paul Ramsey represents the sole theological voice, to the exclusion of more recent voices in both Canada and the U.S; the one "alternate" voice highlighted is that of feminism; and the remainder are the predictable Engelhardt, Singer, and Beauchamp and Childress. See Francoise Baylis, Jocelyn Downie, Benjamin Freedman, Barry Hoffmaster, and Susan Sherwin, in *Health Care Ethics in Canada* (Toronto: Harcourt Brace & Company, 1995).

¹²³ H. Tristram Engelhardt, Jr., "The search for a universal system of ethics; post-modern disappointments and contemporary possibilities," in Kjellstrand and Dossetor, *Ethical Problems*, 15.

¹²⁴ John Dossetor, "Ethical issues in selection for dialysis and transplantation: the duty of advocacy," in Kjellstrand and Dossetor, *Ethical Problems*, 49; and Roy, Williams, and Dickens, *Bioethics*, 375.

characteristic, or a morally neutral disease or disability that should not attract a discriminatory response"¹²⁵; this statement appeared as recently as 1994 (and in 1995 in the French translation¹²⁶). One voice in the Canadian debate is that of the philosopher, Eike-Henner Kluge, who would defend a refusal of allocation of scarce organs to those who make "medically inappropriate lifestyle choices."¹²⁷ He states unequivocally that such choices were "controllable and foreseeable"; and since the right of access to health care is conditioned, in his view, by the presumption of lack of control over health, those making inappropriate lifestyle choices lose their claim to access. That society warns of the dangers of tobacco and alcohol abuse apparently both absolves it of further responsibility, and satisfies the desire to preserve personal freedom. Kluge notes that the University Hospital in London, Ontario, has written guidelines for the allocation of donated livers: "drinkers" have been placed at the bottom of the list.¹²⁸

Reflection

A review of the preceding discussion calls forth at least two observations. The first is that the majority of those who attempt to place their thought within one or another of the moral theories, in vogue in North American circles particularly, have ambivalent attitudes about allocating scarce resources to those found to be clearly responsible for their poor health. With a few exceptions, this would appear to be as true of those writing within a Judeo-Christian framework, as those without. A second, is that the understanding of the concept of responsibility, as used in the same circles, would appear to contain a host of unexamined and

¹²⁵ Roy, Williams, and Dickens, *Bioethics*, 375.

¹²⁶ David J. Roy, John R. Williams, Bernard M. Dickens, et Jean-Louis Baudouin, *La bioéthique: ses fondements et ses controverses* (Saint-Laurent, Québec: ERPI, 1995).

¹²⁷ Eike-Henner Kluge, "Drawing the ethical line between organ transplantation and lifestyle abuse," *Journal of the Canadian Medical Association* 150, No. 5 (1994): 745.

¹²⁸ *Ibid.*, 746.

unstated assumptions; these will be discussed below, but not before an attempt is made to move beyond attempts at all-encompassing ethical theory, to focus on a number of the more recent attempts to shape an ethic that listens for the reality of suffering individuals.

II. A Call for Change

As noted above, for some writers, a meta-ethical approach in bioethics is inadequate in the solving of the complex problems with which health care wrestles. A number of different voices are calling for approaches that appear to take more careful cognizance of the unique aspects of the situation in question, and more importantly, to be more respectful and compassionate towards the individuals or groups involved. The voices offer differing suggestions, mostly not eschewing comprehensive theory *per se*, nor do they necessarily suggest a situation ethics; most are concerned, however, not to force individuals, particular suffering individuals, into the mould of a ready-made principle. For example, Daniel Callahan, a long-time critic from within North American bioethics, decries the sometimes closed, inwardly-focused world of professional philosophy, forgetful, by times, that "ethical theory is meant to be a theory about the way human beings ought to live with each other and with themselves; it must turn its face outward," otherwise the references and sources used are the writings of other theorists, and the problems are tailored to fit the "available methodological paradigms."¹²⁹

Courtney Campbell offers a summary of the divers criticisms directed at the principlism¹³⁰

¹²⁹ Daniel Callahan, "Professional Morality: Can an Examined Life Be Lived?" in L. W. Sumner and Joseph Boyle, *Philosophical Perspectives on Bioethics* (Toronto: University of Toronto Press, 1996), 10-12.

¹³⁰ Campbell defines principlism as "an account of moral reasoning and justification in which moral principles and rules, derived from or validated by a more general ethical theory, are applied to concrete situations ("cases") of conflicting moral demands to provide a guide for particular actions and a basis for judgement about those actions," in Campbell, "Principlism and Religion," 183.

that has been such a feature of the bioethics to which Callahan refers:

Some, emphasizing justification of decisions within the framework of ethical theory, charge that principlism lacks the integration provided by a unitary moral theory. Others, less concerned with the foundations of morality, have argued that the principles themselves are too general to illuminate the moral realities of clinical practice. Still others contend that principlism slights the necessity for a thick description of persons and moral agency. Finally, some have claimed that the sociological and political presuppositions of principlism limit its gender and cultural applicability.¹³¹

Thus a South American bioethicist, writing from a liberationist viewpoint, denounces an individualist focus insufficiently conscious of and in solidarity with suffering others, and a bioethics that appears to serve the dominant social system, with thus little capacity for criticizing it¹³²; and a Dutch physician and medical ethicist writes:

How can scarce resources in health care be allocated without substantial ideas on essential or adequate care? And how can such ideas be developed without a philosophy of the kind of society we want, without a substantive conception of health and human life, without a politics of the good? An ethics of principles is too much focused on cure and technology. Such a thin conception of ethics is unsatisfactory, and a broader conception is needed, for example an ethics of care concerned with meaningful life and filial morality.¹³³

Some of the voices that will be noted are from the various disciplines generally encompassed by bioethics: philosophy, law and theology; others come from sociology, psychology, social policy or women's studies. A number of those calling for change appear to be calling simply for more assistance from the contextual level; others have more specific suggestions. The former will be considered first, followed by a focus on a number of the latter.

¹³¹ Ibid., 183. As noted earlier, Jecker and Berg support this view, suggesting that the "impartial" approach that dominates Western theories of justice may be unrealistic in settings such as rural America, where health personnel cannot remove themselves from the personal relationships that are so essential to the maintenance of community, in "Allocating Medical Resources," 467-474.

¹³² Márcio Fabri dos Anjos, "Bioethics in a Liberationist Key," in Dubose, Hamel, and O'Connell, *A Matter of Principles?*, 130-147.

¹³³ Henk ten Have, "Principlism: A Western European Appraisal," in Dubose, Hamel, and O'Connell, *A Matter of Principles?*, 114.

Help from the Contextual Level

R. M. Hare, noted below for his critique of other voices, suggests that the intuitive level of moral reasoning, focused on the specificities of a situation, can assist the higher level of reasoning.¹³⁴ Norman Daniels, on the other hand, has recently proposed that a "wide reflective equilibrium" is possible - a form of compromise between the practical and the theoretical, whereby there is not one without the other¹³⁵; he also believes that different kinds of ethical problems may call for different approaches, so that "how bottom up or top down [the approach] should be may depend on the problem."¹³⁶ Larry Churchill suggests a similar compromise; it is not that theory is irrelevant, but that theories do not solve problems, humans solve problems, with the help of judgement, perception and the insights of practice¹³⁷; the view of ethical theories as "axioms in a deduction problem-solving process...reflects an enfeebled moral psychology. Answers to problems become standard mechanical products of theoretical prowess, not decisions reached in unique and personal ways by the particular people involved," and he notes that the idea that there is "some final court of appeals for our choices belies both the complexity of our experience and the role of judgement."¹³⁸ There is a place for theory, however

¹³⁴ R. M. Hare, "Methods of Bioethics: Some Defective Proposals," in Sumner and Boyle, *Philosophical Perspectives*, 18-36.

¹³⁵ Norman Daniels, "Wide Reflective Equilibrium in Practice," in Sumner and Boyle, *Philosophical Perspectives*, 96-114.

¹³⁶ *Ibid.*, 102.

¹³⁷ Larry R. Churchill, "Theories of Justice," in Kjellstrand and Dossetor, *Ethical Problems*, 25.

¹³⁸ *Ibid.*, 24; and see his "Rejecting Principlism, Affirming Principles: A Philosopher Reflects on the Ferment in U.S. Bioethics," in Dubose, Hamel and O'Connell, *A Matter of Principles?*, 321-331. Churchill suggests that the appeal of "principlism" is understandable, in that it serves our human need for "moral assurance and certainty in an uncertain world," 324; we like to think of ourselves as "good people who can know and do the right thing," thus we are vulnerable to absolutes and to manipulation by moral slogans, 329.

its application in a unilateral way "oversimplifies and warps theory as well."¹³⁹ Theory is one way that an ethical tradition generates its own resources for renewal. Those who think they can dispense with theory are working with an unexamined theory - often an intuitive, pragmatist theory. "Being clear about what theories we work with is an essential part of ethics."¹⁴⁰ We need not one theory of justice, but many. Churchill suggests that each of the major theories of distributive justice has merits, and blindspots - the trick is to use the merits and be aware of the blindspots.¹⁴¹

In their preface to a comprehensive collection of contributions to questions in bioethics, from diverse theological perspectives, Lammers and Verhey note that their assumption, in editing the anthology, was, not that there is one *right*, impartial, rational principle that could be applied to the complex questions which gave rise to the discipline; but rather that a pluralistic society not only requires the candid expression of different perspectives, but in fact is enriched, since the reduction of morality to "a set of minimal expectations" could be prevented. In their view, the theological perspectives, in particular, "remind all participants in the public discourse of broader and more profound questions about what human beings are meant to be and to become."¹⁴²

Earl Winkler offers the interesting suggestion that we have been remiss in not acknowledging that the intellectual and educational functions of general theory may be at odds with the practical need for "domain-sensitive specificity concerning moral rules and values."¹⁴³

¹³⁹ Churchill, "Theories of Justice," 24.

¹⁴⁰ Ibid., 22.

¹⁴¹ Ibid., 26.

¹⁴² Lammers and Verhey, "Introduction," in *On Moral Medicine*, xv-xvi.

¹⁴³ Earl Winkler, "Moral Philosophy and Bioethics: Contextualism versus the Paradigm Theory," in Sumner and Boyle, *Philosophical Perspectives*, 64.

Writing particularly of the principlism that has overtaken bioethics, he suggests that moral interpretation should determine the understanding of principle, rather than principle determining the morality of cases.¹⁴⁴ He writes:

The holy grail of traditional moral philosophy is a single, comprehensive and informative theory that is based in universal principles, which, in their turn, yield particular precepts and rules that are capable of deciding concrete issues of practice. Accordingly, the ideal of moral justification is essentially deductivist, involving different levels of justification. One justifies a particular judgement by showing that it falls under a rule, and justifies the rule by showing that it is a specification of a principle, and justifies the principle by showing that it is grounded in the most abstract levels of normative theory.¹⁴⁵

Winkler suggests that the paradigm theory, as it has been articulated by Beauchamp and Childress, while it brought a sense of unification to a "disparate and adolescent field,"¹⁴⁶ obscures the particularities of real moral problems, and obscures the fact that justification is a process:

It is the process, in all of its interpretive and analogical complexity, of arriving at a considered moral judgement and defending it as a reasonable alternative within the context of the problem. Leaving aside the question of the viability of the conception of normative theory that lies behind it, and any consequent problem in accounting for contextual variation in the weight of moral reasons, the difficulties with the applied ethics model are twofold. It has tended to confuse the deductive-explanatory pattern that is a product of moral reasoning with the inductive process that is its essential method. To the extent that it acknowledges inductive processes in moral reasoning, it also ignores their greater relative importance, over procedures of deductive application, for moral progress.¹⁴⁷

¹⁴⁴ Ibid., 66. To give "principlism" its due, Albert Jonsen notes that it was useful early in bioethics for a number of reasons: it provided an accessible language - between arid metaethics and lush, inaccessible theology; it provided useful statements of the ethical basis for regulation of research; and it provided a language for clarifying the dilemmas and paradoxes through which "the new audience of doctors and medical students had to be led," in his "Foreword" to Dubose, Hamel and O'Connell, *A Matter of Principles?*, xvi.

¹⁴⁵ Winkler, "Moral Philosophy," 51.

¹⁴⁶ Ibid., 51.

¹⁴⁷ Ibid., 76.

Winkler notes that, for example, classical utilitarianism is blind to many forms of contextual variability that "commonsense morality" would recognize - such as factors of relationship that alter or restrict "the single-minded promotion of everyone's interests"¹⁴⁸; and he suggests that while deontological theories, by their nature, tend to be fixed and unvarying across contexts, our common moral experience is that contexts are invariably variable.¹⁴⁹

Another voice, from the area of social theory, with an interest in the oppression of groups with identifiable differences, has been noted in the previous chapter; Iris Marion Young suggests that such groups have suffered from the fact that theories of justice are overwhelmingly dominated by a distributive paradigm. Such a paradigm, she suggests, is appropriate for the distribution of material goods, (and obviously scarce organs are material goods), however, it is not appropriate when it comes to the distribution of "self-respect, opportunity, power, and honor":

Serious conceptual confusion results....The logic of distribution treats nonmaterial goods as identifiable things or bundles distributed in a static pattern among identifiable, separate individuals. The reification, individualism, and pattern orientation assumed in the distributive paradigm, moreover, often obscures issues of domination and oppression, which require a more process-oriented and relational conceptualization.¹⁵⁰

While by no means rejecting the obvious utility of the distributive paradigm, Young suggests that its focus on persons as primarily possessors and consumers of goods obscures the fact that they are also actors with capacities for broader action and interaction. Furthermore, the focus on distributive justice tends to ignore the unjust social structures which produce the distributive

¹⁴⁸ Ibid., 54.

¹⁴⁹ Ibid., 54-56.

¹⁵⁰ Young, *Justice*, 8.

patterns¹⁵¹; and as Sherwin also suggests below, members of oppressed groups have typically not been part of any democratic process of change.¹⁵² As noted in the previous chapter, while Young does not include the addicted in her use of "group,"¹⁵³ this study will suggest that the addicted, particularly those addicted to alcohol, could be seen as a marginalized, easily identifiable, oppressed group. When it is a question of the distribution of scarce organs, more than organs are being distributed to them: health, life, and self-esteem. Thus it will be suggested that the distributive paradigm must not be the only notion of justice invoked. The fact that the addicted group is more easily blamed than the groups of which Young speaks, only adds to their oppression, hence the need for an entirely different paradigm.

Young is concerned to show that only by an acknowledgement and celebration of difference can we move beyond the outlook of the dominant group being generalized as the norm for all. While there appear to be deep-seated reasons for our fear of difference, in her view change is possible: a change she characterizes as a cultural revolution "that confronts and undermines the fears and aversions that structure unconscious behavior...."¹⁵⁴ The difference of which she speaks is not the essentialist meaning which suggests that groups have different natures, (natures ascribed by the dominant group, which traditionally has left them open to oppression); rather, a positive, celebratory, more liberatory, self-definition is meant. This notion of difference "involves a reconception of the meaning of equality":

The assimilationist ideal assumes that equal social status for all persons requires treating everyone according to the same principles, rules and standards. A politics of difference

¹⁵¹ Ibid., 15-16.

¹⁵² Ibid., 4, 184.

¹⁵³ Ibid., 40ff.

¹⁵⁴ Ibid., 152.

argues, on the other hand, that equality as the participation and inclusion of all groups sometimes requires different treatment for oppressed or disadvantaged groups. To promote social justice...social policy should sometimes accord special treatment to groups.¹⁵⁵

As noted above, there are aspects of Young's thought which are helpful in a consideration of the addicted. While her focus on *group* difference is essential for her argument, it may be that extending the focus to a liberating celebration of *individual* difference might be more useful to this study, in that the addicted do not exactly fit her conception of an oppressed group. Countless individuals suffer from exclusion by reason of difference from the norms of effort and achievement celebrated by liberal humanism.

Different Voices

There are examples in the literature of more drastic suggestions for change, suggestions that would appear to have particular relevance for the concern of this study. Feminine voices, an ethic of care, feminist ethics, a virtue-based ethic, a phenomenological, and a narrative approach could be seen as viable attempts to counter the search for comprehensive moral theory.

Feminine Voices

Carol Gilligan, in an early focus on what knowledge of the differing voices and experiences of women could bring to psychological theory, adds a point with particular relevance for the interminable debate over which theory of justice to privilege. In her view, our imagery of relationships as hierarchical (and thus unstable and morally problematic), gives way, when the experience of women and the family are considered, to the following:

¹⁵⁵ Ibid., 158.

...A nonhierarchical vision of human connection, [and thus a] vision that self and other will be treated as of equal worth, that despite differences in power [as within the family], things will be fair; the vision that everyone will be responded to and included, that no one will be left alone or hurt. These disparate visions in their tension reflect the paradoxical truths of human experience - that we know ourselves as separate only insofar as we live in connection with others, and that we experience relationship only insofar as we differentiate other from self.¹⁵⁶

An Ethics of Care

An ethics of care suggests an approach more cognizant of individual needs. One early and particularly cogent detailing of such an ethic is provided by Nel Noddings; her "feminine" approach suggests that a rational-objective mode by which we seek to impose structure on the world must be supplemented, if not preceded, by a stance of caring for the other before us - an other whose reality we must allow to invade our own:

When we care, we consider the other's point of view, his objective needs, and what he expects of us. Our attention, our mental engrossment is on the cared-for, not on ourselves.... If our minds are on ourselves, however - if we have never really left our own a priori frame of reference - our reasons for acting point back at us and not outward to the cared-for.¹⁵⁷

It is thus not, first, a matter of knowledge and the application of principles, but of feeling, sensitivity and intuition - a receiving of the other with all the particularities of the other's need. Our rational powers are eventually involved, since it is inevitable that the other's reality will become data and be analyzed if there is a problem to be solved; however unless there is a continual moving back to the personal and the concrete, there is a chance that both the other and the self will be lost in "clouds of abstraction."¹⁵⁸

¹⁵⁶ Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, Massachusetts: Harvard University Press, 1982), 62-63.

¹⁵⁷ Nel Noddings, *Caring: A Feminine Approach to Ethics and Moral Education* (Berkeley: University of California Press, 1984), 24.

¹⁵⁸ *Ibid.*, 36.

Noddings uses "feminine," not to designate gender, but to indicate an attitude, a propensity to respond before analyzing; both males and females are capable of so responding, however, it has been males who have all too often been demeaning of what has traditionally been seen as a female deficiency in abstract reasoning, or of capricious behaviour or an emotional reaction.¹⁵⁹ Noddings suggests that the differences have been highlighted in both life and in literature; in parenting, the natural caring of the mother could be seen as the paradigm for a "powerful and coherent ethic," and indeed that "a different sort of world [could] be built on the natural caring so familiar to women."¹⁶⁰ In somewhat of an acknowledged overstatement of the difference, Noddings notes that while "the father might sacrifice his own child in fulfilling a principle; the mother might sacrifice any principle to preserve her child."¹⁶¹ For the feminine, rules and principles are tempered with thoughts of real persons; in fact rules and principles are kept to a minimum - replaced by a climate of cooperative "we-ness."¹⁶² The maternal/child relationship is a paradigm for caring; "relatedness" is central for the personal growth of both the cared-for and the one-caring. Ethics *is*, first of all, that relatedness, that connectedness, that feeling of "I must" arising before consideration of whether or not I might act, or what I might do.¹⁶³ For Noddings, the ethical "ought" is derived from the natural impulse of caring that most experience first in intimate familial relationships, and that most evaluate as good:

The source of my obligation is the value I place on the relatedness of caring. The value itself arises as a product of actual caring and being cared-for and my reflection on the goodness of these concrete caring situations.¹⁶⁴

¹⁵⁹ Ibid., 44.

¹⁶⁰ Ibid., 46.

¹⁶¹ Ibid., 37.

¹⁶² Ibid., 44.

¹⁶³ Ibid., 82.

¹⁶⁴ Ibid., 84.

Iris Marion Young, in fact, both invokes an ethic of care and offers a feminist critique of it in a discussion of the treatment of the addicted (her focus being "pregnant addicts"¹⁶⁵). She contends, first of all, that the focus of such treatment has all too often been punitive, rather than the forms of supportive treatment advocated by an ethics of care. In an important assertion for this study, she suggests the following:

This ethic of care directly criticizes at least three aspects of the model of the relation of individual and society that...underlies the punishment approach - its assumption of the moral self as independent, its assumption of social relations as exchanges among equals, and the correlative assumption that these relations are voluntary.¹⁶⁶

The criticized model to which Young refers is atomistic and contractual, lacking in recognition of inequality and dependence in society. The treatment models that result tend to exclude, to mark as deviant,¹⁶⁷ and are lacking in consciousness-raising opportunities for the addicted to come to recognize that some of the sources of their "individual pain and habit [originate] in structures of power and privilege."¹⁶⁸ In fact the goal of traditional treatment - the production of an autonomous, independent agent - perpetuates the contractual type of society in which the punishment approach to addiction flourishes.¹⁶⁹

On the other hand, Young wonders whether such approaches may focus too heavily on helping individuals cope with oppressive structures rather than politicizing them, the goal being the cultivation of effective collective action.¹⁷⁰

¹⁶⁵ Iris Marion Young, "Punishment, Treatment, Empowerment: Three Approaches to Policy for Pregnant Addicts," in *Intersecting Voices: Dilemmas of Gender, Political Philosophy, and Policy* (Princeton, New Jersey: Princeton University Press, 1997), 75-94.

¹⁶⁶ *Ibid.*, 81.

¹⁶⁷ *Ibid.*, 80-81.

¹⁶⁸ *Ibid.*, 93.

¹⁶⁹ *Ibid.*, 88.

¹⁷⁰ *Ibid.*, 90-91.

Young's concerns are reminiscent of those of William Ryan; his *Blaming the Victim* noted the subtle process by which those who have achieved success in society rationalize the acknowledged pain of those who have not succeeded. Rather than implicating the wealth and privilege of comfortable life-styles in destructive society-wide practices, the victims of such practices are portrayed as victims of adverse societal factors in the *past*. The resultant acquired inadequacy in the victim is blamed, the victims are labelled as "different," attempts (seen as humanitarian) are made to help them adjust to the disordered system, and the requisite social change is blocked. Thus the "pounding day-to-day stresses of life on the bottom rungs that drive so many to drink, dope, and madness" are perpetuated. Ryan suggests, in fact, that change is difficult: those who question such "humanitarian concern" are labelled as radical or unenlightened.¹⁷¹

A Feminist Approach

Feminist thinkers, within a bioethical framework, have similar concerns; they suggest that those advocating an ethics of care have been too easily co-opted by a bioethics not sufficiently removed from the traditional structures of oppression, in which medicine is seen as having being engaged; thus the assertion that the basic problem with a principlist model is not that it relies on abstract principles, or that they have been drawn from male experience, but that both the principles and their application serve to maintain a system oppressive to women and other marginalized groups.¹⁷² Thus Gudorf would not reject principlism completely, but suggests that feminists should carefully examine the situations of the oppressed, allowing for

¹⁷¹ William Ryan, *Blaming the Victim*, revised ed. (New York: Vintage Books, 1976), 5-30.

¹⁷² Christine E. Gudorf, "A Feminist Critique of Biomedical Principlism," in DuBose, Hamel, and O'Connell, *A Matter of Principles?*, 168.

a modification and interpretation of principles such as justice that are intrinsic and necessary for women's welfare. She would not separate real nurturance from rational calculation.¹⁷³

Christine Overall writes in a similar vein:

Bioethics-as-usual is both a highly successful and a conservative academic field. It reflects the hierarchism, individualism, professionalism, and separatism of medicine and is able to co-opt the radical potential of some progressive analyses of health care and the medical profession - including those, such as the ethic of care, that are derived from women's experience.¹⁷⁴

The co-option, according to Overall, has too easily permitted the construal of patients, particularly women, as passive objects of care, as well as the validation of care-givers as omnipotent, altruistic, or self-sacrificing; a more appropriate focus would be the societal system that has produced the need for care in the first place.¹⁷⁵ She calls for a bio(medical) politics that would question the structures of oppression inherent in "bioethics-as-usual"; it would challenge "the cultural commitment to beauty, youth, and technological perfectionism and [be] cognizant of issues of disability and the social construction of illness, deviance, and craziness."¹⁷⁶

A similar concern is expressed by Susan Wendell, a philosopher living with a disability; she notes the fears about loss of control, and loss of the societal dream of beauty and youth with which the disabled face us, and which partly explain our avoidance, our patronizing attitudes,

¹⁷³ Ibid., 168. Of interest is the author's suggestion that theological forms of bioethical principlism are in line with an image of the deity as giver of rules and principles, (revealing his masculine nature as ruler and judge), whereas feminist liberation theologians "tend to understand divinity as relational, even as the ground of relationship, rather than as something properly approached through law or principles"; the fact that Christian principles and rules are derived from the lived experience of Jesus arrests to this manner of viewing the issue, in Ibid., 174-175.

¹⁷⁴ Christine Overall, "Reflections of a Skeptical Bioethicist," in Sumner and Boyle, *Philosophical Perspectives*, 179.

¹⁷⁵ Ibid., 173.

¹⁷⁶ Ibid., 178-179.

our stereotyping and our blame.¹⁷⁷ Of particular interest is her suggestion that a different paradigm of humanity is needed - one that suggests interdependence rather than independence, one that does not so rigidly separate those with diminished control from the strong and the healthy, one that does not so rigidly separate the private world of the home, the aged, the sick and the disabled, from the public world of strength, the perfect body, performance and production. There is no socially acceptable way of expressing weakness in the public world, "no way of having our physical and psychological experience acknowledged and shared" in that world.¹⁷⁸ Of particular concern, in relation to the addicted, for whom the issue of control is so central, is Wendell's contention that we learn to identify our own strengths by society's standards, so that when, from fear of the negative body and fear of loss of control, the disabled are marginalized and blamed for their distress, the oppression is internalized.¹⁷⁹ Furthermore, the disabled pose a threat to a medical model focused on cure; the thrust of Western medicine towards successful medical interventions, and the public's complicity in that focus help to "bolster the illusion of control much better than does the long, patient process of rehabilitation or the management of long-term illness."¹⁸⁰ As long as we cling to a belief that someone can cure us, then the chronically ill, the dying and the disabled "will symbolize the failure of medicine and more, the failure of the Western scientific project to control nature. They will carry this stigma in medicine and in the culture as a whole."¹⁸¹

Wendell also raises the dilemma of "otherness"; the other, in her opinion, is all too often

¹⁷⁷ Susan Wendell, "Toward a Feminist Theory of Disability," in Helen Bequaert Holmes and Laura M. Purdy, eds., *Feminist Perspectives in Medical Ethics* (Bloomington: Indiana University Press, 1992), 63-81.

¹⁷⁸ *Ibid.*, 69.

¹⁷⁹ *Ibid.*, 71.

¹⁸⁰ *Ibid.*, 72.

¹⁸¹ *Ibid.*, 72-73.

symbolic of the rejected and feared, or, alternately, particularly in relation to the disabled, a symbol of heroic control - giving the false impression to the able-bodied that anyone can "overcome" a disability. The author notes the varying attempts amongst the disabled to deal with the ascription of otherness: attempts that emphasize the differences from the dominant group (thus fostering solidarity within the marginalized group), and those that stress the many ways in which the two are similar (which may be difficult for the able-bodied, who may need someone to carry the burden of the negative body "as long as they continue to idealize and try to control the body" - thus Wendell appears to be suggesting that the able-bodied both *need* the disabled, and *fear* what they symbolize).¹⁸² It will be suggested, later in this thesis, that there is possibly another manner of interpreting "otherness."

In her focus on the particular aspects that feminist ethics could bring to medical ethics, Virginia Warren mentions, amongst others, a concern with what she calls "housekeeping issues" - personal issues - as well as with the "crisis" issues that are so prevalent. Following her distinctions, it could be suggested that an example in relation to transplantation would be the following: the crisis issue is choosing criteria for distribution of organs, or choosing the specific patient for a particular organ; housekeeping issues would include helping medical personnel to sensitively raise the issue of organ donation with patients and families (which many feel would raise the number of organs available), or inquiring about what lies ahead for those not chosen for replacement organs, or helping families (including the patient) discuss an impending death. Warren suggests that the standard moral principles are particularly unhelpful in fully dealing with the housekeeping issues, since the principles "do not deal satisfactorily with psychological

¹⁸² Ibid., 74-75.

subtleties, especially with the intricacies of longer-term relationships,"¹⁸³ and furthermore, that we have not adequately identified what are the important relationship issues in relation to the pressing crisis issues.¹⁸⁴ Warren is not suggesting that one type of issue be privileged over another, only that important questions not be ignored, and that the seemingly trivial housekeeping issues not be turned into crisis issues just so they will be resolved.¹⁸⁵

Susan Sherwin contends that the mechanistic application of the "Georgetown mantra" has been facilitated by the chasm between "the more truly philosophical" conceptual questions (considered by many to be the only realm for philosophic thought), and the practical problems arising out of the human experience of trying to live as a moral agent.¹⁸⁶ She suggests instead that the two areas are inextricably linked, and that the connections run both ways.¹⁸⁷ Even when there is surface acknowledgement of the connection, the difficulties arise in practice: when those engaged in theory look to the practical repercussions, they "confine themselves to hypothetical, and often fanciful, examples," and on the other hand, much bioethical research is based on widely accepted but unexamined values, values that inevitably structure our thinking. Many are unclear about the sorts of data that are relevant to theory-making, as well as the type of conceptual work essential to "good practical analysis."¹⁸⁸

Sherwin's proposal, she suggests, is akin to Rawls's dialectical process of "reflective equilibrium," in that she suggests that theoretical questions be explored by examining their

¹⁸³ Ibid., 38.

¹⁸⁴ Ibid., 39.

¹⁸⁵ Ibid., 38.

¹⁸⁶ Susan Sherwin, "Theory versus Practice in Ethics: A Feminist Perspective on Justice in Health Care," in Sumner and Boyle, *Philosophical Perspectives*, 188-189.

¹⁸⁷ Although writing from a feminist perspective, and therefore included in this section, Sherwin's views more appropriately belong in the section focused on "help from the contextual level."

¹⁸⁸ Ibid., 190.

practical effects, while at the same time searching for theoretical expressions of our initial moral values - a shifting of focus back and forth. Sherwin would depart from Rawls in that she suggests that he does not ever, in fact, refer to the specificities of human lives, but remains at the level of general abstract circumstances; she would refer to actual moral problems in the lived world. As well, and this is particularly relevant to this study, Sherwin would, in considering the moral views of others, go beyond those holding the developed moral theories, to a consideration of "those whose voices are least likely to be heard in traditional ethics debates by virtue of their relatively disadvantaged positions in society."¹⁸⁹ Rawls is silent about existing patterns of oppression. Sherwin terms her approach "feminist reflective equilibrium": an attempt to explore "questions of domination and power as morally relevant concerns when we explore the conceptual and practical dimensions of issues in bioethics."¹⁹⁰

While questions of distributive justice are not ignored in such an approach, concerns are considerably widened, to question the accepted, narrow definition of what is entailed in health care, and to what, in fact, has contributed most effectively to improvements in health; acknowledgement is made that many of the changes that must be made are public responsibilities, inaccessible to individual action, hence the need for sustained public debate. Sherwin notes that those most at risk of oppression and violence are, of course, those least able to voice their concerns, hence require a public assumption of responsibility to address the oppression.¹⁹¹ Sherwin notes the importance for "feminists and other ethicists to take particular care to make certain that the conceptual tools we rely on do not perpetuate the very injustice

¹⁸⁹ Ibid., 191-192.

¹⁹⁰ Ibid., 193.

¹⁹¹ Ibid., 200-203.

we seek to dismantle."¹⁹²

Phenomenological and Narrative Approaches

Other approaches which attempt to offer an individual focus arise from phenomenology and from narrative theory. Laura Shanner, for example, suggests that rather than battling over which philosophical theory should be privileged, a more appropriate focus for philosophical bioethics would be an attempt to understand the problem from the point of view of the individuals' lived experience.¹⁹³ Phenomenology suggests that an observer should "bracket" his/her own experience, disregarding *a priori* categories, to reflect upon the meaning of the situation, or the condition, for the individual most intimately affected by it. Shanner suggests that bioethicists have been too fearful of complexity:

Real life can be messy, complicated, full of ambiguity, but real life - not a sanitized, abstracted version of it - is what poses our most compelling ethical problems.¹⁹⁴

Thus a deep understanding of a problem such as addiction involves, first, an attention to the patient's narrative, then, as phenomenology would suggest, a focus on the phenomenon from a wide range of relevant perspectives, including, but certainly not confined, to theoretical perspectives, and not forgetting "the variety of religious and social groups who emphasize non-medical and non-economic values."¹⁹⁵

Thus "genuinely helpful philosophical reflection" requires a metaphor other than that of warring theories; Shanner's metaphor is that of a house with both front and back doors. Into the

¹⁹² Ibid., 206.

¹⁹³ Laura Shanner, "Bioethics through the Back Door: Phenomenology, Narratives, and Insights into Infertility," in Sumner and Boyle, *Philosophical Perspectives*, 116-117.

¹⁹⁴ Ibid., 124.

¹⁹⁵ Ibid., 124-125.

front door will come designers with their preconceived ideas of what is fitting for the situation; while those who come to the back door are more likely to be those more disposed to long, intimate personal sharing of information. The "front door" approach in bioethics is the formal, orderly application of theory and principle; their coherence and elegance can be helpful, but there is the danger that the solution may be constructed "in their own image." The solution may miss "the critical elements of the problem for which they were consulted."¹⁹⁶ When someone's life is at stake, such conceit is clearly inappropriate."¹⁹⁷ Shanner writes:

Rather than emphasizing treatment categories and a priori principles, perhaps we ought to listen to patient' stories, reflect on the meaning of their situation and respond with care to their underlying needs. Bioethics routinely confronts highly personal and philosophically profound questions about the meanings of life, death, and embodiment. Such basic questions are not easily captured in formal principles or categories, and they require time to take shape in description and understanding. While principles can tell us how to manage a technology, for example, the narrative gives far better insight into whether a technology addresses the problem in the first place. In other words, rather than stiffly admiring the formal elegance near the front door, or worse yet, redecorating someone's living room to suit our own image, we ought to go to the back door and sit down with the patients over a cup of tea long enough to learn what actually is at stake for them.¹⁹⁸

Zaner, from his phenomenological stance, and looking back to the meaning of the ancient medical codes and oaths, suggests that justice is grounded in the relationship with the individual patient: the asymmetrical relationship calling for forbearance, restraint, and a respect for the integrity of each individual patient on the part of the physician.¹⁹⁹

¹⁹⁶ Echoed in Richard M. Zaner, "'Experience and the Moral Life: A Phenomenological Approach to Bioethics," in Dubose, Hamel, and O'Connell, *A Matter of Principles?*, 211-239. He suggests that nothing within the complexity of clinical situations can be taken for granted, and thus emphasizes the importance of coming to an understanding of the meaning the situation has for all those involved, 231.

¹⁹⁷ Shanner, "Bioethics," 135-136.

¹⁹⁸ Ibid., 136-137.

¹⁹⁹ Richard M. Zaner, "Justice and the Individual in the Hippocratic Tradition," *Cambridge Quarterly of Healthcare Ethics* 5, no. 4 (1996): 14.

Narrative theory appears equally attentive to discerning, within the narratives that all the players in a bioethical situation have to tell, the complexity of the total situation. "Narrative practices," it is claimed, are an integral part of all the stages involved in coming to grips with an ethical issue: recognizing, formulating, and interpreting the problem, and validating the decision taken. A "narratively competent ethicist," sensitive to clues within the patient's narrative, for example, would be striving to "see clearly what the illness produces for those whose lives are changed by it, to adopt the perspectives of those who suffer, and to serve them by recognizing and articulating the coherent human acts within the chaos of physical illness."²⁰⁰ Making difficult choices in any troubling human situation, it is claimed, inevitably involves "narrative forms of knowing, telling, and reflecting": thus we do not choose to "do narrative" - storytelling is an aspect of who we are.²⁰¹

On the other hand, that one could ever "see clearly" what illness means for another, or that it is ever possible to "adopt the perspectives of those who suffer" is contested by writers such as Iris Marion Young, who, against any theories which purport to attempt to understand an other's reality by reversing positions with the other, for example, evokes notions of

²⁰⁰ Rita Charon, "Narrative Contributions to Medical Ethics: Recognition, Formulation, Interpretation, and Validation in the Practice of the Ethicist," in DuBose, Hamel, and O'Connell, *A Matter of Principles?*, 276. On the other hand, there is an interesting question as to how far a narrative approach, particularly one as avowedly literary as that of Rita Charon, can be taken. One masterful narrator suggests that narrative is "fiction, meant to engage the imagination of the reader, not a guide to conduct," in Robertson Davies, *For Your Eye Alone: Letters 1976-1995*, ed. Judith Skelton Grant (Toronto: McLelland & Stewart, 1999), 70. On the other hand, Emmanuel Levinas, who was steeped in, and deeply influenced by European national literatures, particular those of Russia, speaks of having been awakened to questions about the meaning of life from a reading of the novels of Dostoyevski particularly, in Marie-Anne Lescourret, *Emmanuel Levinas* (Paris: Flammarion, 1994), 42-48, and 53.

²⁰¹ Charon, "Narrative Contributions," 278. In an early attempt to suggest merit in careful listening to the patient's story, Stanley Joel Reiser suggests that it was confidence in technology, beginning with the stethoscope, which eroded the value placed in what may be learned from patients' own accounts of their sensations and thoughts, in "The Decline of the Clinical Dialogue," *The Journal of Medicine and Philosophy* 3, no. 4 (1978): 305-313.

asymmetry and transcendence in relation to the others before one. She suggests the impossibility of standing in another's position, given the asymmetries of history and social position, and in fact suggests, with Luce Irigaray, that to insist on symmetry could be a desire to deny the other's difference.²⁰² Young wishes to suggest that even in situations of apparent similarity, "individuals bring life histories, emotional habits, and life plans to relationships, which make their positions irreversible"; in fact, were symmetry the case creative exchange would be closed off.²⁰³ The other, as "subject-in-process," can never be known once and for all. Respectful listening and interested questioning might give some understanding, but the other's transcendence means that she might remain silent, or tell only part of her story, "for her own reasons."²⁰⁴ Young evokes the notion of gift in relation to the offering of meaning to another, and also refers to Emmanuel Levinas's similar position, to the effect that the opening to another is always a gift, in that it must be given in trust that the other will reciprocate (in fact, Levinas will be seen, in chapter 5, to strenuously avoid any notion of reciprocity in his relationship of the "one-for-the-other"). Young notes Levinas's recognition of the irreducibility and irreversibility of the other's position.²⁰⁵ Young's (and, as will be seen, Levinas's) contention that an imposed "understanding" of an other's reality is really an affront to that other's transcendence, has important implications for the subjects of this thesis; it is suggested that they are often labelled before they have been able to present their own "meaning."

²⁰² Iris Marion Young, "Asymmetrical Reciprocity: On Moral Respect, Wonder, and Enlarged Thought," in *Intersecting Voices*, 38-44.

²⁰³ *Ibid.*, 45.

²⁰⁴ *Ibid.*, 56.

²⁰⁵ *Ibid.*, 50. Young has taken her reading of Levinas from *Otherwise than Being, or Beyond Essence*, without specific citation.

A Virtue-Based Ethic

The re-emergence of a virtue-based ethic is another of the more recent attempts to take into account the particularities of the situation in question. Its focus is less deontological, and focused more on the qualities of the moral agent.²⁰⁶ Its interpretation by Pellegrino²⁰⁷ is especially pertinent for this study. The approach is interesting, in that the principles that have become such a part of medical ethics are not jettisoned entirely; instead the suggestion is that the application of the principles and rules is shaped or informed by virtue: and from the Christian perspective of Pellegrino, the overriding virtue is Charity, the form of all the virtues. "Charity acts as a practical principle of discernment and a benchmark against which the Christian measures concretely, here and now, the moral worth of his or her practical decisions."²⁰⁸ Pellegrino notes that while each of the principles - beneficence, justice and autonomy - is ascertainable by human reason without resort to revelation or Sacred Scripture, levels of obligation are added by virtue of the Sermon on the Mount. On reason alone, the principles might suggest a minimal level of interpretation; beyond that, the pursuit of perfection in Charity could be viewed by the wider community as optional, supererogatory, not to say "unreasonable, unrealistic, or psychologically distressful."²⁰⁹

Pellegrino notes, as a first example, that beneficence - acting for the good of the patient - can be interpreted as mere non-maleficence; or, beyond that, some degree of altruism might

²⁰⁶ Doucet, *Au pays*, 125-130.

²⁰⁷ Edmund D. Pellegrino, "Agape and Ethics: Some Reflections on Medical Morals from a Catholic Christian Perspective," in Pellegrino, Langan, and Harvey, *Catholic Perspectives*, 277-300; and see E.D. Pellegrino and D.C. Thomasma, *For the Patient's Good: The Restoration of Beneficence in Health Care* (New York: Oxford University Press, 1988).

²⁰⁸ Pellegrino, "Agape and Ethics," 297.

²⁰⁹ *Ibid.* 289.

be injected; however the Christian virtue of Charity would suggest that "practising medicine [for the Christian] is inseparable from leading a life that is wholly Christian," which means acting in the interests of the sick "even when it means exposing himself herself to danger, loss of time or income, or serious inconvenience.... Unavailability, inaccessability, abruptness, condescension, refusal to treat for economic reasons, or fear of contagion are irreconcilable with a Charity-based ethic of medicine." While Scripture provides no "algebraic formula" for measuring, for example, the degree of self-effacement required, an ethic-based virtue does not allow one to accept an easy justification for pursuing a minimal level of beneficence.²¹⁰

Particularly pertinent to this study is Pellegrino's discussion of the principle of justice:

The Christian is exhorted in the Gospels to "hunger after justice." This means more than fidelity to the natural virtue of justice as taught by Plato, Aristotle or the Stoics. The Christian is called not only to the natural virtues but also to sanctity, to be perfect "as the father is perfect," to cooperate with God in God's work. Charitable justice is not content with rights only. It recognizes claims on us that have no grounding in legal rights but derive from a conception of the human community that enjoins the more fortunate to help the less fortunate whether they "deserve" it or not. There is thus a certain built-in tension between the strictly legal and the Christian senses of justice.²¹¹

Thus, as McCormick notes, it is to "the poor, the outcasts, sociopaths, alcoholics, or non-compliant in the care of their own health" that Christians are asked to exercise a preferential option²¹²; and so in the case of the distribution of scarce resources, merit, desert and societal contribution are least consistent with charitable justice, while equity, need or lottery are more so. Furthermore, charitable justice requires that the underlying conditions leading to the necessity for rationing be eliminated or ameliorated.²¹³

²¹⁰ Ibid., 290-291.

²¹¹ Ibid., 291.

²¹² Richard A. McCormick, "Theology and Bioethics," HCR 19, no. 2 (1989): 8-9.

²¹³ Pellegrino, "Agape and Ethics," 292.

Pellegrino is not unaware that a Christian and Charity-based ethic could bring a professional into conflict; he suggests that such an ethic enjoins him or her to handle the conflict with love and respect for those who disagree; or to use non-violent means when direct intervention in a perceived injustice appears to be called for.²¹⁴

Pellegrino's vision does not lead one *from* the world, but to a more loving participation *in* that world. It is interesting that this is in stark contrast to Alasdair MacIntyre's virtue-based ethic; MacIntyre writes, not from a Christian perspective, but from that of a philosopher in despair that we have lost the theoretical underpinnings necessary for rational discourse; any assertion of principle can be but a mask for expressions of personal preference. The only solution to surviving the "coming ages of barbarism and darkness," in his view, is a retreat into small Aristotelian communities, where real virtue may be possible since there is a common understanding of the meaning of civility and morality.²¹⁵ Those concerned with the plight of wounded "others" cannot be content to retreat from the world, as messy and conflicted as it indeed is. While some might have the luxury of waiting for "common understandings" to again be possible, others cannot escape difficult decisions in areas such as the allocation of scarce health resources.

The Role of Attention

Warren Thomas Reich, following a positive appreciation of the contributions of a number of alternate voices,²¹⁶ suggests that *attention* is the "door through which we move into

²¹⁴ Ibid., 294.

²¹⁵ MacIntyre, *After Virtue*, 263.

²¹⁶ Reich hastens to add that the notion of "alternate approaches" is misleading, in that it implies "that the rule-based approach is fundamental and stable, while the other approaches - which actually account for the majority of the realms and levels of moral discourse - are reduced to being identified by that to which they are currently contrasted." Warren Thomas Reich, "A New Era for Bioethics: The Search for Meaning in

contact with moral experience and discover moral meaning."²¹⁷ He utilizes the "pivotal" idea of Simone Weil, for whom attention was a negative effort: one suspends one's thought, allowing the other to be received in his or her truth. "It means waiting, seeking, being open to naked truth." It is not a moral norm that one is hoping to elicit, but justice, bred of compassion.²¹⁸ Attention, for Reich, encompasses a number of the approaches that both he and this work have mentioned, including radical care, and virtue. He would also include an ethic of response, mentioning Levinas in this regard; however his elucidation of the Levinasian thought is minimal, and appears to remain within an ontological framework.²¹⁹

Dissenting Voices

There is by no means unanimity regarding the contribution of some of the newer voices; an ethics of virtue and an ethic of caring are particularly vulnerable to criticism. R. M. Hare, for example, suggests, first of all, that the difficulty for an ethics of virtue is in knowing what are the virtues that should be acquired; and secondly, that there is danger in concentrating attention on character to the exclusion of one's acts: good people sometimes do evil things. While Aristotle and Kant, in his view, avoid this concern by positing the intimate link between

Moral Experience," in Verhey, *Religion and Medical Ethics*, 102.

²¹⁷ Ibid., 117.

²¹⁸ Ibid. 117-119. See Simone Weil, *The Simone Weil Reader*, George A. Panichas (New York: David McKay, 1977), 51: "The soul empties itself of all its contents in order to receive into itself the being it is looking at, just as he is, in all his truth." Levinas, whom Reich also quotes, writes in a comparable vein: "Moral consciousness is thus not a modality of psychological consciousness, but its condition. At first glance it is even its inversion, since the freedom that lives through consciousness is inhibited before the Other when I really stare, with a straightforwardness devoid of trickery or evasion, into his unguarded, absolutely unprotected eyes," in *Difficult Freedom: Essays on Judaism*, trans. Seán Hand (Baltimore: The Johns Hopkins University Press, 1990), 293, (hereafter cited as DF); *Difficile liberté: Essais sur le judaïsme*, 3e éd. (Paris: Éditions Albin Michel, 1963 et 1976), 409, (hereafter cited as DL).

²¹⁹ Reich, "A new Era for Bioethics," 116.

character and action, apparently he feels that some ethicists do not.²²⁰ Hare is also concerned that "caring" is no substitute for discernment in specific situations; in a particular situation of distribution of scarce resources, would caring help one decide? How would one reconcile the duties of caring and justice?²²¹ It is not the place, in this study, to thoroughly evaluate Hare's solution: a "carefully formulated combination of Kantianism and utilitarianism" at the critical or higher level of moral thinking (where the conflicts arise), as opposed to an appeal to intuition, more appropriate to a lower level, before the significant conflicts arise. Since intuitions are not self-supporting, they provide no basis for settling disputes.²²²

Higher level thinking would, in Hare's view, "assess the acceptance utility" of the virtues and principles most useful to society; once cultivated, moral reasoning at the intuitional level will be commensurate with them.²²³ In Hare's view, "impartial" critical thinking can tell us both when we must be more "partial" (for example, to our own children) and when we must, for certain roles and situations, cultivate impartiality. Hare is not uninterested in the facts of specific situations: they assist the higher-level reasoning; however it could be suggested that he has not chosen a viable tool for arriving at those facts: he suggests that empathy allows us to "represent to ourselves fully what it is like to be the other people," thus we enter fully into their situation, think of them as though they were ourselves, then universalize our prescriptions.²²⁴ As will be discussed later in this study, a notion such as Hare's, of "entering fully into [the other's] situation" could be seen as both impossible and potentially damning for those whose "otherness"

²²⁰ R. M. Hare, "Methods of Bioethics: Some Defective Proposals," in Sumner and Boyle, *Philosophical Perspectives*, 26-27.

²²¹ *Ibid.*, 27-28.

²²² *Ibid.*, 29.

²²³ *Ibid.*, 30.

²²⁴ *Ibid.*, 31-32.

is difficult to encompass, such as the addicted. That Hare does not suggest the asking of wider and deeper questions may be as much related to the fact that he is writing from a narrowly philosophical point of view. It could be suggested that the phenomenon of the "fallacy of misplaced concreteness"²²⁵ operates in the area of philosophy as frequently as in any other. It could be suggested that the phenomenon of an autonomous discipline's narrow, specified focus being mistaken for the whole reality might, in fact, be of particular concern in bioethics, given the complexity of the problems. They obviously call, at the very least, for close and respectful collaboration amongst the various relevant disciplines.

There is also a concern that all of the relevant disciplines may not be seated at the table. Renée Fox, suggests, first of all, that the current castigation of U.S. bioethics for its individualism and principlism, itself has a "mantra-like" quality, as does the prescribed alternatives that are being recited."²²⁶ She is concerned that although the field prides itself on multidisciplinary, it is dominated by philosophy and philosophers, this notwithstanding a renewed interest in the relationship with religion, and notwithstanding interest, within bioethics, in sociological and anthropological data; however, there is "minimal recourse to pertinent anthropological and sociological literature, and little contact with the social scientists who authored it."²²⁷

An interesting form of "dissent" comes from a theologian reflecting on the malaise

²²⁵ For a discussion of the "fallacy" and its pertinence to economics, see Herman E Daly and John B. Cobb, Jr., *For The Common Good: Redirecting the Economy toward Community, the Environment, and a Sustainable Future*, 2nd ed., updated, expanded, and with contributions by Clifford W. Cobb (Boston: Beacon Press, 1994), 25-43.

²²⁶ Renée C. Fox, "The Entry of U.S. Bioethics into the 1990's: A Sociological Analysis," in DuBose, Hamel, and O'Connell, *A Matter of Principles?*, 57.

²²⁷ *Ibid.*, 60-61.

within bioethics; rather than countering principlism with a different approach, Richard McCormick asserts that the dissatisfaction with principlism is a symptom of a deeper malaise, traceable to a change in the practice of medicine itself - a "displacement of the culture of medicine as a profession."²²⁸ Forces such as depersonalization, secularization, the emergence of public morality (pursuit of values other than those related to persons), and the market-driven health care system, have contributed to this cultural shift; if such forces can be "honestly faced" and effectively dealt with, then it is McCormick's contention that there might be a spontaneous adjustment of the status quo in bioethics - an adjustment "from below."²²⁹

Concluding Remarks

Those who are thought to have taken risks with their health will possibly have gained a measure of understanding for their situation in relation to the alternate voices: they cannot but benefit from suggestions that their personal stories must be heard; that they might define their own otherness rather than have it initially defined for them by those potentially ready to marginalize, blame and thus oppress; and that their loss of control and dependence might not be so different from the existential situation of the rest of humanity. That the reality of their situation, as understood within bioethics, would benefit from the insights of the social sciences, and a renewed thrust towards compassionate care and search for meaning from voices within religion are to be welcomed. A missing piece remains, however: unexamined assumptions about

²²⁸ Richard A. McCormick, "Beyond Principlism is Not Enough: A Theologian Reflects on the Real Challenge for U.S. Biomedical Ethics," in Dubose, Hamel, and O'Connell, *A Matter of Principles?*, 345. McCormick's thought has echoes in that of Reich: the latter suggests that both medicine and bioethics have developed instrumental, "stethoscopic" approaches which "listen" to a restricted language: biomedical quandaries and restricted rules. Thus both are inattentive to a range of moral meanings within the relevant experience. In Reich, "A New Era for Bioethics," 99-102.

²²⁹ McCormick, "Beyond Principlism," 350-357.

responsibility. The following section will note the rather sparse consideration of the concept within the bioethics literature.

III. When the Focus is "Responsibility"

In contrast to the painstaking search for an understanding of the meaning of justice at all levels of analysis in bioethics, the concept of "responsibility" appears to receive much less attention, in effect, to be largely unexamined. Broadly speaking, there is acknowledgement that, to the extent one believes the addicted to be responsible for their condition, then to that extent there must be some assignment of blame, and possibly some way of making the individual "pay." Those who wish to take a more compassionate or lenient stance toward those who are addicted tend to posit some form of diminished responsibility. Rarely is there question as to the meaning of the concept, or why, if there is responsibility, it should bring some form of payment; or what would be the goal of "payment" - behaviour change, retribution, deterrence? Why, if there is responsibility, should it not occasion more rather than less compassion? That the focus might be, not the assessment of patient responsibility, but the depth of responsibility for that patient, is rarely mentioned.

Social Worth / Responsibility for One's Poor Health

"Social worth" tends to be more of a focus in the bioethics literature than is responsibility for one's health; the two are obviously related, in that moralistic attitudes may oppress those labelled either "socially undesirable," or "irresponsible": a lack of responsibility, particularly in relation to the addicted, might underlie a judgement that the former is the case. It has been suggested that the range of opinion regarding social worth in health care is as wide

as that obtaining within society as a whole.²³⁰ Jecker notes that the two are easily conflated, within both public and professional opinion. Her continuum illustrating judgements of those thought to be "socially undesirable" may help to indicate why this is so. She suggests that at one end of the continuum are those incarcerated for serious crimes such as murder rape and assault; a second group engages in self-destructive behaviour, such as substance abuse, or threatens harm to others; a third may not be a threat to anyone, but incur negative judgements because they lack the financial means to meet their basic needs, thus relying on public sources of funding (and, as well, are potentially judged as less able to benefit from certain kinds of treatment).²³¹ While Jecker does not suggest it, it is obvious that the addicted could appear in either of the first two categories, and that they, as well, must often rely on public sources of support. With no widely-accepted account of the etiology of addiction, and if "blaming the victim" can be seen to be operative in attitudes towards the addicted, then it is not surprising that they are subjected to varying degrees of judgment in the bioethics literature.

Assumptions Made in the Use of the Concept of Responsibility

The philosopher and bioethicist, Daniel Wikler, suggests that many of the arguments for the assignment of responsibility for the health to the individual rely on "key unstated assumptions whose validity is doubtful."²³² While he examines the issues from an analytic philosopher's point of view, he is not convinced that a "reasoned" solution is the sole approach required; the debate is a complex phenomenon, which, he suggests, involves moral questions,

²³⁰ Nancy S. Jecker, "Caring for 'Socially Undesirable' Patients," *Cambridge Quarterly of Healthcare Ethics* 5, No. 4 (Fall 1996): 501.

²³¹ *Ibid.*, 501-502.

²³² Daniel Wikler, "Who Should be Blamed for Being Sick?" *Health Education Quarterly* 14, No. 1 (Spring 1987): 11.

and as well should include political scientists and historians, since the policies of industry and government are also involved: policies which he suggests may have been instrumental in causing sickness.²³³ (Thus in this area, as in that of justice, there is call for interdisciplinarity.)

Wikler uses Dworkin's distinction between the different meanings of "responsibility" that appear in the health-related literature, noting three that are particularly relevant for his discussion: 1) one is "role-responsible" for health since the body in question is one's own; 2) one is "causally-responsible" for one's health, in that choice of behaviour largely determines one's health status; and 3) one is "liability-responsible" to the extent that one is assigned liability for the costs and other consequences of being sick.²³⁴ Wikler had earlier noted the confusions that can result from the conflation of the different meanings; that one is at fault and accountable does not logically follow from the fact that lifestyle plays a causal role in producing illness (while the latter is undeniable, the former may be difficult to prove). Not to disentangle the distinctions is to be diverted from a focus on various external causes of risky behaviour, "resulting in a lessening of willingness to aid the person whose own behavior has resulted in illness."²³⁵

Wikler is particularly concerned to assess the assumptions which appear to him to underlie the policy suggestions for handling those engaging in risky behaviour - policy suggestions that were noted in the discussion of justice above: choices ranging from informing and advising about risks, to more active encouragement such as increased taxes, heightened insurance costs or incentives for non-risk takers, to actual denial of care. Wikler's exposition

²³³ Ibid., 24-25.

²³⁴ Ibid., 12; from G. Dworkin, "Voluntary health risks and public policy," in HCR 11, No. 5 (1981): 26-31.

²³⁵ Daniel I. Wikler, "Persuasion and Coercion for Health: Ethical Issues in Government Efforts to Change Life-Styles," *Millbank Memorial Fund Quarterly | Health and Society* 56, No. 3 (1978): 333.

of the assumptions is meant to indicate the difficulties of "making a serious case for assigning responsibility for health to individuals."²³⁶

- the first assumption is that we know what people can do to stay healthy; Wikler suggests that there is much disagreement over whether such a claim can be made.²³⁷
- the second is that those who take risks with their health wrongly burden others. Wikler suggests that this assumption might be more relevant in a system of universal health insurance; however, even if it had some validity in a system based on private insurance, (where, it must be acknowledged, insurance is not usually purchased as a means of coverage to allow risk taking), it would have to be shown that it would not be appropriate to allow one to purchase insurance for that purpose.²³⁸
- the third assumption is that no one has the right to force others to pay for their unhealthy behaviour; and while the intuitive reaction is to agree, Wikler suggests that, taken to its logical conclusion, it must be acknowledged that most of our choices in living place burdens of one kind or another on others: the question becomes one of drawing a line, ultimately, between the private and the public: one could conceivably be blamed for making any one of a number of choices in the private realm that excluded a choice that would have benefited another beyond the private circle. "The general point is that there are a great number of chances for becoming more of a help and less of a burden to our fellow citizens," and the chance to lighten another's load by maintaining our own health "may be the less important

²³⁶ Wikler, "Who Should be Blamed?" 18.

²³⁷ Ibid., 18.

²³⁸ Ibid., 18-19.

of these chances."²³⁹ There is obviously room for dispute as to where the threshold for concern for the other should be set; Wikler suggests that the advocates of personal responsibility for health have not found a rationale for generalizing their argument.²⁴⁰

- the fourth is that people freely choose their risks, the "classical philosophical problem regarding all behavior."²⁴¹ There is no simple definition or test of freely chosen behaviour; and the behaviours most in question in relation to health are in a grey zone: they appear to be matters of free choice, but are difficult to give up (Wikler lists smoking as one of these; since his article appeared, there is of course much less agreement over the freedom of choice to smoke). Wikler notes that Veatch "who has been the commentator most concerned with this issue,"²⁴² has concluded, (as has been detailed above), that there is some voluntariness to risk-taking behaviour, given that some individuals are able to rise above class-related lifestyle stressors contributing to the behaviour. Wikler counters that while this is true, there may be a host of other social determinants of personal choice besides class-related lifestyle; and Wikler is, at any rate, uneasy at leaving the argument at a purely metaphysical level. Empirical factors, allowed into the argument at a lower level of abstraction, could be taken into account to suggest that although risk takers usually have choices, some have, in fact, a smaller range of sets of choices for accomplishing stress-reduction. While distributive justice would suggest that all should have a fair share of such choices, that is patently not the case, with implications, therefore, in relation to free choice.

²³⁹ Ibid., 19.

²⁴⁰ Ibid., 19-21.

²⁴¹ Ibid., 21.

²⁴² Ibid., 21.

Wikler suggests that it may be that the question of voluntariness cannot be solved apart from consideration of moral premises.²⁴³

It is interesting to note that Wikler appears to imply that, in spite of the complexities involved, if it could be conclusively shown that a person were responsible, then he or she should "pay" in some way; he does not suggest that the best "moral" stance in the face of such responsibility might well be one of compassion, or even forgiveness.

John Kilner notes the extent to which the concept of responsibility is employed within the "medical ethics" literature without elaboration - its use more assumed than otherwise; and possibly based on a Judeo-Christian "story" that Kilner suggests has lost its standing. With that loss has gone society's wholistic, integrated perspective on people and life; in his view, such a story merits more attention, in that we are in need of a "coherent way forward."²⁴⁴

IV. In Summary

This extended discussion has attempted to give a broad understanding of the tenor of the debate, within bioethics, devoted to the giving of organs to those assumed to be responsible for their own poor health. Given the lack of unanimity, within the discipline, regarding either the meaning of justice, or the theory to be privileged, it is not surprising that there is not any unified approach to the topic of the thesis. It is of interest, however, that there appears to be a call for a more nuanced, and possibly a more compassionate consideration for the addicted amongst those advocating more contextually-based foci of justice and/or care.

²⁴³ Ibid., 21-25.

²⁴⁴ Kilner, *Who Lives?*, 232-234.

The discussion of the concept of responsibility, within the bioethics literature, has been far less voluminous than that of justice; however, a discussion has begun, and it will be expanded in the following chapter. It will be suggested that many of the unexamined assumptions underlying the confused nature of the "intractable debate" have their roots in a wide array of notions about the concept that have come piecemeal through the centuries. The fourth chapter will review the more prominent and apparently more influential of them.

CHAPTER FOUR

"RESPONSIBILITY" A BRIEF HISTORY OF THE CONCEPT

D'abord, on est surpris qu'un terme, au sens si ferme au plan juridique, soit d'origine si récente et sans inscription marquée dans la tradition philosophique. Ensuite, on est embarrassé par la prolifération et la dispersion des emplois du terme dans son usage courant; et cela bien au-delà des limites assignées par l'usage juridique.

Paul Ricoeur, *Le Juste*, 1995

Introduction

Given a belief that significant consequences for individuals can be traced to how "responsibility" is understood, and given the underlying understanding of this study that compassionate treatment and the preservation of the human dignity of the fragile other should be assigned a very high value, a brief focus on the development of the concept of responsibility and its use today is in order. It should become clear that present use of the term is an amalgam of its use over time; of concern is a perception that the "amalgam" retains elements from a variety of uses of the term in philosophy, theology, jurisprudence, and the social sciences: elements that potentially have effects inconsistent with the preservation of that dignity. The implications of such inconsistencies remain largely unchallenged, at least in the bioethics literature.

Although it is the understanding of responsibility that is of interest in this study, the history of the concept is clearly linked to the question of human freedom, given the obvious intuition that unless a minimal degree of freedom is posited, humans may not appropriately be

held responsible. Of what does human freedom consist? Does the possession of freedom define what it means to be human? In more recent years, the question has become linked to the question of the freedom of human action, in that it is generally conceded that if human action is not restrained from either internal or external forces, then the individual may be held responsible. Debates have arisen in all of the disciplines which speak in any way of such problems; to adequately trace the debates in these fields would unfortunately be beyond the scope of this study.

Hannah Arendt notes the complexities and the dilemmas that lie in wait for anyone approaching this area:

To raise the question, what is freedom? seems to be a hopeless enterprise. It is as though age-old contradictions and antinomies were lying in wait to force the mind into dilemmas of logical impossibility so that, depending which horn of the dilemma you are holding on to, it becomes as impossible to conceive of freedom or its opposite as it is to realize the notion of a square circle. In its simplest form, the difficulty may be summed up as the contradiction between our consciousness and conscience, telling us that we are free and hence responsible, and our everyday experience in the outer world, in which we orient ourselves according to the principle of causality. In all practical and especially in political matters we hold human freedom to be a self-evident truth, and it is upon this axiomatic assumption that laws are laid down in human communities, that decisions are taken, that judgements are passed. In all fields of scientific and theoretical endeavor, on the contrary, we proceed according to the no less self-evident truth of *nihil ex nihilo*, of *nihil sine causa*....It is true that the test of causality - the predictability of effect if all causes are known - cannot be applied to the realm of human affairs; but this practical unpredictability is no test of freedom, it signifies merely that we are in no position ever to know all causes which come into play, and this partly because of the sheer number of factors involved, but also because human motives, as distinguished from natural forces, are hidden from all onlookers, from inspection from our fellow man as well as from introspection.¹

Arendt notes, quoting Max Planck, that the problem has led philosophy into the obscure wood

¹ Hannah Arendt, "What is Freedom?" in *Between Past and Future: Eight Exercises in Political Thought* (New York: Penguin Books, 1968; reprint, New York: Viking Press, 1968), 143-144.

wherein it has lost its way.² In fact, it was the last of the great questions to become a topic of philosophical inquiry, and when it did appear, "it was the experience of religious conversion - of Paul first and then of Augustine - which gave rise to it."³

This chapter will speak of the early use of the concept of responsibility and the etymology of the word; it will note the early church's treatment of human freedom; mention will be made of the contribution of the early modern philosophers: Hobbes, Locke, Hume, Mill and Kant; it will briefly focus on a number of the more recent modern philosophers whose work in the areas of freedom and responsibility appear to have particularly influenced the current use: Nietzsche, Weber, and Sartre, and note will be taken of Sartre's links with two of his principle interlocutors, Marx and Freud; it will indicate the tenor of the more recent debates surrounding the question of free will/determinism amongst the analytical philosophers; it will finally suggest that an altogether different orientation in relation to responsibility is more appropriate to both the human condition as we now understand it, and to the situation spawned by our recent technical prowess. The concept of "social sin" is explored as one manner of taking into account both expanding knowledge in the social sciences and a concern that Christian compassion not be forgotten. Paul Ricoeur's work, as it alludes to new meanings of responsibility will be mentioned. Ricoeur names Hans Jonas and Emmanuel Levinas as two philosophers who speak

² Max Planck, "Causation and Free Will" in *The New Science* (New York, 1959), quoted in *Ibid.*, 145. One early discussion of responsibility is meant to illustrate the difficulties in this area. F. H. Bradley, in a clever "tongue-in-cheek" comparison of the "vulgar" (non-theoretical) understanding of responsibility with that implied by the doctrines of either "Freedom" or "Necessity," implies that the former has possibly more coherence than that arising from the latter two. The "vulgar" notion implies that to be held responsible, one must act himself, have been himself at the time of the act, "have had enough sense to know what he was doing," to know good from bad, and, where ignorance is wrong, the not having known is not a mitigating factor. As well, everything said of commission also applies to omission or negligence. His suggestion, in the end, is that a philosophy which *thinks* what the "vulgar" *believe* might be worth "tak[ing] steps to understand." In F. H. Bradley, "The Vulgar Notion of Responsibility in Connexion with the Theories of Free-Will and Necessity," in *Ethical Studies*, 2nd ed., with an introduction by Richard Wollheim (Oxford University Press, 1927; Oxford Paperbacks, 1962), 9.

³ Arendt, "What is Freedom?" 145-146.

with differing, but possibly complementary, voices. This chapter will end with an appreciation of Jonas' work. That of Levinas will be the focus of chapter 5, in that it is felt that his concept of responsibility is the more directly relevant for a compassionate stance towards the fragile others actually in our midst.

With each philosopher mentioned, there will be an attempt to discover their understanding of human freedom, their stance in relation to the concept of responsibility, and their attitudes toward those who either do not appear to be "free" or who at least appear to choose to act in an "unacceptable" manner.

I. The Emergence of the Concept and the Related Terminology

The noun responsibility in fact came into use after the corresponding adjective, however two of the concepts which they imply: imputing actions to an agent (causality), and holding agents accountable for those actions (punishment \ commendation) had been known long before, in Greek philosophical and political theory. The two concepts are closely interrelated; McKeon notes that in the early statements of their interrelations, the meanings of the terms involved, and the scope of their applications vary. The interrelated meanings of causality and punishment in these theories appear particularly related to shifting understandings of what constitutes human action, and on the foundation of moral criteria for evaluating that action: whether the criteria are independent of convention and thus recognizable by wisdom, or whether they are external recognitions and instituted consequences.⁴

"Cause" was initially a Greek legal term which was extended to the area of natural

⁴ Richard McKeon, "The Development and the Significance of the Concept of Responsibility," *Revue internationale de philosophie* XI (1957):10-11.

motions, and thence to the question of the causation of human action: what distinguishes a human act, and under what circumstances an act may be imputed to its subject? The notion that only voluntary actions, susceptible of deliberation and choice, could be morally imputed to human subjects, arose in the diverse understandings of Plato and Aristotle.⁵

The notion of accountability, which implies the "operation of punishments, penalties, and indemnities, imposed by a community to rectify or prevent injuries arising from crime, misdemeanor, breach of contract, or negligence,"⁶ is variously treated, depending on whether justice or duty are believed to underlie the interrelations between ethics and politics. If justice, then there are variations dependent on the above-mentioned variation in criteria for moral evaluation (internal or external). The Aristotelian distinctions give some idea of the complexities. In its political applications of justice, there are as many varieties as there are constitutions; in its moral applications to action, there are a number of meanings: the lawful; the fair; or the virtuous. Justice is distributive, or commutative; the former operating by imputation, through honours and other rewards; the latter judging accountability via a surprisingly nuanced scale of wrong-doing.⁷

However, when the notion of duty rather than that of justice is employed to explain virtues, laws, and their interrelation, accountability and imputation are encompassed under that notion, (as was the case with the Stoics). While the meanings varied over time, Zeno the Stoic defined duty as "that for which, when done, a reasonable defence can be adduced"; its causal

⁵ Ibid., 10-11.

⁶ Ibid., 11.

⁷ McKeon, "Concept of Responsibility," 11-12.

basis was the harmony of natural processes.⁸ In fact, it was the "language of duties and natural law" which entered into the formulation of the principles of Roman law: "the formula that justice is rendering every man his due, which Polemarchus was unable to defend against the criticisms of Socrates in Plato's *Republic*, reappears in the definition of justice in Justinian's *Institutes*."⁹

Etymologically, while the adjective "responsible," did not come into use until the 13th century, it was derived from the Latin *responsum*, out of *respondere*, which was derived from *sponsio* and *spondere*.¹⁰ In the Latin root can be detected the diverse meanings of responsibility. *Respondeo* meant both to promise a thing in return for something else, and also, in juridical discourse, to give an opinion, advice, or an answer when summoned to appear before a tribunal.¹¹ Thus, in the first sense, *responsor* referred to the guarantor of a debt or an obligation, (*sponsor* meant the financier in present terms¹²), and eventually *répondre* referred to the obligation to meet another's debt, implying the holding of oneself as a guarantor of events in the future.¹³

In the second sense, *respondere* contains the notion of answering in the wider sense of responding to any type of question in the course of a dialogue; Villey notes usage such as "le juriste romain *répondait* à ses consultants," or, more particularly, "on répond à une exigence, ce qui est faire face à un devoir."¹⁴ This sense of answering may well be reflected in Molière's

⁸ Diogenes Laertius, VII, 107, in McKeon, "Concept of Responsibility," 12-13.

⁹ McKeon, "Concept of Responsibility," 12-13.

¹⁰ *Ibid.*, 46.

¹¹ William Schweiker, *Responsibility and Christian Ethics* (Cambridge: Cambridge University Press, 1995), 55.

¹² Villey, "Esquisse historique sur le mot responsable," *Archives de philosophie du droit* 22 (1977): 46.

¹³ *Ibid.*, 46.

¹⁴ *Ibid.*, 47.

*"Je réponds de ma femme et prends sur moi l'affaire"*¹⁵; and Schweiker notes that this usage is eventually reflected in the German *Verantwortung*, where in answering, the self appears before whomever he or she must respond; the bond between person and her or his deeds is acknowledged; at a deeper level, the self exists in its answering and responding to others.¹⁶

Schweiker notes another root for the concept of responsibility, one that he will indicate has had a significant application. An early use in English denotes an actor who is able to play any part required by the company: such a person is called a "good all-round responsible." Schweiker suggests that this usage, along with the idea of "character," indicates the importance of social roles in assigning responsibility, "and also that persons can assume the roles, and thus responsibility, of others."¹⁷

While the juridical roots of responsible are rarely noted in the dictionaries, it is clear to Villey that the examples therein cited from ordinary language are derived from the law. It is interesting that in neither the early juridical use nor in the ordinary language use does Villey detect implication of fault or an imposed fine; for example, no fault is presupposed for which a debtor must respond to financiers.¹⁸ This remains true once the adjective responsible appears in the 13th century as the passive of *répondre*: a demand to which one could not respond;

¹⁵ Ibid., 47.

¹⁶ Schweiker, *Responsibility*, 55-56.

¹⁷ Ibid., 56-57. In Schweiker's view, the roots and early usage of the concept presage the content of the theories of responsibility that have developed since (each articulating an important insight into the moral life, but none able to stand alone). He lists them as 1) *agential*: focusing on the agent as causal force; the questions of free will and determinism, and of accountability, are of central importance; 2) *social*: responsibility is grounded in relation to the roles and vocations an agent holds; social practices of praise and blame - the boundaries of the moral community - become central; and 3) *dialogical*: which focuses on the event of the encounter with the other; the self comes to be constituted as a moral being in terms of the quality of the response to the claims of others on the self. See 40-41; 65; and 78-105.

¹⁸ Villey, "Esquisse," 48.

although in the end, the meaning became attached to the subject upon whom it was incumbent to give a response, as in Voltaire's "*Chaque soldat est responsable de la gloire de la nation*."¹⁹

The noun responsibility did not appear until later in the 1700's, at a time, almost simultaneously, when the fact that the populace was taking an active interest in its government being more responsive to its needs was obvious in England, France, and the United States. An example from the writings of Alexander Hamilton is instructive: "I add, as a sixth defect, the want, in some important cases, of a due responsibility in the government to the people, arising from that frequency of elections which in other cases produces this responsibility."²⁰ That the related "irresponsible" and "irresponsibility" followed soon after the appearance of "responsibility" is not surprising. In Henriot's view, it is also not coincidental that at the same time, the Civil Code was in process of being developed and refined.²¹ The Code's emphasis on reparation for damage caused/compensation for the victim would highlight personal responsibility; as Henriot notes, "désormais la 'responsabilité' de tous garantit les droits de chacun."²²

While the roots of the focus on reparation for damage can be seen in the Roman juridical tradition - the concern being, not that the damage be traced back to a fault, but that a just order, an equilibrium, be reestablished - Villey cautions that this does not mean that the notion of fault was absent from Roman law; it appeared in relation to certain criminal affairs, and in contractual law, wherein the fault would be in the failure to respond to the obligations imposed by good

¹⁹ Ibid., 48.

²⁰ A. Hamilton, *The Federalist. A Commentary of the Constitution of the United States*, No. LXIII (London: Fisher Unwin, 1888), 392, in Jacques Henriot, "Note sur la date et le sens de l'apparition du mot 'responsabilité,'" *Archives de philosophie du droit*, no. 22 (1977): 61.

²¹ Henriot, "Note," 61.

²² Ibid., 62.

faith (and wherein the law would look to the subjective intentions of the accused).²³ However, the fault was not the cause of the obligation: "la cause véritable, essentielle de l'obligation...c'est toujours le *désordre* jeté dans une *relation* entre plusieurs personnes, et la réaction de la justice (sinon seulement 'commutative') *corrective* et réparatrice."²⁴ Even following damage, fault was not sufficient to render one responsible - all the factors entering into a given situation were taken into account; nor was fault a necessary condition, as in the case of the head of a family being responsible for damages caused by servants. To summarize, the early juridical roots of the concept of responsibility refer to those called before a tribunal in relation to certain obligations, whether or not their debt proceeds from an act of free will.

One could, with Michel Villey, regret that the Roman juridical roots of "responsible" are, today, often ignored; Villey's concern is that a modern individualistic ethics with its focus on subjective intentions and the finding of fault, an orientation that he believes was spawned by the moralists, has led to a neglect of the relationships between the diverse players in a given situation: the perpetrator of the crime, the victim, and the society of which they are a part.²⁵ His point is that this wider focus would be more useful to the judiciary. In fact, one of the concerns underlying this study is that society may have become too focused on blaming victims, to the exclusion of a focus on the notion of a "just order." That the misuse of tobacco and alcohol has been so problematic for so many citizens could be viewed as a more pervasive "disorder" in which all bear some responsibility.

²³ Villey, "Esquisse," 50.

²⁴ Ibid., 51.

²⁵ Michel Villey, "Esquisse," 58.

II. Early Christian Thought

To adequately follow the full discussion of responsibility within Christian theology is beyond the scope of this study; brief note will be taken, first, of its links with the language of duties and natural law within Roman law; then of St. Augustine's understandings of free will in relation to our salvation, and finally of the contribution of Saint Thomas to the Western conception of responsibility.

As is mentioned above, the language of duties and natural law, which was variously used in Greek philosophy, entered into the formulation of the principles of the Roman law, and thence was adapted to Christian doctrine. "Accountability found a universal basis in divine law, old and new, and imputation a natural basis in original sin."²⁶ The questions of human responsibility for either good or evil; the problem of the relationship of free will, should it exist, to the assumed foreknowledge of God; the role of grace; and the relation of the divine law to civil and moral law were superimposed on the age-old questions surrounding causality and punishment/imputation and accountability. The rather inner-directed concern about obedience to divine law, a concern, ultimately, about personal salvation, led, in Villey's view, to the change in the concept of responsibility: to a focus on the blameable act.²⁷

St. Augustine

St. Augustine's agonizing contemplations of such issues set the stage for an on-going debate. Reflecting on his life before conversion, Augustine notes that whereas then he would excuse himself for sinful behaviour, believing that another, alien nature could be blamed,²⁸ later,

²⁶ McKeon, "Concept of Responsibility," 13.

²⁷ Villey, "Esquisse," 52-54.

²⁸ "...and it pleased my pride to be beyond fault, and when I did evil not to confess I had done it." *Confessions of St. Augustine*, V,10, trans. F.J. Sheed, intro. Peter Brown (Indianapolis \ Cambridge: Hackett

after conversion, he came to know that the sin could be imputed solely to an inner conflict, since "in truth I was wholly I, it was my impiety that had divided me against myself."²⁹ Following his encounter with the Pauline thought, Augustine came to view human sin as the inevitable result of original sin, and human striving as inadequate: unless justified by faith, one does not escape the tragedy of "the good that I would I do not: but the evil which I would not, that I do."³⁰ The human will remains free to choose good and evil, but without divine intervention, it cannot choose the good. Augustine has set the stage for the debates that are with us yet.³¹

Hannah Arendt, whose dissertation focused on love in the works of Augustine, notes that, besides being "the great Christian thinker who in fact introduced Paul's free will, along with its perplexities, into the history of philosophy,"³² Augustine introduced another notion of freedom: freedom as the faculty of beginning, the beginning implied each time we act. She writes:

...freedom is conceived [in the *City of God*] not as an inner human disposition but as a character of human existence in the world. Man does not possess freedom so much as he, or better his coming into the world, is equated with the appearance of freedom in the universe; man is free because he is a beginning and was so created after the universe had come into existence....In the birth of each man this initial beginning is reaffirmed, because in each instance, something new comes into an already existing

Publishing Company, Inc., c1993): 79.

²⁹ Ibid., 79.

³⁰ Romans 7: 19. (It is a question, which will not be dwelt upon here, whether Paul, in Romans 7:20, has moved very far beyond Augustine's earliest belief that an alien nature could be blamed: "Now if I do that I would not, it is no more I that do it, but the sin that dwelleth in me.")

³¹ One of the debates, presaging the Reformation, is the well-known Erasmus\Luther *Discourse on Free Will*, a striking example of reasonable argument meeting offensive rhetoric; trans. and ed. by Ernst F. Winter (New York: Frederick Unger, 1961).

³² Arendt, "Freedom," 167. The editors of Arendt's dissertation note that she "neatly bypasses" the theological minefield of Augustine's evolving views on predestination and the coercion of grace, believing that she can legitimately proceed with a philosophical analysis. Joanna Vecchiarelli Scott and Judith Chelius Stark, "Rediscovering Hannah Arendt," in Hannah Arendt, *Love and Saint Augustine*, Edited and With an Interpretive Essay by Joanna Vecchiarelli Scott and Judith Chelius Stark (Chicago & London: The University of Chicago Press, 1996), 143.

world which will continue to exist after each individual's death. Because he *is* a beginning, man can begin; to be human and to be free are one and the same. God created man in order to introduce into the world the faculty of beginning: freedom.³³

Arendt believes that this view is rooted in Augustine's Roman background, and, significantly, appears in the *City of God*, his only political treatise. This notion of freedom echoes the central political understanding of both ancient Greek and Roman political life, however the political understanding of freedom played no role in ancient philosophy, since the overriding philosophical belief was that perfect freedom is possible only outside the realm of human affairs.³⁴ Ironically, as noted above, it was Augustine's other understanding of free will which allowed the insertion of free will into the philosophical understanding of freedom, an insertion that was possible only because it involved an inner dialogue between the self and the will, beyond the political realm. Arendt notes the ensuing tragedy:

Since then, freedom has been a philosophical problem of the first order; as such, it was applied to the political realm and thus has become a political problem as well. Because of the philosophic shift from action to will-power, from freedom as a state of being manifest in action to the *liberum arbitrium*, the ideal of freedom ceased to be virtuosity in the sense we mentioned before [excellence in the performance itself, rather than in an end product] and became sovereignty, the ideal of a free will, independent from others and eventually prevailing against them....

....Politically, this identification of freedom with sovereignty is perhaps the most pernicious and dangerous consequence of the philosophical equation of freedom and free will. For it leads either to a denial of human freedom - namely, if it is realized that whatever men may be, they are never sovereign - or to the insight that the freedom of one man, or a group, or a body politic can be purchased only at the price of the freedom, i.e., the sovereignty, of all others. Within the conceptual framework of traditional philosophy, it is indeed very difficult to understand how freedom and non-sovereignty can exist together, or to put it another way, how freedom could have been given to men under the condition of non-sovereignty.³⁵

³³ Arendt, *Freedom*, 167.

³⁴ *Ibid.*, 154-157.

³⁵ *Ibid.*, 163-164.

Arendt is obviously of the opinion that the sovereignty of political bodies has always been an illusion, maintained by violence; indeed "freedom and sovereignty are so little identical that they cannot even exist simultaneously."³⁶ It is instructive to juxtapose Arendt and those, noted in Chapter Three, who espouse the more freedom-oriented theories.

St. Thomas Aquinas

Turning to Saint Thomas, it is suggested that his thought, along with that of Aristotle, was largely the foundation of the traditional Western conception of responsibility: an account centring on knowledge and on the capacity to act as necessary conditions for voluntary action, and focusing also on the reasons why responsibility might not be rightly assigned to an agent. Whether acts are voluntary or involuntary is dependent on whether the "principle of action" is internal or external to the agent - this being so whatever that principle might be, including passion or interest, and whatever its provenance. Thus voluntariness implies freedom from external compulsion, or possibly deception or factual ignorance.³⁷

While the idea of responsibility is not explicit, the conception is that of moral character in terms of the virtues, and the moral rightness of the acts of praise and blame. Aquinas's reconstruction of Aristotle is interesting, in that it conceives of the infusion of the theological virtues into the human soul; thus an external cause - God - becomes an internal principle of action *within* an agent.³⁸ Aquinas suggests that perfection of action, or of knowledge, is impossible without God's grace³⁹; thus he writes:

³⁶ Ibid., 164.

³⁷ Schweiker, *Responsibility*, 69-70.

³⁸ Ibid., 69.

³⁹ Grace "is not the same as a virtue. It is the disposition which the infused virtues presuppose as their principle and root." Thomas Aquinas, *Nature and Grace: Selections from the Summa Theologica of Thomas Aquinas*, trans. and ed. by A. M. Fairweather, The Library of Christian Classics, Vol. XI, eds. John Baillie,

...an action of the intellect, or of any created thing, depends on God in two ways: first, in that it has from him the perfection or the form by means of which it acts, and second, in that it is moved to its act by him. Every power bestowed by God upon created things has the power to achieve some definite action by means of its own properties. But it cannot achieve anything further, unless through a form which is added to it.⁴⁰

Aquinas writes thus of a will that is free, yet moved by a higher power:

...it is because of the deliberation of his reason, which can turn to one side or the other, that a man is master of his actions, and of willing and not willing. But although he is thus master, it is only through a previous deliberation that he either deliberates or does not deliberate. Since this regress cannot be infinite, we are finally driven to say that a man's free will is moved by an external principle higher than the mind of man, that is, by God. The philosopher indeed proves this in his chapter on Good Fortune... Thus even the mind of a healthy man is not so thoroughly master of its actions that it does not need to be moved by God. Much more so the free will of a man weakened by sin and thereby hindered from good by the corruption of nature.⁴¹

As indicated at the beginning of this section, the debates spawned within the early church are with us yet; they divide communities of faith, and complicate widespread discussion of the extent of individual responsibility. If Arendt is correct, the confusion has had devastating consequences at the wider political level as much as for the individual. However, while Arendt may be correct, as may Villey, in stating that the contribution of Christianity added to the focus on the blameable act, one could suggest that a countervailing trend was present as well: the focus on compassion and the focus away from judging others that was so central to the message of Jesus. If the early church engendered an inner focus, one centred on personal salvation, it also engendered the responses that have attempted to heal the wounded, regardless of blame for those wounds. That there are such responses today for groups such as the addicted, may well rest on the same foundation as the attitudes which condemn them.

John T. McNeill, and Henry P. Van Dusen (London: SCM Press Ltd., 1954), 12ae, Q. 110, Art.3.

⁴⁰ Ibid., 12ae, Q. 109, Art 1.

⁴¹ Ibid., Q. 109, Art.2.

III. The Compatibilists and Incompatibilists of the Seventeenth, Eighteenth and Early Nineteenth Centuries

The thinkers of the Enlightenment, and the radical Enlightenment, in their bent to free reason from all unnatural constraints, and to submit humanity and its society to the scientific method, would include morality in the attempt. The profound questions surrounding our human condition were not thereby settled; the separation of the moral dimension from a divine tribunal, not complete until the radical Enlightenment, meant simply that the manner of asking the questions differed. Less troubled by whether we have a God-given free will, the debate became, eventually, whether and to what extent we are free from the necessity or determinism of some form of physical causality. If not free, can we be held accountable? If not free, can we be held morally responsible for our actions? How is punishment justified?

As the debate unfolded over the centuries, the arguments became more complex as subtleties were introduced by the varieties of determinists, and the distinctions between the different notions of freedom. Determinism could simply refer to the notion that every event has a cause, or at the extreme, the belief that, given a description of the world at any one time, and complete knowledge of the laws of nature, the whole future of the world is predictable.⁴² Freedom has been based on a number of varying distinctions: in the "basic" sense of being able to do what one chooses to do; or, for some, based on a certain "freedom-sufficient degree of agentive enablement"⁴³ - referring, for example, to capacities for purposive action, desires and beliefs, or capacities for self-conscious thought. Others believe that in order to be free humans

⁴² Galen Strawson, *Freedom and Belief*, 4.

⁴³ Strawson, *Freedom*, 9.

must possess certain attitudes about the way things are.⁴⁴ The subtleties have led to categorizing labels: *incompatibilists* assert that the presence of determinism entails the absence of freedom; *libertarians* are incompatibilists who believe we are free, *hard determinists* that we are not. *Compatibilists* believe we may be free, even if determined, although implied in the label is no particular belief as to whether either is true.

Hobbes, Locke, Hume, and Mill are today categorized as Compatibilists; for the first three, choices, decisions and actions can be both determined by external causes and free, if by free it is meant simply that we are not prevented from doing what we wish to do; normative distinctions are derived from external devices of accountability. The views of Mill will be seen to differ markedly from the other Compatibilists. Kant represents the opposing view, that human acting is the result of spontaneous origination; the necessary laws of nature are to be distinguished from the moral laws of freedom, which alone can be the determining principles of right action.⁴⁵ The external devices of accountability or punishment have no normative value. Kant is considered an Incompatibilist; our freedom is the result of choices, decisions and actions that are both voluntary, and originate with the self.⁴⁶ This section will focus on Hobbes, Hume, (with scant mention of Locke), Mill, and Kant, with a particular attempt to delineate how the actions of the "irresponsible" (in the light of what their historical understanding of that could be) might be viewed in their respective theories.

⁴⁴ Strawson, *Freedom*, 9-11.

⁴⁵ McKeon, "Concept of Responsibility," 14-18.

⁴⁶ These distinctions are used particularly by the analytic philosophers, to whose works this study will allude later in the chapter. See particularly Hilary Bok, *Freedom and Responsibility* (Princeton, New Jersey: Princeton University Press, 1998); Ted Honderich, *How Free Are You? The Determinism Problem* (Oxford \ New York: Oxford University Press, 1993), and *A Theory of Determinism*, vol. 2, *The Consequences of Determinism* (Oxford: Clarendon Press, 1988).

Thomas Hobbes

Although Hume, of the eighteenth century, is regarded as the "patron saint" of Compatibilism, the credit should apparently be given to his predecessor, Thomas Hobbes, of the seventeenth.⁴⁷ Hobbes writes of freedom thus:

Liberty, or Freedom, signifieth (properly) the absence of opposition (by opposition, I mean external impediments of motion) and may be applied no less to irrational and inanimate creatures than to rational. For whatsoever is so tied or environed as it cannot move but within a certain space, which space is so determined by the opposition of some external body, we say it hath not liberty to go further. And so of all living creatures, whilst they are imprisoned or restrained with walls or chains, and of the water, whilst it is kept in by banks or vessels, that otherwise would spread itself into a larger space, we use to say, they are not at liberty to move in such manner as without those external impediments they would. But when the impediment of motion is in the constitution of the thing itself, we use not to say it wants the liberty, but the power to move (as when a stone lieth still or a man is fastened to his bed by sickness).

And according to this proper and generally received meaning of the word, a Free-Man is *he that in those things which by his strength and wit he is able to do is not hindered to do what he has a will to do....* [F]rom the use of the word *free-will* no liberty can be inferred of the will, desire, or inclination, but the liberty of the man, which consisteth in this: that he finds no stop in doing what he has the will, desire, or inclination to do.⁴⁸

Since every human act proceeds from some cause, they proceed, in Hobbes view, from necessity; the necessity of which he speaks comes to the will from God's will: otherwise, in his view, "the *liberty* of men would be a contradiction and impediment to the omnipotence and *liberty* of God."⁴⁹ God's will is communicated through the secular power, and scripture is liberally quoted to support his view that the sovereign is "ordained of God" for this purpose.⁵⁰

⁴⁷ See John J. Jenkins, *Understanding Hume*, ed. Peter Lewis and Geoffrey Madell (Edinburgh: Edinburgh University Press, 1992), 92; also Honderich, *How Free?*, 95.

⁴⁸ Thomas Hobbes, *Leviathan*, with selected variants from the Latin edition of 1668, ed. with introduction and notes by Edwin Curley (Indianapolis/Cambridge: Hackett Publishing Company, Inc., c1994), 136.

⁴⁹ *Ibid.*, 137.

⁵⁰ The question of Hobbes' religious beliefs in general, and of his use of scripture in particular, are of interest. James Farr notes that, while Hobbes decried prooftexting, he did so himself quite liberally, to "confirm his rationalism, his natural philosophy of body (discussions of angels, spirits, ghosts), and his

Hobbes acknowledges that we do many things which God does not command, and of which He is not the author; these are the things done without passion or "appetite."⁵¹ Punishment and praise are seen as efficacious in persuading the populace to act appropriately; a "perceived agreement on moral matters" is foundational.⁵²

There are some indications of Hobbes' attitude to those without the means to take notice of the law of the commonwealth:

Over natural fools, children, or madmen there is no law, no more than over brute beasts; nor are they capable of the title of just or unjust, because they never had power to make any covenant or to understand the consequences thereof, and consequently, never took upon them to authorize the actions of any sovereign, as they must do that make to themselves a commonwealth.⁵³

Of particular note is Hobbes' view that those who are unable to understand the law by reason of an accident befalling them are excused, *unless that accident proceed "from his own default"* (emphasis mine).⁵⁴ On the other hand, there is indication that Hobbes had some understanding of the sources of human behaviour. Bernard Gert notes that the best indication appears in Chapter XIII of *De Homine*, in which Hobbes lists the sixfold source of human "dispositions," or "inclinations": they arise from "the constitution of the body, from experience, authorities."⁵⁵ Gert thus suggests that Hobbes remarks about human nature in the state of

political philosophy of absolute obedience," as well as to counteract any claim to political or ecclesiastical power on the part of churchmen, and to help exorcise the strains in Christianity that he believed were responsible for the irrationality of the civil war. James Farr, "Atomes of Scripture: Hobbes and the Politics of Biblical Interpretation," in *Thomas Hobbes and Political Theory*, ed. Mary G. Dietz (Lawrence, Kansas: University Press of Kansas, 1990), 175. Chapter XLIII of *Leviathan* is particularly instructive in this regard.

⁵¹ Hobbes, *Leviathan*, in Curley, 137.

⁵² Richard Tuck, "Hobbes' moral philosophy," in *The Cambridge Companion to Hobbes*, ed. Tom Sorell (Cambridge: Cambridge University Press, 1996), 200.

⁵³ Hobbes, *Leviathan*, in Curley, 177.

⁵⁴ *Ibid.*, 177.

⁵⁵ Thomas Hobbes, *De Homine*, X-XV, ed. Bernard Gert (Indianapolis/Cambridge: Hackett Publishing Company, Inc., 1991), XIII, 9. Quoted in Bernard Gert, "Hobbes's psychology," in *Cambridge Companion*, 166-167.

Nature should not be construed as applying to individuals, but should be seen as some features of the population in general, to be taken into account when constructing a workable political theory.⁵⁶

Liberty had a similar meaning for John Locke, as did morality, however in contrast to Hobbes, he posited three sources of laws: divine laws which legislate whether actions are sins or duties; civil laws, whether actions are criminal or innocent; and "the law of opinion or reputation," whether actions are vices or virtues: virtue is thus founded on a form of general agreement; rewards and punishment are external.⁵⁷

David Hume

David Hume presents a "reconciling project with regard to the question of liberty and necessity"⁵⁸; Jenkins notes that, if there is anything distinctive in Hume's position, as opposed to that of Hobbes and Locke (and Leibniz), it is in the persuasiveness of his argument.⁵⁹ Hume explains that the dispute over liberty and necessity has been essentially verbal; that by liberty it has never, surely, been meant that actions have no connection with motives, inclinations and circumstances. We must all, surely, agree as follows:

...By liberty, then, we can only mean *a power of acting or not acting according to the determinations of the will*; that is, if we choose to remain at rest, we may; if we choose to move, we also may. Now this hypothetical liberty is universally allowed to belong to everyone who is not a prisoner and in chains.⁶⁰

Hume's reconciling project defines necessity as the inference of cause and effect

⁵⁶ Gert, "Hobbes's psychology," 166.

⁵⁷ McKeon, "Concept of Responsibility," 15.

⁵⁸ David Hume, *An Inquiry Concerning Human Understanding: with a supplement, An Abstract of a Treatise of Human Nature*, ed. with an intro. by Charles W. Hendel (Indianapolis: Bobs-Merrill, 1955), 104.

⁵⁹ Jenkins, *Understanding Hume*, 92.

⁶⁰ Hume, *An Inquiry*, 104.

produced by the regular conjunction of objects with each other, (or the regular conjunction of like actions with like motives, inclinations and circumstances)⁶¹; this in opposition to any notion of objective necessity in the occurrence of events themselves.⁶² This understanding has relevance for whether punishment has a place:

I shall go farther, and assert, that this kind of necessity is so essential to religion and morality, that without it there must ensue an absolute subversion of both, and that every other supposition is entirely destructive of all laws both *divine* and *human*. 'Tis indeed certain, that as all human laws are founded on rewards and punishments, 'tis suppos'd as a fundamental principle, that these motives have an influence on the mind, and both produce the good and prevent the evil actions. We may give to this influence what name we please; but as 'tis usually conjoin'd with the action, common sense requires it shou'd be esteem'd a *cause* and be look'd upon as an instance of that necessity, which I wou'd establish.⁶³

Moral judgement is founded, not on reason, but on the spontaneous moral sentiments of approbation or blame, apparently more efficacious than "remote and uncertain speculations [reason]"⁶⁴; such sentiments are not to be "controlled or altered by any philosophical theory or speculation whatsoever."⁶⁵ Watson notes that the Humean reason differs markedly from Platonic reason as a source of motivation, and a determinant of value; Hume's "reason" is a faculty concerned only with matters of fact: calculating, within a given set of desires or ends, how to fulfil the desires and serve the ends, with nothing to say about the assignment of initial value.⁶⁶ McKeon notes that the Humean reason can analyse our language of praise and blame,

⁶¹ Hume, *Inquiry*, 106.

⁶² Jenkins, *Understanding Hume*, 92.

⁶³ David Hume, *A Treatise of Human Nature*, ed. with an analytical index, by L.A. Selby-Bigge. Second Edition, with text revised and variant readings by P.H. Nidditch (Oxford: Clarendon Press, 1978 [1739-40]), 410.

⁶⁴ Hume, *Inquiry*, 111.

⁶⁵ *Ibid.*, 110.

⁶⁶ Gary Watson, "Free Agency," in *Free Will*, ed. Gary Watson (Oxford: Oxford University Press, 1982), 98-99.

discovering what is common and therefore normative.⁶⁷ Our moral judgements are thus expressions of how we feel; these are forms of either love or hatred (directed at others and their personal qualities), or pride and humility (when self-directed); furthermore, the judgements are directed, not at actions, but at persons and their personal qualities, and in order to arouse our sentiments, the personal qualities must be seen to be consistent with durable and constant personal character:

Actions are by their very nature temporary and perishing: and where they proceed not from some cause in the characters and disposition of the person, who perform'd them, they infix not themselves upon him, and can neither rebound to his honour, if good, nor infamy, if evil. The action itself may be blameable; it may be contrary to all the rules of morality and religion: But the person is not responsible for it; and as it proceeded from nothing in him, that is durable or constant, and leaves nothing of that nature behind it, 'tis impossible he can, upon its account, become the object of punishment or vengeance.⁶⁸

Hume could be seen to be struggling with the issues that are with us to this day. Given more understanding of the complexity of human motivation and action, we speak less frequently than does Hume of stable and abiding character, and, as Jenkins notes, we are also more likely than Hume to reward those whose actions indicate that they are struggling against obstacles in the personality;⁶⁹ however, as this thesis suggests, we have not fully resolved the issue of whether or not to blame, and whether or not to punish, a number of individuals, of whom the addicted are prime examples.

John Stuart Mill

Although John Stuart Mill is also considered a Compatibilist, given his conjoining of

⁶⁷ McKeon, "Concept of Responsibility," 16.

⁶⁸ Hume, *Treatise*, 411.

⁶⁹ Jenkins, *Understanding Hume*, 162,

freedom and necessity, his inclusion should not suggest that his views do not differ markedly from the other compatibilists considered. Mill characterizes himself as a "Moral Causationist," meaning that while our character and general disposition are determined by external influences, and our conduct is in turn determined by our character and by our circumstances, we can improve that character, make changes to what we dislike about ourselves, if the desire to do so is stronger than the means are disagreeable. (This in opposition to what Mill calls a Pure Fatalist, who believes that an external power compels us to act in a predestined manner; and to a Modified Fatalist, for whom actions are determined by our wills, but our wills are ultimately traceable to a character that is not of our making: in either case, there is no efficacy in our love of good and evil, or attempts at change, and so we are not responsible.⁷⁰)

The strongest motivating force for the development of good character is punishment, in Mill's view. A detestation of doing wrong emerges when the actions that displease others lead to our being an object of others dislike; then we render ourselves:

...liable to whatever [others] may think it necessary to do in order to protect themselves against [us]; which may probably include punishment, as such, and will certainly involve much that is equivalent in its operation on [us]. In this way, [we] are certain to be made accountable, at least to our fellow creatures, through the normal action of their natural sentiments [of right and wrong].⁷¹

Mill is quick to note that accountability has nothing more in it than an expectation and dread of external punishment, since when pain has been long associated with a given fact, the fact itself becomes painful. The forbidden wrong becomes a detestation of doing wrong, and the

⁷⁰ John Stuart Mill, *An Examination of Sir William Hamilton's Philosophy and of The Principle Philosophical Questions Discussed in his Writings*, ed. J. M. Robson, with an introduction by Alan Ryan (Toronto: University of Toronto Press, 1979), 465-466.

⁷¹ *Ibid.*, 455.

deed in question becomes one for which we feel moral responsibility. Uppermost in our minds, when we are said to have the feeling of being morally responsible, is the idea of being punished.⁷² The feeling of responsibility admits of two kinds; either the expectation that punishment will be inflicted, or only that we know that we deserve the punishment.

The foundations for "right and wrong" are apparently our "natural sentiments" of love of the good, and hatred of evil; it is a "property of [our] nature by which [we] prefer what is salutary to what is pernicious, and proclaim and act upon the preference."⁷³ By fault, we mean an insufficient love of good, and by merit, the opposite.⁷⁴ Mill goes on to note that the sentiments excited in us by others' behaviour react on us, and so what is considered odious in others is true also for ourselves. For Mill, the reality of moral distinctions and the question as to whether our actions are free or determined are two very different and independent questions.

Given the role of punishment in Mill's schema, it is not surprising that he would exempt from punishment any who were under such physical constraint, or under the influence of such "a violent motive" (such as fear of imminent death), that fear of punishment would have no effect. Similarly, those who really "could not help" acting as they did are also exempt; meaning that the will could not have helped it. However, barring these circumstances, and even if "[the] act was the consequence of motives," (that is, even if his notion of determinism is true) the defect or infirmity (the insufficient love of good) is surely recognized as one's own. What actions do not depend on one's will are not explained; nor is there any indication of how Mill might view behaviour that we would label addictive, although he does suggest that those who

⁷² Ibid., 454.

⁷³ Mill, *An Examination*, 457 n.*p.

⁷⁴ Ibid., 464.

have overcome great obstacles are worthy of greater merit than those whose "moral desires and aversions have prevailed, but not over a strong force."⁷⁵ When judging actions, there is apparently a need for a careful weighing of both the moral desires and aversions, and the size of the obstacle or temptation to be overcome.

Also of note is Mill's discussion of the justice of punishment. While he does not clearly, or at any length, elaborate on the issue, he does recognize that some punishment is mere retaliation, and this he abhors. Punishment is justifiable if it will "improve the culprit himself, or secure the just rights of others against unjust violation"⁷⁶; Mill could admit inflicting suffering in certain cases where it gives satisfaction to feelings of indignation and resentment, (which are mostly, he believes, to be encouraged).⁷⁷ Hence, again there is need for careful weighing; and although there is evidence of some sensitivity to human suffering in Mill's thought, it will be suggested, later in this study, that this incessant weighing (or in other terms, this "knowing of being") in the face of the needs of the fragile other, is not the most helpful or the most compassionate stance.

It is of interest that Mill's apparent faith in the efficacy of punishment in changing behaviour is still in evidence: one need only attend to the cries for harsher treatment of those who transgress the law, (uttered at times, it would appear, for political gain), or for stiffer penalties for those who appear to be an unjustified drain on the health care system. As well, Mill's allowance of some satisfaction for the feelings of indignation and resentment could be seen to be akin to present-day support for some of the demands of the advocates of victims'

⁷⁵ Mill, *An Examination*, 464–465.

⁷⁶ *Ibid.*, 462.

⁷⁷ *Ibid.*, 462.

rights, or indeed to the justifications used to deny scarce medical resources to those seen to be worthy objects of such sentiments.

Immanuel Kant

Kant is a striking contrast to Hobbes and Hume, since he is generally considered an Incompatibilist,⁷⁸ for whom morality is based on action that is free in the sense of spontaneous origination. This designation will be seen to be rather a simplistic generalization of Kant's complex thought (in fact, as will be noted below, Christine Korsgaard points to a sense in which Kant might be called a practical Compatibilist⁷⁹). Kant sought a solution to the age old dilemma in his well-known distinction between the phenomenal and the noumenal worlds, and the related distinction between the two standpoints from which we may view our selves and our actions. So far as one belongs to the sensible world, one passively receives sensations, and is subject to the laws of nature: the laws of cause and effect. It is as a member of the intelligible world that one is considered an autonomous moral agent, subject to laws having their ground in one's reason, independent of the sensual world, subject to no laws not imposed by the self.⁸⁰ Kant, of course, resolves the apparent conflict by suggesting that, while from the sensual standpoint, we do not consider ourselves as responsible for our desires and inclinations, from the theoretical standpoint, we do consider ourselves as responsible for indulging them to the detriment of the moral law, the principles of which are present *a priori* in our reason.⁸¹ He writes thus of reason

⁷⁸ Honderich, *How Free*, 98-99.

⁷⁹ Christine M. Korsgaard, *Creating the Kingdom of Ends*, (Cambridge: Cambridge University Press, 1996).

⁸⁰ It is in the distinction between the two standpoints that Korsgaard is able to call Kant a practical Compatibilist; he endorses both free will and determinism, but does not believe they can be reconciled from within one standpoint. *Ibid.*, 209-212.

⁸¹ Immanuel Kant, *Groundwork of the Metaphysic of Morals*, trans. and analysed by H. J. Paton (London: Hutchinson & Co., 1956; New York: Harper & Row Publishers, Inc., Harper Torchbook, 1964), 114-126.

and intelligence, and the source of law:

...It comes about that man claims for himself a will which does not impute to itself anything appertaining merely to his desires and inclinations; and, on the other hand, that he conceives as possible through its agency, and indeed as necessary, actions which can be done only by disregarding all desires and incitements of sense. The causality of such actions lies in man as intelligence and in the laws of such effects and actions as accord with the principles of an intelligible world. Of that world he knows no more than this - that in it reason alone, and indeed pure reason independent of sensibility, is the source of law; and also that since he is there his proper self only as intelligence (while as a human being he is merely an appearance of himself), these laws apply to him immediately and categorically. It follows that incitements from desires and impulses (and therefore from the whole sensible world of nature) cannot impair the laws which govern his will as intelligence. Indeed he does not answer for the former nor impute them to his proper self - that is, to his will; but he does impute to himself the indulgence which he would show them if he admitted their influence on his maxims to the detriment of the rational laws governing his will.⁸²

Since Kant defines "persons" as those who, distinguishing them from things, are subject to no laws which they have not given themselves⁸³; and since he furthermore states that "morality is the only condition under which a rational being can be an end in himself; for only through this is it possible to be a law-making member in a kingdom of ends," and that therefore "morality and humanity so far as it is capable of morality, is the only thing which has dignity,"⁸⁴ then the danger is that those, such as the addicted, who appear to be subject to uncontrollable, or difficult to control pressures - from either within or without - could be regarded as non-persons without human dignity, indeed as "things" outside of the kingdom of ends. Furthermore, Kant speaks of the moral strength, courage, and wisdom involved in conquering the obstacles involved in sensuous inclinations; only in the possession of this wisdom is a person free, healthy,

⁸² Kant, *Groundwork*, 125-126.

⁸³ Immanuel Kant, "Introduction," *The Metaphysics of Morals*, in *Immanuel Kant: Ethical Philosophy*, Book II, trans. James W. Ellington, with an introduction by Warner A. Wick (Indianapolis: Hackett Publishing Company, 1983), 23.

⁸⁴ Kant, *Groundwork*, 102.

"a king" and can "suffer no loss by chance or fate, since he is in possession of himself and the virtuous man cannot lose his virtue."⁸⁵ One's concern is that this leaves those who have failed to be in full possession of themselves as potentially viewed in an extremely negative light.

However, on the other hand, Kant asserts that "humanity itself is a dignity," and that there is a duty to respect every other human, in spite of vice.⁸⁶ Thus he writes:

If vice is taken in the sense of a basic principle (a vice proper), then any vice, which would make human nature itself detestable, is *inhuman* when regarded objectively. But considered subjectively, that is, in terms of what experience teaches us about our species, such vices are still *human*....

...To be *contemptuous* of others (*contemnere*), that is, to deny them the respect owed to men in general, is in every case contrary to duty; for they are men. At times one cannot, it is true, help inwardly *looking down* on some in comparison with others (*despicatui habere*); but the outward manifestation of this is, nevertheless, an offence....I cannot deny all respect to even a vicious man as a man; I cannot withdraw at least the respect that belongs to him in his quality as a man, even though by his deeds he makes himself unworthy of it. So there can be disgraceful punishments that dishonor humanity itself....⁸⁷

Christine Korsgaard notes that it is one of the appealing things about Kant's ethics that he is less interested in praise and blame than are, at least, the British Empiricists; for some, such as Hume, disapproval of others is the fundamental moral phenomenon. In contrast to this unattractive stance, Kant's ethics arises from the perspective of the agent deciding upon action: "responsibility is in the first instance something taken rather than something assigned."⁸⁸ In adopting a belief in freedom for ourselves, we must do the same for others; however since the necessity of the latter comes from the moral law of love and respect, theoretical reasoning about others motives may be excluded; we may know nothing at all about another's motives, and "are

⁸⁵ Immanuel Kant, *The Metaphysics of Morals*, trans. with an introduction and notes by Mary Gregor (Cambridge: Cambridge University Press, 1991), 206.

⁸⁶ *Ibid.*, 255.

⁸⁷ *Ibid.*, 254-255.

⁸⁸ Korsgaard, *Kingdom of Ends*, 189.

obligated, whenever possible, to take a generous attitude."⁸⁹ In Kant's view, our duty entails the following:

...respect[ing] a man even in the logical use of his reasoning, a duty not to censure his errors by calling them absurdities, poor judgement, and so forth, but rather to suppose that his judgement might yet contain some truth and to seek this out, uncovering, at the same time, the deceptive illusion (the subjective ground that determined his judgement that, by an oversight, he took for objective), and so, by explaining to him the possibility of his having erred, to preserve his respect for his own understanding. For if, by using such expressions, one denies any understanding to a man who opposes one in a certain judgement, how does one want to bring him to understand that he has erred? The same thing applies to the censure of vice, which must never break out into complete contempt and denial of any moral worth to a vicious man; for on this supposition he would never be improved, and this is not consistent with the Idea of a Man, who as such (as a moral being) can never lose entirely his predisposition to the good.⁹⁰

Kant's thought obviously does not imply that there should be no judgement, since there must have been some judgement in order to believe that the action is vicious⁹¹; nor does it entail foregoing the naming of actions as vicious or irresponsible; in fact, in his view, the naming signifies respect, in that it suggests that another is capable of improvement. Pertinent to this study, is the fact that naming an injustice, or a behaviour considered vicious, does not necessarily entail punishment, and certainly does not entail disrespectful treatment. It is of interest that Korsgaard, in arguing strongly for the importance, from a number of viewpoints, including that of respect, of holding others responsible, suggests that one cannot rest with the view that "agents take responsibility for their own actions but can refrain from judging others," and that therefore a Kantian must say more than did Kant himself about what is involved in

⁸⁹ Ibid., 174.

⁹⁰ Kant, *Metaphysics*, 256.

⁹¹ It is interesting that we are urged to "cast the veil of philanthropy over the faults of others, not merely by softening but also by silencing our judgements," in Immanuel Kant, *Metaphysical Principles of Virtue*, in *Kant: Ethical Philosophy*, 466. Noted also in Korsgaard, *Kingdom*, 174. (Are we to judge, but keep silent, or are we urged not to judge at all?)

holding others responsible.⁹² In the view of this work, however, it appears that in Korsgaard's reasoned arguments for the holding of others responsible, she has not sufficiently delineated the difference, noted above, between naming an injustice and punishing.⁹³ One of the bases for her argumentation is the importance of reciprocity in human relationships, and the impossibility of entering into such relationships with those we do not hold responsible.⁹⁴ The focus on reciprocity will arise later in this chapter.

Thus, in summary, in the time-frame encapsulated within this section, there can be seen a movement from a strong focus on the efficacy of punishment in inculcating responsibility, to Kant's far more nuanced view of freedom and responsibility. While Kant might, in relation to the population under discussion in this thesis, suggest that succumbing to an addiction is irrational, or a sign of a lack of virtue, he would apparently caution forbearance in the use of punishment, and certainly caution against disrespectful treatment.

IV. Influential Thinkers of the Late Nineteenth and Twentieth Centuries

The contemporary world is a vastly different place from that which obtained as the above-mentioned philosophers were constructing their philosophical systems. A consideration of the thought of a number of those who followed them may serve to point to some of the factors motivating that change. These thinkers were both contributing to and reacting to the forces, begun long before their time, which eventually issued in the contemporary world. To adequately chronicle the processes of change, or even to refer to all of them is not the focus

⁹² Korsgaard, *Kingdom*, 197.

⁹³ *Ibid.*, 197-212.

⁹⁴ *Ibid.*, 207.

here. The intent is to mention those whose work appears to have particularly influenced our understanding of responsibility. Although Max Weber has both delineated the tenor of some of those changes, and, as noted by Jaspers, his thought also harkens back to an earlier wisdom, he might more appropriately have been the first considered; however to maintain the chronology, Nietzsche will be followed by Weber, then Sartre, and with Sartre, his intriguing connections with the thought of both Freud and Marx, obviously not without continuing influence on how "free," and thus responsible, we consider ourselves to be.

As an interesting aside, although by no means unrelated to the tenor of contemporary intellectual life, mention will be made of the work of the analytic philosophers, who continue the free will/determinism debate in the tradition of the earlier Compatibilists and Incompatibilists. Since, as some believe, their debate is largely with each other,⁹⁵ the extent of their influence can be questioned. They are included, however, since their work represents a sizeable proportion of recent writing in the area, and since it contains some clarifications and insights felt to be useful to the main concern of this study.

Friedrich Nietzsche

The decline that many feel is characteristic of contemporary life appears to be viewed in Friedrich Nietzsche's *On the Genealogy of Morality* as progress: progress away from the destructive constraints of conventional morality, particularly one with roots in a Christian "ascetic ideal." To the extent that power and strength bring such respect in modern culture, (in spite of the pain to the weak and wounded that the rise to power might have occasioned); to the extent that war, by times, is the solution of choice, (taking precedence over the deliberation

⁹⁵ John Heil, "analytic philosophy," in *Cambridge Dictionary of Philosophy*, 1995.

of international tribunals); and that the fight for the rights of those without power can still be viewed with contempt⁹⁶; and to the extent that self-sacrifice and self-denial are viewed as a turning of the will against life, then according to Nietzsche's thought, we have made strides against a slave morality, with its *ressentiment* against the powerful. Nietzsche is included in this chapter as a philosopher whose rhetorical declamations reverberate in the popular consciousness, contributing, it is suggested, to the climate of disapproval and rejection surrounding those who appear not to have the strength and self-control so celebrated in the Nietzschean thought.

Nietzsche envisages the "long history of the origins of *responsibility*" as ending in the production of a predictable, reliable creature who is able to make promises; as this creature has become reliable, even in his own self-image, he becomes answerable for his own future (as is someone making a promise). While the morality of custom and the straightjacket were instrumental in this process, at the end of the process (the tree bearing fruit), is the supra-ethical, autonomous individual, a "master of the *free* will," with his own standard of value, and now with the *right* to make promises. Nietzsche speaks of the extraordinary privilege of this responsibility, with its awareness of rare freedom and power over the self and its destiny.⁹⁷

It is absurd to believe that the powerful have a choice whether to be powerful (and thus whether they can be held responsible for what Nietzsche sees as positive qualities); he notes that "it is just as absurd to ask strength *not* to express itself as strength, *not* to desire to overthrow, crush, become master, to be a thirst for enemies, resistance and triumphs, as to ask weakness

⁹⁶ Nietzsche, *On the Genealogy of Morality*, ed. Keith Ansell-Pearson, trans. Carol Diethe (Cambridge: Cambridge University Press, 1994), 121.

⁹⁷ *Ibid.*, 38-40.

to express itself as strength."⁹⁸ The strong are, by definition, strong, and the weak are being defensive in describing as good the opposing qualities: they do not rape, harm others, attack, retaliate, take revenge; they keep hidden, avoid evil, ask little from life, are patient, humble and upright - in a word, weak, but the weaknesses are clothed as voluntary achievement.⁹⁹

There is no unjust act as such, simply acts that are deemed such by the legal system,¹⁰⁰ itself the fruit of the primitive buyer/seller relationship: a justice system that began by insisting that "every thing has its price - *everything* can be compensated for."¹⁰¹ Any notion of mercy, seen as the relaxation of harsh punishments, remains the prerogative of the "most powerful man...his way of being beyond the law."¹⁰²

The so-called weak-willed: addicted, wounded humans, would appear to be the very antithesis of Nietzsche's favoured superior, striving, strong "men." While the rhetorical style is undoubtedly aimed against the self-denying ascetic ideals which he claims have been particularly enfeebling of the human reality, it is just such unfortunate metaphors, (related to sickness, and the apparent glorifying of war, aggression and triumph) that have been taken from their contexts, and have become part of our popular cultural understandings. The following are instructive: Nietzsche speaks of the healthiness of a "sort of sublime nastiness"¹⁰³; notes that those "who, from the start, are the unfortunate, the downtrodden, the broken - these are the ones, the *weakest*, who most undermine life amongst men, who introduce the deadliest poison

⁹⁸ Ibid., 28.

⁹⁹ Ibid., 29.

¹⁰⁰ Ibid., 54.

¹⁰¹ Ibid., 50.

¹⁰² Ibid., 52.

¹⁰³ Ibid., 71.

and scepticism into our trust in life, in man, in ourselves"¹⁰⁴; and suggests that since it is unthinkable that the healthy should nurse the sick, then the "doctors and nurses" who tend them should be sick as well; (he refers, of course to ascetic priests, who rule over "suffering," defending their herd against "all hard, violently predatory health and powerfulness"¹⁰⁵).

Whether or not Nietzsche should be viewed as a radical nihilist, or as making a serious attempt to overcome the nihilism that he feared would follow the waning of the "traditional modes of religious and philosophical interpretation"¹⁰⁶ is of interest, but beyond this study; it is thought-provoking to consider the opinion of Arendt, who considered the work of Kierkegaard, Marx and Nietzsche as "conscious rebellions against a tradition which has lost its...beginning and principle," and the fact that all three "should have ended in self-defeat is no reason to question the greatness of their enterprises nor their relevance to the understanding of the modern world."¹⁰⁷ In her view, the fact that all three failed is the most superficial thing they have in common; the important element uniting them is their willingness to radically question and overturn accepted beliefs and concepts, in order to "ask again what the specifically human quality of man is."¹⁰⁸

¹⁰⁴ Ibid., 95.

¹⁰⁵ Ibid., 97-98. The fact that Nietzsche's usage was obviously not meant to be narrowly focused on health care has not prevented unfortunate references in that literature; for example, in a discussion as to whether there is a duty to die cheaply, Paul Menzel quotes thus from Margaret Battin: "Nietzsche wrote that doctors should give, not prescriptions, but a 'fresh dose of disgust' to sick people who continue to vegetate in a state of cowardly dependence," from Nietzsche's *The Twilight of the Idols*, 36, in Margaret Battin, "Age-Rationing and the Just Distribution of Health Care: Is There a Duty to Die?" in Timothy M. Smedding, *Should Medical Care Be Rationed By Age?* (Totowa, New Jersey: Rowman and Littlefield, 1987), 70, in Paul Menzel, *Strong Medicine: The Ethical Rationing of Health Care* (New York: Oxford University Press, 1990), 192.

¹⁰⁶ Richard Schacht, "Friedrich Nietzsche," *Cambridge Dictionary of Philosophy*, (1995).

¹⁰⁷ Arendt, "Tradition and the Modern Age," in *Between Past and Future*, 31.

¹⁰⁸ Ibid., 35-39.

Max Weber

Karl Jaspers offers the following appreciation of Max Weber:

Man who was born into the world of Homer and the Jewish prophets was not lost with Nietzsche. His last great incarnation for the time being was Max Weber, a figure of our world which changes so rapidly that the particular features of Weber's environment have disappeared in spite of the passing of such a short time. What has not passed are the basic questions of our existence, of human knowledge, of human challenges. We no longer have a great human being who could affirm our identity. Weber was the last one.¹⁰⁹

In describing his age, Weber notes its disenchantment, the rationalization of its value spheres, and the intellectualization of human responses to them.¹¹⁰ Given the significant role that science and politics have played in the unfolding of such themes, a delineation of that role has been central for Weber. Many of his insights appear in the related lectures, "Politics as a Vocation, and "Science as a Vocation"; the focus here will be largely these lectures, plus a number of related essays.

The three aspects of the identity of the age are of course closely related in the Weberian thought. Disenchantment's connotation of our having moved away from reference to and authority derived from a "magical" sphere suggests that we have no further need of magical means to "master or implore the spirits....technical means and calculations perform the service"¹¹¹; we do not necessarily have all the information we need, but it is possible to find

¹⁰⁹ Karl Jaspers, *Max Weber: Deutsches Wesen im politischen Denken, im Forchen und Philosophieren*, (Oldenburg: Stalling, 1932), 78; quoted in Wolfgang Schluchter, "The Paradox of Rationalization: On the Relation of Ethics and the World," in Guenther Roth and Wolfgang Schluchter, *Max Weber's Vision of History: Ethics and Methods*, (Berkeley: University of California Press, 1979), 13.

¹¹⁰ Roth and Schluchter, *Weber's Vision*, 13.

¹¹¹ Max Weber, "Science as a Vocation," in *From Max Weber: Essays in Sociology*, trans., ed., and with an introduction by H.H. Gerth and C. Wright Mills (New York: Oxford University Press, 1946), 139. Of interest is Dietrich Bonhoeffer's use of the same trend to point, not away from God, but to a God who "makes us live in this world without using him as a working hypothesis," a God who is weak and powerless: "exactly the way, the only way, in which he can be with us and help us," ie. help us participate responsibly in the sufferings of the world, in *Letters and Papers from Prison* (London: S.C.M. Press, 1953; Fontana Books,

it without recourse to mysterious powers; and "this above all is what intellectualization means."¹¹² The move towards disenchantment is evident in a trend which Weber sees as beginning with the Hebrew Prophets and their condemnation of magical means of salvation, and as culminating in the Calvinist rejection of any ecclesiastic-sacramental means of salvation.¹¹³ A separation from God is paralleled by the separation of man from the world: the individualism that Weber saw as presaging a domination by "unbrotherliness."¹¹⁴ Disenchantment is ultimately accomplished by the faith in rational empirical knowledge spawned by the Enlightenment and assisted by the symbiotic relationship between science and capitalism.¹¹⁵

Weber writes thus of rationalization:

... With its clarity of self-consciousness and freedom from subjective scruples, [a rational approach] is the polar antithesis of every sort of unthinking acquiescence in customary ways, as well as, on the other hand, of devotion to norms consciously accepted as absolute values. One of the most important aspects of the process of 'rationalization' of action is the substitution for the unthinking acceptance of ancient custom, of deliberate adaptation to situations in terms of self-interest. [Weber has been writing of the functioning of the market within capitalism.] To be sure, this process by no means exhausts the concept of rationalization of action. For in addition this can proceed in a variety of other directions; positively in that of a conscious rationalization of ultimate values; or negatively, at the expense not only of custom, but of emotional values; and finally, in favour of a morally sceptical type of rationality, at the expense of any belief in absolute values. [There are] many possible meanings of the concept of rationalization....¹¹⁶

1959), 122, 125. Of related interest is Hans Jonas's "The Concept of God after Auschwitz: A Jewish Voice," *The Journal of Religion* 67 (1987): 1-13, wherein Jonas speaks of divine self-restriction, self-limitation, in the face of horrors such as the Holocaust, in order that the human might "be." As with Bonhoeffer, the responsible human must inquire about how the coming generation is to live.

¹¹² Weber, "Science as a Vocation," 139.

¹¹³ Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, trans. Talcott Parsons (New York: Scribner, 1958), 105; quoted in Roth and Schluchter, *Weber's Vision*, 40.

¹¹⁴ *Ibid.*, 40.

¹¹⁵ Max Weber, "The Uniqueness of Western Civilization," in *Max Weber on Capitalism, Bureaucracy and Religion: A Selection of Texts*, ed. and in part newly trans. by Stanislaw Andreski (London: George Allen & Unwin, 1983), 28.

¹¹⁶ Max Weber, *The Theory of Social and Economic Organization*, trans. A.M. Henderson and Talcott Parsons, ed., with an introduction by Talcott Parsons (New York: The Free Press, 1947), 123.

Talcott Parsons notes that while "rationality" is used to point to specific criteria with which to distinguish actions, Weber does not give an explicit statement of these criteria. It can be inferred, however, that "an act is rational in so far as (a) it is oriented to a clearly formulated unambiguous goal, or to a set of values which are clearly formulated and logically consistent; (b) the means chosen are, according to the best available knowledge, adapted to the realization of the goal."¹¹⁷ Weber's faith in rational inquiry did not extend to its ability to settle the complexities of clashes of ultimate values.¹¹⁸ What the faith in science did not provide was the question about the meaning of this life, and whether it makes sense to live in such a world.¹¹⁹ Weber refers specifically to the questions which medicine, as a practical technology, cannot answer:

Consider modern medicine, a practical technology which is highly developed scientifically. The general 'presupposition' of the medical enterprise is stated trivially in the assertion that medical science has the task of maintaining life as such and of diminishing suffering as such to the greatest possible degree. Yet this is problematic. By this means the medical man preserves the life of the mortally ill man, even if the patient implores us to relieve him of life, even if his relatives, to whom his life is worthless and to whom the costs of maintaining this worthless life grow unbearable, grant his redemption from suffering. Perhaps a poor lunatic is involved, whose relatives, whether they admit it or not, wish and must wish for his death. Yet the presuppositions of medicine, and the penal code, prevent the physician from relinquishing his therapeutic efforts. Whether life is worth living and when - this question is not asked by medicine. Natural science gives us an answer to the question of what we must do if we wish to master life technically. It leaves quite aside, or assumes for its purposes, whether we should and do wish to master life technically and whether it ultimately makes sense to do so.¹²⁰

¹¹⁷ Talcott Parsons, "Introduction," to Max Weber, *Theory*, 16.

¹¹⁸ Max Weber, "'Objectivity' in Social Science and Social Policy," in *Philosophy of the Social Sciences: A Reader*, ed. Maurice Natanson (New York: Random House, 1963), 363.

¹¹⁹ Weber, "Science as a Vocation," 144. Weber quotes Tolstoy's contention that "science is meaningless because it gives no answer to our question, the only question important for us: 'What shall we do and how shall we live?'," in *Ibid.*, 143.

¹²⁰ *Ibid.*, 144.

What will be of help for modern "man" in answering such questions? There is apparently no rational way to decide between competing value spheres¹²¹; science, "free from presuppositions," can only point to a rational explanation for events, and if the adherents of particular value positions remain convinced of their "practical" standpoints, then science (and Weber is speaking of science in the academy), can at least contribute this: the pointing to facts that are inconvenient for strongly held conviction.¹²²

The question of strongly held conviction is central for Weber, in relation to the problem it poses for a rational approach to the world: rational in the sense of an efficacy between means and ends in the spheres where human intelligence seeks meaning. Weber opposes an ethic of conviction (an "ethic of ultimate ends"¹²³) to an ethic of responsibility. The former ethic, in his view, puts aside as irrelevant the price attached to using dubious or dangerous means to attain a "good" end; the latter requires that one give an account of the foreseeable consequences of one's actions¹²⁴; it foregoes an "ultimate harmonization," ethically liberates the choice of means, and proceeds with the knowledge that not everything can be changed simultaneously, and without contradictory consequences.¹²⁵

There are interesting paradoxes; political action of necessity entails the possibility of the use of force, with all the negative consequences that ensue; on the other hand, "if one chases after the ultimate good in a war of beliefs, following a pure ethic of absolute ends, then the goals may be damaged and discredited for generations, because responsibility for *consequences*

¹²¹ The values inherent in Weber's statement, quoted above, will not be discussed at this point.

¹²² Weber, "Science as a Vocation," 146-148.

¹²³ Weber, "Politics as a Vocation," in *From Max Weber*, 120.

¹²⁴ *Ibid.*, 121.

¹²⁵ Wolfgang Schluchter, "Value-Neutrality and the Ethic of Responsibility," in *Weber's Vision*, 90.

is lacking...."¹²⁶ While it is clear that the two ethics are theoretically opposed,¹²⁷ Weber believes that the politician must, in fact, keep the two in some sort of tension; "an ethic of ultimate ends and an ethic of responsibility are not absolute contrasts but rather supplements, which only in unison constitute a genuine man - a man who *can* have the 'calling for politics'."¹²⁸ Weber extols the person who, while being aware of the possible consequences of her acting, and while being prepared to accept responsibility for them, at the same time is prepared to take a stand based on conviction.¹²⁹ Paul Ricœur will later refer to the same paradoxical opposition between the two ethics, although he suggests that the dilemma is inherent in action in all the spheres; he speaks of "un tragique d'action."¹³⁰ Ricœur would have conviction allied with a sense of mission to protect the fragile, otherwise it is but idealist rhetoric; the same sense of mission for the perishable would save responsibility from the danger of efficiency becoming an end.¹³¹ The insights of both Weber and Ricœur will be more specifically applied below to the focus of this study.

Weber and Friedrich Nietzsche, near contemporaries in a similar milieu, both eschew any notion of objective values, and both view religion as an impediment to the achievement of humanity's highest goals, (although as Gerth and Mills note, Weber's "love for his mother" and his genuine detachment from religion prevent him from falling into the "Promethean blasphemy

¹²⁶ Weber, "Politics as a Vocation," 126.

¹²⁷ Ibid., 120.

¹²⁸ Ibid., 127.

¹²⁹ Ibid., 127. There is controversy over this point. Wolfgang Schluchter suggests that, in spite of his comments to the contrary, Weber privileges an ethic of responsibility, in "Value-Neutrality and the Ethic of Responsibility," in *Weber's Vision*, 86-90.

¹³⁰ Paul Ricœur, "Postface," in Frédéric Lenoir, *Le temps de la responsabilité* (Paris: Librairie Arthème Fayard, 1991), 264.

¹³¹ Ibid., 265.

of Nietzsche"¹³²). Schluchter compares the two thinkers thus:

Weber has been called a nihilist, a relativist, and a decisionist. He is all of these things if you believe in the existence and discernibility of an objective meaning of the world. With Nietzsche, Weber believed that neither exists anymore, but in contrast to Nietzsche he turned this experience into an object of empirical historical research. He objectified his experience in the thesis of disenchantment. From it follows a situational diagnosis that is bound up with two ways of gaining distance: from faith in the possibility of ultimate uncertainty, and in the ultimate feasibility of human happiness. Today this diagnosis regains importance in a period in which a cycle of world flight and world adjustment seems to be running its course in the disenchanted world. This diagnosis shows us the reasons for our discontent with modernity, but it also makes clear why we will do well not to give in to this discontent.¹³³

Weber's project surely evinces a more subtle understanding of human motivation than has been in evidence in the thinkers noted to this point,¹³⁴ as well as an understanding that genuine "brotherliness" is possible, that there is dignity in community, and that there is merit in meeting the "demands of the day" in human relations.¹³⁵ It could also be suggested that Weber's concern for the negative consequences of "conviction" might speak to the concern raised in the previous chapter around the application of meta-ethical theory, forgetting the distress of individuals. Weber might speak as well to those who ask whether we can, or should hope to, "master life technically."

Jean-Paul Sartre

Jean-Paul Sartre is unquestionably another philosopher whose insights can be seen to have influenced lay thought. That as humans we are condemned to be free; that we are unable *not* to experience freedom; that the human must make him or herself, must choose him or

¹³² Gerth and Mills, "A Biographical View," in *From Max Weber*, 25.

¹³³ Schluchter, "The Paradox of Rationalization," in *Weber's Vision*, 58-59.

¹³⁴ For example, note his discussion of the role of *ressentiment* in the development of religious thought, in "The Soteriology of the Underprivileged," in *Max Weber: Selections in Translation*, ed. W.G. Runciman, trans. E. Matthews (Cambridge: Cambridge University Press, 1978), 174-191.

¹³⁵ Weber, "Science," 155-156.

herself down to the slightest detail; that this free choice is the very being of the human¹³⁶; and that we are abandoned in a hostile environment, condemned to responsibility for both self and the world,¹³⁷ have become some of the acceptable phrases by which we define our reality, at least in the West. Although, along with Kant, labelled an Incompatibilist,¹³⁸ it will be suggested below that, as with Kant, that may be too simplistic a generalization, since for some, the apparent shift (or as some see it, the break) in Sartre's thinking represents a nod towards a form of determinism.

For Sartre, choice and self-consciousness are one and the same - one must be conscious in order to choose, and must choose in order to be conscious.¹³⁹ Choice extends to the emotions: we choose, for example, whether the response to threat will be fear or courage.¹⁴⁰ While it would be surprising if, in the bioethical literature, one were to find it stated explicitly, as in Sartre's thought, that we choose our responses of "inferiority,"¹⁴¹ what are found are assumptions that patients have had substantial degrees of choice in relation to their addiction, and must therefore accept some measure of responsibility for that (including the relevant consequences).

Sartre acknowledges certain limits encountered by an individual freedom - the most significant being the freedom of others to describe the reality of the self - my "objectification" in the eyes of the other:

¹³⁶ Jean-Paul Sartre, *Being and Nothingness: An Essay in Phenomenological Ontology*, trans. with an introduction by Hazel E. Barnes, Special Abridged Edition (New York: The Citadel Press, 1966), 415-417.

¹³⁷ *Ibid.*, 531-532.

¹³⁸ Honderich, *How Free*, 101.

¹³⁹ Sartre, *Being and Nothingness*, 438.

¹⁴⁰ *Ibid.*, 421.

¹⁴¹ *Ibid.*, 448.

The true limit of my freedom lies purely and simply in the very fact that an Other apprehends me as the Other-as-object and in that second corollary fact that my situation ceases for the Other to be a situation and becomes an objective form in which I exist as an objective structure.¹⁴²

In a word, freedom is limited only by freedom. Beyond certain unchangeable elements of facticity, obstacles such as race and health, limits that do not emanate from the "for-itself" cannot constitute external limits of freedom, since there is freedom to choose what meanings those obstacles will have for the individual.¹⁴³

That Sartre changed his focus in his later writings¹⁴⁴ is evidence for some of a significant break in his thinking about freedom, or at least evidence of inconsistency. As evidence, passages such as the following are quoted:

There are things I approve of and others I look down upon with a feeling of shame. Among the latter...is what I wrote in 1945 or thereabouts to the effect that, no matter what the situation may be, one is always free. And as the examples I noted that a worker is always free to join a union or not, as he is free to choose the kind of battle he wants to join, or not join. And all that strikes me as absurd today. There's no question that there is some basic change in the concept of freedom. I still remain faithful to the notion of freedom, but I can see what can modify its results in any given person.¹⁴⁵

Others see echoes of the later thought in *Being and Nothingness*, and believe the confusion has arisen from a failure to notice Sartre's consistent reference to two types of freedom.¹⁴⁶ Ontological freedom, with its focus on the absoluteness of the freedom of choice, is the concern in the earlier works; practical freedom is of greater concern in the later writing (although first

¹⁴² Ibid., 501.

¹⁴³ Ibid., 464-465, 486, 493.

¹⁴⁴ Such as his *Critique of Dialectical Reason*.

¹⁴⁵ Jean-Paul Sartre, *Sartre By Himself*, trans. Richard Seaver (New York: Outback Press, 1978), 58; quoted in David Detmer, *Freedom as a Value: A Critique of the Ethical Theory of Jean-Paul Sartre* (LaSalle, Illinois: Outback Press, 1986), 95.

¹⁴⁶ See particularly Detmer's extensive discussion in *Freedom as a Value*, 35-131.

articulated in *Being and Nothingness*¹⁴⁷). This later sense of the concept - the "freedom of obtaining" - is the sense in which Sartre repeatedly states that we are, in fact, always limited, hence the concern in those later works to mitigate the situations that contribute to the frustration of need.¹⁴⁸ Detmer contends that Sartre is able to insist on the absoluteness of one's ontological freedom, given the fact that no consciousness *is* its situation - it can separate itself from what is external to it; nothing in the situation can determine for the consciousness what features of that situation will be focused upon as obstacles. He notes that, for Sartre, "to be sure, there are any number of external forces which 'push' me in various directions; but these forces *by themselves*, without my complicity, cannot determine my action....with respect to any external force, insofar as I am conscious of it, I can always say 'no' to it, and choose to undertake the project of acting in opposition to it."¹⁴⁹ Detmer's contention is that there are indeed times when Sartre contradicts himself, but that his penchant for overblown rhetoric exaggerates the perception of a radical change in his thought.¹⁵⁰

In relation to Sartre's understanding of personal responsibility, his discussion of the concept in *Being and Nothingness* uses a specific definition of the concept, and appears to be quite value-free:

...man being condemned to be free carries the weight of the whole world on his shoulders; he is responsible for the world and for himself as a way of being. We are taking the word "responsibility" in its ordinary sense as consciousness (of) being the incontestable author of an event or of an object.¹⁵¹

While in this use of the word, Sartre does not imply moral accountability, Detmer notes that

¹⁴⁷ Sartre discusses the difference in *Being and Nothingness*, 458-459.

¹⁴⁸ Detmer, *Freedom*, 55-65.

¹⁴⁹ *Ibid.*, 64.

¹⁵⁰ *Ibid.*, 96.

¹⁵¹ *Being and Nothingness*, 529.

while Sartre stops short of explicitly stating that in order to be responsible, one *must* act in certain ways, there are passages in the writings that make it clear that he considers some choices to be wrong, and some choosers morally accountable, and worthy of blame for those choices, (for example, the attack on Camus' pacifism, and his disgust over silence in the face of anti-Semitism). A passage in "The Responsibility of the Writer" is instructive:

The responsibility of the writer today is very clear: He must construct a positive theory of liberation and freedom. He must put himself in every instance in the position of condemning violence from the point of view of the members of the oppressed classes. And he must establish a true relationship between ends and means. He must refuse forthwith, in the name of freedom - which will not, of course, prevent anything - to sanction any means of violence to establish or sustain an order. He must, finally, give his thoughts without respite, day in, day out, to the problem of the end and the means; or, again, the problem of the relationship of ethics and politics.¹⁵²

It would thus appear that Sartre cannot be labelled a pure subjectivist; there are objectivist elements as well, which Detmer relates to Sartre's shift in focus to the fulfilment of human *need*, as opposed to the earlier emphasis on *play*, wherein values may be created free of obligations. We apparently have a responsibility to work together to enhance practical freedom; we are reminded, however, that the new focus is ultimately related to the great value that Sartre placed on human freedom, and on his contention that freedom is the source of all value.¹⁵³

It is not clear how Sartre would view addiction; whether he would see it as a freely chosen response to one's alienation, or whether, as a given obstacle, it would present an opportunity for a consciousness to choose its response, to choose the meaning it will have for that consciousness.¹⁵⁴ In either case, the individual is potentially blamed: either he or she has

¹⁵² Sartre, "The Responsibility of the Writer," trans. Betty Askwith, in *The Creative Vision: Modern European Writers on their Art*, eds. Haskell M. Block and Herman Salinger (New York: Grove Press, 1960), 185; quoted in Detmer, 171.

¹⁵³ Detmer, *Freedom*, 178-215.

¹⁵⁴ Sartre, *Being and Nothingness*, 457-458, 464, 505.

freely chosen the devastation of addiction as a response; or has freely chosen to see the given addiction as an insuperable obstacle, that is, has chosen not to say "no" to its force, in the sense of: "it is...our freedom which constitutes the limits which it will subsequently encounter."¹⁵⁵

It is interesting that two of Sartre's principle interlocutors, Freud and Marx, could be seen, with Sartre, to have influenced our current understandings of human reality, particularly our rather amorphous concept of responsibility, although in differing directions: Freud contributing to a notion of psychological determinism, and Marx to that of a social/economic determinism. Given his concern about the diminished freedom that the unconscious implies, Sartre explicitly separates himself from the Adlerian,¹⁵⁶ and from the Freudian¹⁵⁷ notions of the unconscious in relation to maladaptive responses. It is Ivan Soll's belief that Sartre rejects Freud for other reasons besides the threat posed to radical freedom by the psychic unconscious. In Sartre's thought, he sees the "rejection by a Cartesian dualist of any view, such as Freud's, that seems to have as a goal the reduction of the psychic realm to the physical,"¹⁵⁸ (that is, "being-for-itself" reduced to "being-in-itself"¹⁵⁹). Sartre saw as inherently inadequate, and to be "so obvious as to require no demonstration,"¹⁶⁰ the belief that intentional, goal-directed behaviour could ever be accounted for in physical, mechanical, or neurophysical terms, leaving the behaviour amenable to the same causal explanations as physical processes. Soll suggests that Sartre is basing his rejection of Freud on an erroneous understanding of Freud's meaning of

¹⁵⁵ Ibid., 458.

¹⁵⁶ Ibid., 449-450.

¹⁵⁷ Ibid., 434-435.

¹⁵⁸ Ivan Soll, "Rejection of the Freudian Unconscious," in Paul Arthur Schlipp, ed., *The Philosophy of Jean-Paul Sartre*, Vol. XVI, The Library of Living Philosophers (LaSalle: Illinois, 1981), 602.

¹⁵⁹ Ibid., 592

¹⁶⁰ Ibid., 592.

"unconscious"; Sartre has equated Freud's use of "conscious" and "unconscious" with the *ego* and the *id*. While this may have been an earlier, structural use of the terms, Soll suggests that Freud later used the terms more descriptively, in the sense of "unconscious mental processes" rather than "unconscious region of the mind,"¹⁶¹ thus circumventing the mental\physical problem.

Soll notes that it is far from clear "whether the psychoanalytic postulation of an unconscious in any way entails that man is not responsible for the contents of his unconscious or reduces man's responsibility for his actions in general."¹⁶² However, whatever be the truth of Sartre's (or Freud's) claims, it would certainly appear that our common, uninformed understandings of the unconscious and what it means for human responsibility, are probably fairly close to those articulated and critiqued by Sartre.

The material/psychic distinction is also relevant for Sartre's critique of Marx. While Marx apparently developed no systematic theory of causality, it can "at least be said with confidence that Marx had no qualms about admitting that non-conscious entities can and do exert a direct influence over the activities of human consciousness"; Sartre, as we have seen, "has consistently (and persuasively) argued that to admit even a small amount of direct action by *things* on consciousness or praxis is to undermine the claim that radical freedom is a fundamental structural characteristic of consciousness."¹⁶³

Sartre's great attraction to Marxism is evident; as noted above, he became increasingly aware of the limitations on human freedom; he was interested in the forms of social relationships

¹⁶¹ Ibid., 590-591.

¹⁶² Ibid., 602.

¹⁶³ William Leon McBride, "Sartre and Marxism," in *The Philosophy of Jean-Paul Sartre*, 619.

that prevent the reflection by which alienation is overcome - relationships of oppression, social stratification, and the dehumanization of workers by machines.¹⁶⁴ As McBride notes, however, he retained "an antipathy to the 'orthodox' Marxist interpretation of materialism, which has traditionally been linked with a doctrine of flat and fairly rigid determinism"¹⁶⁵; and so while he was concerned with the negative effects of oppression, he was also concerned to deny that oppression has an influence that could be classified as determining.¹⁶⁶

In an interesting aside, McBride notes that, in the end, in constantly insisting upon the fact that the *actual*, in relation to present-day humans and their societies or their future possibilities, should not be idealized, Sartre's philosophy exemplifies "what is best and most important in Marxism itself...: its role of radical social *criticism*."¹⁶⁷

Briefly, in summary, the addicted are potentially the objects of disapproval and rejection in relation to the theories which celebrate power and strength, or suggest that humans are self-made. Only in Weber is there noted a concern for the "unbrotherliness" of individualism; and from Weber, as well, it can be inferred that it is irresponsible that a technology such as transplantation should surge forward without adequately attending to all of its consequences, (which would obviously include the consequences for those not chosen¹⁶⁸).

The Analytic Philosophers

The intractable nature of the free will/determinism debate has ensured that it would continue to be waged, but with interesting nuances, as understanding in the biological,

¹⁶⁴ Thomas Baldwin, "Sartre, Existentialism and Humanism," in Godfrey Vesey, ed., *Philosophers Ancient and Modern*, Royal Institute of Philosophy Lecture Series 20, Supplement to *Philosophy*, (1986), 305.

¹⁶⁵ McBride, "Sartre," 618.

¹⁶⁶ Baldwin, "Sartre," 305.

¹⁶⁷ McBride, "Sartre," 628.

¹⁶⁸ See the discussion in this thesis, Chapter 2, 53-58.

behavioural, and physical sciences became more sophisticated. The literature is vast, nor would it add to this work to chronicle the debates in detail. A decision has been made to mostly eschew the intricacies of a discussion which appears to be mired in arguments over agent causality, such as the import for the notion of freedom of the correlation between mental events and neural events, whether freedom means that one "could have decided otherwise," over whether it is free decisions or free acts which should be of concern, and so on. The interest in this work is not essentially in solving the riddle of the extent of personal choice that might be involved in addiction; the interest is whether embraced theories engender compassionate responses to an other's fragility. Thus the focus in perusing the analytic philosophers is to note their varying responses to those who, for whatever reason, appear not to be "free," in the varying meanings of that concept. Four of those writing in the area will be noted, in that their views have some bearing on attitudes toward the addicted: those of Thorp, Lucas, Honderich, and Dennett. In addition, Hilary Bok's recent attempt at a neo-Kantian reconciling project will be mentioned.

John Thorp suggests that it is an experience of "active power" within agents which constitutes what he refers to as "agent causality," (as opposed to the "event" causality which the scientific world view has conditioned us to exclusively consider).¹⁶⁹ This active power of which he speaks is proposed as being present in agents who possess all of the following: purposiveness, uncausedness, and consciousness¹⁷⁰; such criteria would, in his view, include "children, animals, and madmen," in contrast to those which favour rationality as a ground for

¹⁶⁹ John Thorp, *Free will: A Defence Against Neurophysiological Determinism* (London: Routledge & Kegan Paul, 1980), 102-103.

¹⁷⁰ *Ibid.*, 115-118.

free agency. The "uncausedness" lies in the indeterministic nature of their neural systems.¹⁷¹ Since our decisions are uncaused, in the majority of cases, one could have acted otherwise, and hence one could be held metaphysically responsible.¹⁷² Moral responsibility is another matter; it is a question of whether one *should* be held responsible; it admits of degree, (dependent on how difficult it would have been not to have acted as one did), and is an historical and a relative notion: one must be a member of a community in order to be held responsible to it. Since children, animals, and "madmen" are not members of the communities whose institutions philosophers analyze, they cannot be held responsible to it.¹⁷³

Thorp suggests an answer to the lay concern about the influence of "weak wills": the uninformed, he suggests, cite such as the cause of self-destructive behaviour. In his view weak-wills are influences (which do not cause actions); their strength merely lends predictability to mental processes such as pain; only neural processes infer physical causality: Thorp is sharply distinguishing between the neurophysiology and the felt experience of pain. The difference between a weak-willed and a strong-willed person is that the latter feels little pain in resisting a temptation, the former far more. Both are free to resist, but it would be more taxing for the weak.¹⁷⁴

Thus according to Thorp's analysis, the addicted could possibly be considered as both belonging outside of the communities analyzed by philosophers, and as being weak-willed, in that they succumb to the pain and discomfort produced by temptations which the strong-willed more easily resist. Logically, in relation to the former, they could possibly be treated in the way

¹⁷¹ Ibid., 118.

¹⁷² Ibid., 140.

¹⁷³ Ibid., 138-141.

¹⁷⁴ Ibid., 131-137.

animals are treated; and in relation to the latter, they could be open to moral disapprobation. Both possibilities are potentially diminishing of human dignity.

J. R. Lucas appears concerned to both speak to our intuitive sense that we are not completely free, yet to preserve what we hold as important constituents of our moral and rational lives,¹⁷⁵ and to indicate that the chief arguments for determinism (he is not a determinist) tend to turn on confused ideas of explicability.¹⁷⁶ This is particularly true of what he terms "psychological" determinism: a claim that certain psychological laws, based usually on early experiences, enable us to reliably predict responses later in life (and thus presumably excuse from blame to a certain extent). Lucas refers to the Hempelian distinction between regularity and rational explanation to counter this confusion and to define real predictability.¹⁷⁷ In the human realm it is impossible to know and thus put aside the irrelevant characteristics, as is possible in physics, and in the human realm, no two situations are the same, thus real comparison is impossible.¹⁷⁸ "Psychological" might be more accurately named "re-describing explanations"; Lucas notes their inaccurate use in thinkers such as St. Augustine and Kant. In their view, we are free only when we act morally; when we act otherwise, there must be a "psychological" explanation (in Kant's view, a "pathological" explanation) in which case, we could not have done anything else. They claim that desires can determine actions (unless we escape them by making a moral choice); however this is a different sense of determined, and,

¹⁷⁵ J. R. Lucas, *The Freedom of the Will* (Oxford: The Clarendon Press, 1970), 1

¹⁷⁶ We both confuse partial explanations with complete explanations, but also confuse different types of explanations; it is a different matter to say that every event has a *causal* cause, than to say that every event has an explanation. From the fact of an action being explicable, or having a rationale, it does not follow that it is determined, in the strong sense of determined used by Lucas: all actions that are *caused* are determined by conditions outside our control, because they originate before our births. *Ibid.*, 52-54.

¹⁷⁷ *Ibid.*, 37-43.

¹⁷⁸ *Ibid.*, 78-80.

in Lucas's view, an invalid argument.¹⁷⁹

Lucas decries the fact that, given advancing knowledge, there appears to be increasing ability to find extenuating reasons for actions that appear not to be "really the actions of a person"¹⁸⁰; however, given the distinctions he makes, and the measure of choice he posits, he would not have a problem retaining moral assessment. The terminology used by Lucas could be problematic. If those whose actions are inappropriate can be viewed as non-persons, does this mean that they can be treated as non-persons - are we less concerned to respect their dignity? And where is the line drawn between acceptability and non-acceptability? For groups such as the addicted, it could be that a trade-off for not ascribing responsibility is a loss of person-status. The question has, of course, wider application in medicine and beyond: are those whose ability to act rationally and responsibly has been diminished - those in comas, for example - seen as less than persons, and thus in danger of being treated, not as ends, but as means?

Ted Honderich looks to the nomic correlation between neural and mental events as proof of a form of determinism, in contrast to Lucas's citing of psychoneural indeterminism as an argument for a type of free-will. He suggests that recent science, particularly neuroscience, Quantum Theory, and common sense support his "Union Theory" - that mental events are intimately related to neural events in a way that rules out any notion of a free-floating self, or an originator. It is events, things that happen, rather than abstract objects such as subjective ideas, ideal concepts, or propositions, to which Honderich refers.¹⁸¹ He does not exclude environmental events from the complicated chain of causal circumstances which precede an

¹⁷⁹ Ibid., 82.

¹⁸⁰ Ibid., 8.

¹⁸¹ Honderich, *How Free*, 59-63.

action, nor does he exclude active intentions from the "psychoneural pair" which ultimately issues in an action.¹⁸² He writes:

What we arrive at, then, is the idea that each choice with its neural correlate is the effect of a causal sequence whose initial circumstances has in it neural and other bodily events before the first moment of consciousness of the person in question, and last environmental events then and thereafter. It is clear there is no sense in which the person is responsible for any of the bodily or neural events or many of the environmental ones.¹⁸³

Honderich does posit some agent responsibility in reply to those of his interlocutors whose interest in championing free will is to retain that possibility. He speaks of a certain voluntariness in relation to actions, a voluntariness related to whether actions can be seen as partly influenced by an agent's "embraced desires" and life hopes; there would be a logical inconsistency in this position, he contends, only if a caused desire, "in virtue of being caused," was an unembraced or reluctant desire.¹⁸⁴ The voluntariness of which Honderich speaks means that one knows what one is doing, is not being manipulated, and the actions in question are not at odds with one's personality,¹⁸⁵ one's "intentions."¹⁸⁶ Of particular interest to this work, Honderich asserts that if his proposals lack some imprecision, then it may be because certain areas of which philosophy speaks are not as open to precision as others: the attempt to put certain experiences into precise formulations should perhaps be resisted.¹⁸⁷

The stance on holding others responsible which Honderich's theories allow him to take could be viewed as more compassionate than that of many of his interlocutors. He sees that one

¹⁸² Ibid.,

¹⁸³ Ibid., 33.

¹⁸⁴ Honderich, *Consequences*, 29-30.

¹⁸⁵ Honderich, *How Free?*, 88-89.

¹⁸⁶ Honderich, *Consequences*, 227-228.

¹⁸⁷ Ibid., 27.

of the important questions that can be posed to those on opposing sides of the free will/determinism debate, is whether we have been, and are now "involved in systematic unkindness and injustice, not only personally but as members of a society?"¹⁸⁸; he is particularly focused on theories of punishment, and the variety of attempts to justify their use. Of any theory of punishment, it must be asked whether it is "clear, consistent and worked out," and whether it "really does give us at least a prima-facie argument for punishment."¹⁸⁹ Honderich rejects a number of theories, such as the agreement theory, or most of the various retributive theories, as logically untenable, quite apart from the difficulties which a belief in determinism would pose for them. The only retributive theory with any logically adequate argument is the one that does not have an acceptable "moral tone": that of the wish, on the part of the afflicted, for distress for the one who has caused the pain. He acknowledges that pure retributive theories are now seldom held; they tend to be part of larger "packages" justifying punishment: for example, at the actual institutions of punishment, such a package would contain an element of prevention, as well as desert. But this retributive theory also rests on action being both voluntary and originated, the latter of which he rejects.¹⁹⁰

While Honderich does not reject the notion of punishment altogether, his preferred response is to attempt to arrive at a "philosophy of life,"¹⁹¹ which includes an element he calls "affirmation"; it includes the possibility of punishment arising from repugnance and the desire for prevention, as opposed to grievance and the desire for revenge¹⁹²; and one that is in

¹⁸⁸ Honderich, *How Free*, 108.

¹⁸⁹ *Ibid.*, 121.

¹⁹⁰ *Ibid.*, 121-128.

¹⁹¹ Honderich suggests that English-speaking philosophers have been particularly condemning of such attempts, believing them to be lacking in intellectual rigor. *Ibid.*, 112.

¹⁹² Honderich, *Consequences*, 226-228.

accordance with the "Principle of Equality," which is that we should take really effective steps to make well-off those who are badly-off."¹⁹³ Affirmation also includes giving up certain notions of self-importance, expected acclamation, and consequent desert which, like revenge and retaliation, arise from a belief in origination.¹⁹⁴

Honderich does mention addiction, in the context of one's life-hopes being frustrated by "stark and extreme" self-frustration; of an alcoholic being faced with a life of having desires which he[she] may not want to have: the life-hope, in fact, might be the desire to give up drink.¹⁹⁵ Honderich's stance is one of some compassion. Applying his "affirmation" to addiction, and making inferences from his discussion of punishment, it would appear that the personal "weakness"¹⁹⁶ might be blamed; but blame, in itself does not imply punishment, and is less open to the "satisfaction of retributive desires of either victims or ourselves."¹⁹⁷

Daniel C. Dennett argues for a variety of free will that, in the end, has echoes of Honderich's imprecise determinism; Dennett rather paradoxically posits "a being that listens to the voice of reason and yet is not exempted from the causal milieu"; a being in control but whose decisions are caused by the interaction of its present state and features of its environment over which it has no control; a being responsible for its own character; a deterministic being, whose future is "up to it"; a responsible, free agent "of whom it is true that whenever it has acted in the past, it could not have acted otherwise."¹⁹⁸ Dennett rejects both the perfect Kantian

¹⁹³ Honderich, *How Free?*, 128.

¹⁹⁴ *Ibid.*, 84-92.

¹⁹⁵ Honderich, *Consequences*, 28-29.

¹⁹⁶ *Ibid.*, 29.

¹⁹⁷ *Ibid.*, 225.

¹⁹⁸ Daniel C. Dennett, *Elbow Room: The Varieties of Free Will Worth Wanting* (Cambridge, Massachusetts: The MIT Press, 1984), 170.

will and the completely self-made person; his variety of free will is premised less on proof of its existence than on the rationality of desiring its existence in order to preserve the "moral conceptual world."¹⁹⁹ The institution of this moral world is analogous, in Dennett's view, to our rationale for the institution of law.²⁰⁰ Thus we effect an inculcation of more responsible behaviour by the social utility of holding each other responsible (whether or not it can be discovered beyond doubt that we *are* fully responsible).²⁰¹ In his view, the knowledge that we will be held responsible constrains the risk-taking "in the design (and redesign) of [our] characters within tolerable bounds"; those for whom these measures do not work - those caught in wrong deeds - should not object, having been warned, to paying the penalty.²⁰² Dennett's views, apparently less nuanced, less compassionate than those of Honderich, appear to be similar to the views of many of those attempting to come to grips with notions of responsibility in health care.

Hilary Bok, a neo-Kantian, presents an attempt to answer both the libertarians' concerns that a belief in determinism does not leave one morally responsible for one's actions,²⁰³ and the problem that she believes that libertarians have in giving an adequate account of freedom. Bok employs the distinction between theoretical and practical reasoning; her claim is that the libertarian problem has been to argue from a theoretical point of view, one seeking only a causal explanation. By definition, this can seek only to indicate a temporally situated chain, inadequate

¹⁹⁹ Ibid., 155-157.

²⁰⁰ Ibid., 163. Dennett appears to accept the commonly held justification for punishment (what might be called the "package" of deterrence and prevention), suggesting that without the former, "the undesirable harms of the state of nature would return." Ibid., 161-162.

²⁰¹ Ibid., 164.

²⁰² Ibid., 165.

²⁰³ Bok, *Freedom*, 42.

for any useful notions of freedom. Bok suggests that when it is a question of a choice in decision making, we reason from a practical point of view - that is, we evaluate reasons for choosing a course of action.²⁰⁴ Quite apart from the truth or not of determinism, (the choices amongst which we choose may well be the result of external forces), when we deliberate and come to a decision, the decision is ours, and we can therefore be held responsible for it. In Bok's view, the dignity of our personhood is thereby preserved, (and the libertarian concerns answered).

Personhood, for Bok, entails the ability to reason in just this way: to weigh the alternatives for action, then be prepared to accept moral responsibility for the consequences of that action.²⁰⁵ Again, one must ask whether those outside of this scheme are to be considered as non-persons. Bok does not address this, but does indicate that she is not prepared, given her stated aim, to deal with a number of difficult issues, such as whether addicts should be held morally responsible for continuing to abuse their drug of choice.²⁰⁶ It could be countered, on the other hand, that the question that surely should be put to any proposed scheme is how it deals with the difficult cases.

At the end of an all too brief perusal of a number of analytic philosophers, the question remains, in relation to the addicted, whether the former would include the latter in the category "person." As well, one senses that the focus is on the ideal adult, whose rational faculties are unconstrained by the forces which beset more of us than this group seems willing to admit, or at least to consider for their purposes. Finally, the overwhelming focus is on the individual

²⁰⁴ Ibid., 89-91, 156.

²⁰⁵ Ibid., 117; 189-191.

²⁰⁶ Ibid., 7-8.

person, rather than the person-in-community.

V. New Directions

The complexities posed by addiction, at least concerning any ascription of responsibility to the individual, are felt to be inadequately addressed by the traditional free will/determinism debate briefly detailed in the preceding discussion. The overwhelming focus on the individual obscures the dialectical relationship between the individual and the community of which he or she is a member. To continue to focus exclusively on the individual's responsibility is to simplify an extremely complex issue, of which there is, obviously, in many quarters, a growing recognition. This study will, in the end, suggest that our focus should be rather radically changed, but initially, it will highlight some approaches that presage such a radical focus.

"Social Sin" / Structural Evil

More thoughtful discussions have tended to come from theological works concerned to nuance the language of sin, or to speak of the common good in the Christian tradition.²⁰⁷ Kenneth Himes notes the recent acknowledgement, in that tradition, of the reality of "social sin" - an acknowledgement that societal institutions both express our being as individuals, and influence individual consciousness. In theological terms, societal institutions are not value-free, but express "both our graced condition and our sinfulness."²⁰⁸ Himes notes some awareness of this reality earlier in the tradition: Biblical expressions such as "sin of the world" would appear

²⁰⁷ Three voices will be noted here: Kenneth F. Himes, "Social Sin and the Role of the Individual," *The Annual of the Society of Christian Ethics* (1986): 183-218; Mark O'Keefe, O.S.B., *What are they saying about Social Sin?* (New York: Paulist Press, 1990); and Kenneth R. Melchin, *Living with Other People: An Introduction to Christian Ethics Based on Bernard Lonergan*, Saint Paul University Series in Ethics (Ottawa: Novalis, 1998).

²⁰⁸ Himes, "Social Sin," 184-185.

to point to a social dimension; and St. Augustine's portrayal of "original sin" as a lack, (when separated from its "unconvincing" means of inheritance), serves to highlight how deeply affected we are by the social disorders that are part of the world into which we come.²⁰⁹ While we cannot be blamed for such disorders, we can be held responsible, in Himes' view, for acquiescing to the sinful world, and thus contributing to the strengthening of unjust social structures. The concept of social sin is useful in making sense of both the inherited and the chosen aspects of our "sinful human existence." In any discussion of individual responsibility, the two aspects (inherited and chosen) must be kept clearly separate.²¹⁰

Rather than arguing for what he calls a non-distributive approach to moral responsibility, which refuses to blame individuals when social sin is the issue, Himes would prefer a distributive approach, with the acknowledgement of mitigating factors on the extent of individual "culpability." His insights are derived from interactionist, or game theory: it is the individual who accepts the rules of the game, plays a particular role, and performs the role according to particular talents and abilities.²¹¹ The notion of "collective causal responsibility" is acceptable to Himes, but not that of "collective moral responsibility," given that "intending" is in the mind of discrete individuals.²¹²

Himes specifically declines to comment on the manner in which internal constraints such as trauma or addiction may serve as mitigating factors,²¹³ as did Hilary Bok, in spite of the fact that addiction would appear to be an important test case for any discussion of social sin (it

²⁰⁹ Ibid., 186-187.

²¹⁰ Ibid., 188.

²¹¹ Ibid., 204-205.

²¹² Ibid., 206-207.

²¹³ Ibid., 208.

should be understood that the interest here is not in labelling addiction a sin, but in understanding what contribution theology could make to its focus). Himes' admonition to keep separate the individual's personal acts from sinful societal practices, when assessing blame, would be a particularly difficult task. Addiction is surely a prime example of a complex interaction between internal and external factors; an intertwining of what could be termed "original sin" (our "being" in the midst of social disorders not of our making), an inheritance of genetic, physical, and/or chemical factors predisposing addiction, plus individual moral choice (itself constrained by the pervasive "social sin" to which addicts, as others, both contribute and strive to alter). In the painstakingly attempt to separate the personal from the social, particularly when the focus remains an attempt to lay blame, the fear is that the needs of the individual for recognition and compassion will be overlooked.

O'Keefe suggests that Himes has not sufficiently articulated the complexity of the individual/social group relationship: "the traditional discussion of individual knowledge and freedom as requirements for moral agency" may have to be broadened.²¹⁴ Both he and Kenneth Melchin, from an understanding informed by the cognitional theory and the theological method of Bernard Lonergan, using particularly Lonergan's notions of bias²¹⁵ and conversion, offer a more nuanced understanding of the interrelatedness of individuals with the structures, institutions, and systems that are implied by "social context."

Melchin offers a clear understanding of social structure, and of how we become

²¹⁴ O'Keefe, *What are they saying?*, 74.

²¹⁵ Bias is defined as "the human tendency to eliminate from consideration data upon which understanding, judgement, and decision will be based because the data is perceived to be a potential threat to our well-being or accustomed ways of viewing the world. But failure to account for significant data in this manner leads to a failure in human development since authentic self-transcendence requires the ability to challenge and transcend accustomed ways of viewing ourselves and the world." In *Ibid.*, 77.

embroiled in what eventually can be designated as societal decline. Our involvement may or may not include our own unfortunate choices, but nevertheless, just by virtue of living with others, we participate in the structures in question. Melchin defines structures as linked sets of human meaning: "vast ranges of conventions of meaning form[ing] the patterns of relations among individual citizens," which link with "wider notions of cosmic order, truth and justice...."²¹⁶ We interact, within these structures, from horizons of understanding that may be relatively encompassing, or narrow and constricting; and our ability to act, with what Lonergan calls effective freedom, may be severely constricted, depending on a complex host of factors. Patterns of maladaptive (or possibly evil) habits may develop, and become systematized, "stamp[ing] their imprint on broadening ranges of our lives quite apart from our deliberate intentions."²¹⁷ Beyond the individual, there are much wider structures of interrelations, the influence of which can be far reaching, quite beyond any individual intent. Melchin notes that oppressive structures are not necessarily planned: the linked sets of meaning "can emerge spontaneously to yield structures that achieve what none could achieve alone, and these achievements can work for evil as well as for good."²¹⁸ Melchin writes thus of structural evil:

Structural evil is more than the intentional malice of individuals, it is more than the ideology which is supported by power and authority. It is a dynamic of decline: cooperative social structures sustain deformed notions of the good, they promote the interests of some at the expense of others, they harness the cooperation of well-meaning persons in service of their tasks, they accumulate by forming the habits of successive generations of citizens, and, eventually, they provide ample evidence to all that morality is an impossible or silly ideal. Sin is a power in social and political life that radically circumscribes and compromises the capacities of moral responsibility.²¹⁹

²¹⁶ Melchin, *Living with Other People*, 10.

²¹⁷ *Ibid.*, 92.

²¹⁸ *Ibid.*, 93.

²¹⁹ *Ibid.*, 105. There are echoes here of the concerns of Hans Jonas, who speaks of the "unintended dynamics of technical civilization as such, inherent in its structure," in *The Imperative of Responsibility: In Search of*

O'Keefe builds on the Lonerganian understanding of conversion, and on the possibilities suggested to other theologians by this work, to focus on what he calls social conversion: the overcoming of social sin. Although stemming originally from human choice, the resultant sinful structures gain an independence from that choice; they exercise influence on individuals who can be quite unaware of their power. Conversion will involve change at both the structural and the personal levels: since there is a dialectical relationship between person and society, there must therefore be a dialectical relationship between personal and social conversion.²²⁰ O'Keefe suggests that the fact no logical priority can be given to either personal or social conversion is supported by Moltmann's contention that neither the idealist illusion (that persons must be transformed first, which would imply that we are disembodied souls), nor the materialist illusion (implying that persons are but products of social circumstances), is adequate to the reality.²²¹

The "shape" of social conversion is seen by O'Keefe to be an emphasis on overcoming isolation in renewed communities of equality and mutuality, and on solidarity with the oppressed in their struggles against sinful structures, (insights drawn particularly from liberation theology and the work of Christian feminists).²²² This could be seen to be a useful approach in relation to addiction: support for those who are struggling with both their own wounds, as well as with the disordered societal structures that have contributed to those wounds. O'Keefe suggests that the church has a distinctive mission:

...the church, from the perspective offered by God's word, has the critical function of

an Ethics for the Technological Age, trans. Hans Jonas, with the collaboration of David Herr (Chicago: University Press, 1984), 202.

²²⁰ O'Keefe, *What are they saying?*, 92-93.

²²¹ Jürgen Moltmann, *The Crucified God*, trans. R.A. Wilson and John Bowden (London: SCM Press, 1974), 23; in O'Keefe, *What are they saying?*, 93-94.

²²² O'Keefe, *What are they saying?*, 87.

challenging every situation of injustice and sin. It seeks to open the eyes of those blinded by social sin. Attending to the needs of those oppressed by sinful structures, analyzing the structural roots of their oppression, and drawing from the resources of its scriptures, the church challenges individual Christians and those outside the church to become aware of and to work to transform every structure which oppresses human dignity.

Particularly in light of its eschatological vision of the future made manifest in Jesus, the church critiques the present in light of the future. This future perspective gives the church some idea about the shape of the future hoped for. Further, the vision of the reign of God yet to be realized, together with the recognition that conversion is ultimately the work not of human effort but of grace, relativizes all present solutions and efforts. In this light, all present solutions, even those which seem the most just, must be seen as provisional and necessarily open to change. This relativizing action also has the effect of comforting Christians in the face of failure, offering them hope, and challenging them to find new ways to combat social sin. The vision of God's reign fully realized allows the church to seek reconciliation, not as a facile solution to present difficulty but as the goal of all efforts and as the context for the conflict necessary in order to bring about transformation.²²³

It will be suggested below that the Church, given its unique message, may well be the one institution in society in a position to adequately critique society's accepted wisdom.

Hans Jonas

A completely different focus emerges in the work of the German philosopher, Hans Jonas, who died in the U.S. in the mid 90's, having been a professor at the New School for Social Research. His religious roots were Jewish, but his interest in matters of faith was ecumenical; his thought is meant to be a challenge to all. Of particular interest to this study is his focus away from assessing individual responsibility for action, toward a different question. Jonas speaks of an ethics of responsibility,²²⁴ implying a responsibility *for* the fragile "other,"

²²³ O'Keefe, *What are they saying?*, 90-91. O'Keefe acknowledges a debt to Peter Henriot for this discussion, from "Social Sin and Conversion: A Theology of the Church's Involvement," *Chicago Studies* 11 (Summer 1972): 115-130.

²²⁴ Richard Bernstein while suggesting that Jonas should have been more careful in specifying what must be preserved from traditional ethics, acknowledges that Jonas was ever careful to emphasize the tentativeness of his project, and the continuing need to rethink responsibility; in "Rethinking Responsibility," HCR 25, no. 7, Special Issue (1995): 19-20.

although in contrast to the work of Emmanuel Levinas, the focus of the following chapter, that of Jonas is concerned with *future* "others," indeed with the planet, whose very existence may be in peril given the power of the technology we have developed. Jonas's particular interest in the power of modern technology led him to an association with the Hastings Center and questions arising in the field of bioethics.

Both Jonas and Levinas are of interest for their espousal of a non-reciprocal responsibility: responsibility not characterized by the juxtaposition of corresponding duties and rights. For Jonas, the archetype of such responsibility is the parent-child relationship. Confronted by the "utmost facticity of 'thisness,' utmost right thereto, and utmost fragility of being," there is an unconditional parental duty to avert, by both commission and omission, a falling back into nothingness.²²⁵ (That Jonas sees parental responsibility as the *only* case where the cause one serves has nothing to do with appraisal of worthiness, nothing with comparison, and nothing with a contract,²²⁶ will be countered by Levinas.)

The self-evident "ought" of the parent-child relation is related to the less self-evident "ought" deriving from the right-to-be of the existence of the totality of Being itself - a continuum of existence related by purposiveness, (a purposiveness at work in the unconscious and nonvolitional levels of life: goods-in-themselves which address an ought to the human will).²²⁷ The first imperative (categorical) for humans, is that the existence of humankind be

²²⁵ Jonas, *Imperative*, 130-135.

²²⁶ *Ibid.*, 134-135.

²²⁷ *Ibid.*, 75-80. Lawrence Vogel questions whether we need such a weighty metaphysics in order to establish limits: he suggests that its arguments would be useful to only a few (likely the converted); that Jonas is inconsistent in not requiring a conscious perspective outside of our own, for whom our destiny matters - nature, he suggests, might be better off without the human; and Vogel wonders whether the imperative is linked to a psychological need to be at the centre, "linked to eternity," avoiding the bitter truth of our contingency. An empiricist ethic, building on Humean feelings of care is suggested as more appropriate to the situation, in "Does Environmental Ethics Need a Metaphysical Grounding?" HCR 25, no. 7, Special

assured, since whether the rest of the continuum survives rests upon us,²²⁸ given the success of our Baconian program. Beyond this first imperative, the extent and nature of our power will determine the scope and kind of responsibility we hold toward all the ends-in-themselves under our power.²²⁹ It is power that binds will and obligation, moving responsibility into the centre of morality.²³⁰ The ideal no longer commands; there is a reversal of the Kantian dictum, "Thou canst because thou ought"; the ought no longer has primacy because "the deed [is] already underway," its effects unforeseen and far-reaching; we "ought," therefore, because we can.²³¹ The relevancy to modern medicine is obvious: the agenda of the multinational biotechnology industry, driven by market forces as well as by more altruistic aims, may well have overtaken medicine's traditional focus; causal effects, confronting the "ought" of our responsibility, have unquestionably been unleashed, as has been noted in chapter 2.

Exactly how far one's taking of responsibility should reach is a matter of controversy. Its unlimited extension is somewhat problematic for Paul Ricœur; he counsels a compromise - the finding of "la juste mesure" between the short and the long-term visions; ignoring all long-term effects is as problematic as the opposite, which can restrain us from acting in any way.²³²

Issue (1995): 30-39. Jonas actually speaks to this in an earlier issue, noting that while no philosophical ethics is needed to tell us that disaster must be averted, a theory of values is essential where the very image of the human is at stake, as he notes is the case in the biomedical, behavioural and social fields; in "Toward a Philosophy of Technology," HCR 9, no.1 (1979): 43.

²²⁸ Jonas, *Imperative*, 43.

²²⁹ Ends which Jonas clearly states are obviously unchosen. "Only human freedom permits the setting and choosing of ends and thereby the willing inclusion of the ends of others in one's immediate own, to the point of fully and devotedly making them his own." *Ibid.*, 235, n. 2.

²³⁰ *Ibid.*, 128-130. Schweiker presents an interesting rebuttal to Jonas's contention that the space of human responsibility has been created by the self-limitation of divine power, (expressed in Jonas's, "The Concept of God after Auschwitz: A Jewish Voice," *The Journal of Religion* 67, (1987):1-13); in Schweiker's view, this is a negative claim; he prefers to name "God" as the "self-interpretation of ultimate power," in *Responsibility and Christian Ethics*, 210-211.

²³¹ *Ibid.*, 128.

²³² Paul Ricœur, "Le concept de responsabilité," dans *Le Juste* (Paris: Éditions Esprit, 1995), 68.

Jonas's response, (with an allusion to Aristotle), would be that, given the magnitude and destructive potential of our new powers, "one should fight that fault more which one is more prone to and therefore more likely to commit, and rather lean over in the opposite direction, toward the side less favored by inclination or circumstance."²³³ Ricœur does not want to lose altogether the notion of personal ascription of responsibility (*le pôle imputation*)²³⁴; he suggests that the notion of *mission*, as encompassing both personal responsibility and Jonas's far-reaching imperative, could be useful; the new imperative enriching rather than replacing the older focus.²³⁵

The appropriate response to the dilemma, in Jonas's view, is a heuristic of fear, the priority of a prophesy of doom. The greater threat is not from nuclear destruction, but from "the nature of the unintended dynamics of technical civilization as such, inherent in its structure, where it drifts willy-nilly and with exponential acceleration,"²³⁶ (akin, it could be suggested, to the insidious structural evil, or sin, mentioned in the previous section).

The freedom of which Jonas speaks, the freedom that issues in responsibility, a freedom peculiar to humans, is the ability to set its own ends²³⁷; Jonas emphasizes, however, that morality must never have the "whims" of the self's will for its ends. Only the good-in-itself is worthy to be an end - the source of any "ought." The Biblical denial of self²³⁸ is echoed in

²³³ Jonas, *Imperative*, 204.

²³⁴ Ricœur, "Le concept," 69.

²³⁵ Paul Ricœur, "Postface," dans *Le temps de la responsabilité* (Paris: Librairie Arême Fayard, 1991), 263.

²³⁶ Ibid., 202-203.

²³⁷ Of interest to the freedom/determinism debate, is Jonas's suggestion that humanity has actually curtailed its freedom by creating the determinism of a rampaging technology. On the other hand, Jonas reminds us of the above-mentioned belief of Hannah Arendt that in view of the freedom implied in the ever-new beginnings assured by newborn individuals, we should expect to be surprised by less drastic outcomes than the ones we fear from the "rampaging technology," (but suggests this is all the more reason for provoking and informing that spontaneity); in "Toward a Philosophy of Technology," 41-43.

²³⁸ For example, Luke 9:23.

Jonas's contention:

The secret or paradox of morality is that the self forgets itself over the pursuit of the object, so that a higher self (which indeed is also a good in itself) might come into being....But just this will be possible only if my concern was with the object and not with myself: the latter must not itself become the object, and the deed's object only the occasion for it. The good man is not he who did the good for its own sake. But the good is the "cause" at issue out there in the world, indeed the cause of the world.²³⁹

The focus outward from self, toward the vulnerable, which characterizes Jonas's understanding of responsibility is also echoed in the Levinasian thought, however there are notable differences between the two philosophers. While for Jonas the rational perception of the other as an ought-to-be is answered by one's feeling of responsibility for this perishable good-in-the-world, issuing in a moving of the will to action, for Levinas, as will be seen, it is the fragility of the other which calls forth the response - before any rational perception, any "knowing" of being. Another difference is that for Jonas, only close relationships ensure that the responsibility goes beyond the demands of duty; whereas for Levinas, that is not the case: there is a radical response to whomever one encounters; "eros" adds another element, but not that of an increase in the trembling for the other's existence.²⁴⁰ As well, Jonas allows himself to speak of the relationship of responsibility, although unilateral in itself, as in principle reversible and possibly reciprocal, and he portrays it as subject-object kinship.²⁴¹ This manner of portraying the relationship would not appear in the Levinasian thought. Paul Ricœur, nevertheless, suggests that there could be a complementarity between the two philosophies²⁴²; and Jonas has suggested this as well. He notes that, whereas Levinas's concern is a

²³⁹ Jonas, *Imperative*, 85.

²⁴⁰ *Ibid.*, 93.

²⁴¹ *Ibid.*, 98.

²⁴² Ricœur, "Postface," 269.

phenomenological description of moral consciousness, his own is different, although not opposed: seeking a foundation for an imperative, "contribuer à libérer une voie théorique vers une ontologie différente, une ontologie dans laquelle il y a une place pour la valeur et le devoir."²⁴³

Concluding Reflection

The overriding concerns of this work are the preservation of the fact of human dignity, and of respect for the human person, whether or not that person can be considered free, or rational, or worthy (in whatever manner worthiness happens to be historically defined). As noted in the introduction, the interest in this section of the work is whether the embraced theories of freedom and responsibility engender compassionate responses to an other's frailty, particularly a "frailty" such as addiction, which appears to call forth a wide range of attitudes in both lay circles and among professionals. In fact, it is clear that problems such as addiction pose difficult dilemmas for many of those seeking to build viable theories around the issues of freedom and responsibility: as noted above, a number of philosophers make a conscious choice to "bracket" the problem,²⁴⁴ in spite of the fact that the issue would appear to be an important test case for such theories. When dignity is tied to an ability to "take responsibility," "make responsible choices," "become a member of the moral community," and so on, then the possibility exists for those without such abilities to be considered, then treated, as less than human.

When behaviour is blameworthy, by whatever standard applied, then the question arises

²⁴³ Hans Jonas/Jean Greisch/Erny Gillen, "De la gnose au *Principe responsabilité*: Un entretien avec Hans Jonas," *Esprit*, no. 5 (May 1991): 20-21.

²⁴⁴ For example, Hilary Bok and Kenneth Himes.

as to whether punishment must automatically follow. The distinction between the naming of an injustice, or an evil, and the necessity, or not, of inflicting some form of punishment is not frequently made; Kant is one of the exceptions. The naming would appear to be a necessity, however punishment is a different issue; questions arise as to the uses of punishment. Is prevention the goal, either in relation to the perpetrator or as an example for those who might also commit an injustice? What is the goal: desert? retribution? rehabilitation? reconciliation? And do we too often assume that such uses, and the means employed, are efficacious? Addiction is an interesting issue: not of itself a punishable crime, although it appears that the addicted call forth attitudes akin to those evoked by both criminal activity (the wish to punish), and by perception of difference (and ensuing oppression). Thus arises the possibility, at least within the health care system, of punishment without due process, and marginalization (both potentially cloaked in medical rationales).

The history of the concepts of responsible, and responsibility, does give evidence of alternate foci: the Roman juridical concern, less concerned with blame, than with the reestablishment of ordered relationships within society; St. Augustine's freedom as new beginning, rather than as power and sovereignty; Kant's notion of responsibility as something taken rather than assigned; the more recent widening of the issue - placing the individual within sinful social structures in which all are implicated, and the calling for solidarity with those who struggle within them; a reasoned discussion of punishment which suggests that many of our theories of punishment rest on logically untenable assumptions (and possibly morally untenable, depending on one's understanding of the origination of action); and finally, the radical calls for forms of non-reciprocal responsibility for other humans, indeed for the future of humanity and

the planet itself. The work of Emmanuel Levinas, the focus of the following chapter, is of interest for both his concept of responsibility, and for his contribution to the debate concerning meta-ethical theory, set aside at the end of chapter 3.

CHAPTER FIVE

RESPONSIBILITY *FOR* THE OTHER : THE THOUGHT OF EMMANUEL LEVINAS

Introduction

The foregoing discussion of two different sets of controversies: those surrounding the notion of responsibility, and those questioning the philosophical foundations thought to be appropriate for addressing questions in bioethics, has revealed a number of suggestions for change that appear to presage the thought of Emmanuel Levinas. It has been suggested that the traditional foci in both areas has been too individualistic, with little thought for the reality of person-in-community, but at the same time, too concerned to find an all-encompassing comprehensive theory, and thus, paradoxically, insufficiently sensitive to the reality of the specificities of person and place, especially of the oppressed. The watchword in North American bioethics has been the autonomy of the individual patient, to the impoverishment, it seems, of deeper, more meaningful relationships with healthcare professionals, and to the obscuring of the needs of the wider community. At the same time, the focus of "responsibility" appears so overwhelmingly to be the holding responsible of autonomous individuals, to the detriment of an acknowledgement of the manner in which we are all implicated in evil, and to a forgetting of the place of compassion in fashioning a liveable society.

This chapter will attempt to indicate that the thought of Emmanuel Levinas provides another manner of approaching a number of the foregoing concerns. It will explore the aspects

of the Levinasian thought which appear to have relevance for the focus of this work - whether to provide scarce resources for those thought to have caused their own illnesses. The chapter will, first of all, situate Levinas in relation to his principal interlocutors; it will subsequently note his eschewal of the "knowing of being" and the development of theory as first philosophy; then undertake to delineate his radical notion of "ethics as first philosophy": one quite opposed to autonomy - responsibility *for* the other. Note will be made of Levinas's insistence on the asymmetrical nature of that relationship, and on its centrality for the dispensing of justice. Finally, there will be consideration as to whether ethical precepts can legitimately be drawn from the Levinasian thought, and on its relationship with Judeo-Christian faith.

I. Levinas and the Western Philosophical Tradition: Why Not Ontology?

Emmanuel Levinas (1906-1995) was born in Lithuania,¹ into a Jewish milieu which placed the highest value on learning.² The family was uprooted by war and revolution, living in the Ukraine through the Russian revolution. The exposure to Russian culture was to have a profound influence on Levinas:

Les auteurs russes comme Pouchkine, Gogol, Dostoïevski, Tolstoï, gardent dans mon esprit tout leur prestige malgré tous les éblouissements de ma vie occidentale.³

Following philosophical studies in Strasbourg and Freiburg, Levinas, who had become a French citizen in 1930, spent the war years in Germany as an imprisoned French soldier. His parents

¹ Levinas describes Lithuania as "a country where Jewish culture was intellectually prized and fostered and where the interpretation and exegesis of biblical texts was cultivated to a high degree," in Richard Kearney, *Dialogues with contemporary Continental thinkers: The phenomenological heritage: Paul Ricoeur, Emmanuel Levinas, Herbert Marcuse, Stanislas Breton, Jacques Derrida* (Manchester: Manchester University Press, 1984), 53.

² Particularly well documented in Marie-Anne Lescourret, *Emmanuel Levinas* (Paris: Flammarion, 1994), 19-50.

³ François Poirié, *Emmanuel Lévinas: essai et entretiens* (Arles, France: Babel, 1996), 63.

and brothers were murdered by German collaborators in Eastern Europe; his wife and daughter were sheltered in a Roman Catholic monastery in Orléans.⁴ As Levinas notes, his biography is "dominated by the presentiment and the memory of the Nazi horror."⁵ This memory underlies the overwhelming concern for Levinas to seek a foundation, in philosophy, for a manner of being, actually an "otherwise than being," which would not so inevitably lead to the totalizing tyranny of which the Holocaust is the ultimate expression.⁶

Levinas characterizes most Western philosophy as "an attempt at universal synthesis, a reduction of all experience, of all that is reasonable, to a totality wherein consciousness embraces the world, leaves nothing outside of itself...The consciousness of the self is at the same time the consciousness of the whole."⁷ Western philosophy has been, for the most part, ontology: the comprehension of beings through a reduction of the other to the same by the "interposition of a middle and neutral term [such as a thought, a sensation, or Being] that ensures the comprehension of being"⁸; the primacy of the same and of its right to "be"; the apparent freedom derived from that reduction, in that the same does not allow itself to be

⁴ Ibid., 93. Elsewhere, Levinas writes that "the experience of Hitler brought many Jews into fraternal contact with Christians who opened their hearts to them - which is to say, risked everything for their sake....This memory remains precious...." DF, xiii; DL, 10.

⁵ Emmanuel Levinas, "Signature," in DF, 291; DL, 406. For other biographical data see François Poirié, *Emmanuel Levinas: Qui êtes-vous?* (Lyon: La Manufacture, 1987); and Adriaan Theodoor B. Peperzak, *To the Other: An Introduction to the Philosophy of Emmanuel Levinas* (West Lafayette, Indiana: Purdue University Press, 1993), 1-7.

⁶ It seems clear that Levinas implicates mainstream Western philosophy in the fact that Naziism arose in the first place. It is interesting to compare this contention with the thought of others; Hannah Arendt refused to blame the European intellectual tradition, believing only that neither its "conceptual language" nor its "traditional metaphors" were adequate to deal with the enormity of the situation; from unpublished notes for a lecture on *Eichmann in Jerusalem*, Library of Congress, in Elisabeth Young-Bruehl, *Hannah Arendt: For Love of the World* (New Haven: Yale University Press, 1982), 222.

⁷ EI, 75; EeI, 69.

⁸ TI, 43; TeI, 33-34.

alienated, or questioned, by the other than self.⁹ As an example, Levinas cites Socrates, for whom reason is the neutral term ensuring the encompassing of the other - an encompassing that neutralizes that other, who becomes a theme, a concept, or an object, with its alterity removed. The Socratic ideal thus rests on "the essential self-sufficiency of the same."¹⁰ Ontology is described as a philosophy of power, of injustice, in that its support of the *conatus essendi* could ultimately issue only in tyranny.¹¹ As will become clear, Levinas is not opposed to the affirmation of the self, "mais, il faut préciser *comment* ce Je se pose ou s'affirme."¹²

It is suggested that two moments in the history of Western philosophy presage Levinas's metaphysics - Plato's notion of the Good, and Descartes' idea of the Infinite - in the extent to which they surpass "the totalizing categories of Being."¹³ It is Plato's placing of the Good above essence that is of interest to Levinas: the need of satisfied being for what is beyond essence - the Good.¹⁴ Descartes' notion of the possession of the idea of infinity, that is to say the "placing in one" of the idea of infinity, is in fact the welcome of an inviolable Other, a non-thematizable Other, whose presence does not violate interiority.¹⁵

Levinas' roots are unquestionably within phenomenology. His early writings reveal him to be "one of the leading expositors of twentieth-century phenomenology, and one of the most

⁹ TI, 42-43; Tel, 32-33.

¹⁰ TI, 43-44; Tel, 34.

¹¹ TI, 46-47; Tel, 38.

¹² Emmanuel Lévinas, "Entretien," in *Répondre d'autrui: Emmanuel Lévinas / Paul Ricoeur...[et al.] autour d'un entretien avec Emmanuel Lévinas*, textes réunis par Jean-Christophe Aeschlimans (Neuchâtel: A la Baconnière, 1989), 12.

¹³ Kearney, "Prefatory note," in *Dialogues*, 48.

¹⁴ TI, 49-50, 103; Tel, 41, 105-106.

¹⁵ TI, 50, 211; Tel, 42-43, 232-233.

influential."¹⁶ He is credited with introducing the thought of Husserl (and to a lesser extent, that of Heidegger) to France, and, indirectly, in translation, to North America.¹⁷ Jacques Derrida makes reference, in fact, to two transforming moments in twentieth century Western philosophical culture, two "explosions" of thought: Levinas's translations and interpretive lectures introducing the thought of Husserl and Heidegger, and then, with dignity and without polemic, the introduction of his changes to that thought, changes which would be profound, prophetic, and irreversible.¹⁸

Levinas's philosophical roots lie particularly in the phenomenology of Heidegger and Husserl. Phenomenology has no other goal, according to Levinas, than to place "the world of objects - objects of perception, science, or logic - in the concrete web of our life and to understand them on that basis."¹⁹ The neutral term in phenomenology is Being: "the light in which existents become intelligible."²⁰ He maintains that his analyses are in the "spirit," as opposed to the letter, of that thought. He "remains faithful to intentional analysis," to the extent that its focus is a concern for locating and understanding the horizons in which "notions" appear, and locating those horizons that may be "unrecognized, forgotten or displaced in the exhibition of an object."²¹ On being questioned as to whether, in fact, he had remained faithful to the phenomenological method, Levinas asserts again that what he does is phenomenology,

¹⁶ Richard A. Cohen, introduction to *Discovering Existence with Husserl*, by Emmanuel Levinas, trans. Richard A. Cohen and Michael B. Smith (Evanston, Illinois: Northwestern University Press, 1998), xi.

¹⁷ Cohen, *ibid.*, xi.

¹⁸ Jacques Derrida, *Adieu à Emmanuel Levinas* (Paris: Galilée, 1997), 23-25.

¹⁹ Emmanuel Levinas, *The Theory of Intuition in Husserl's Phenomenology*, trans. André Orianne (Evanston, Ill: Northwestern University Press, 1973), 149, (hereafter cited as TIHP).

²⁰ TI 42: TeI, 32.

²¹ OB, 183; AE, 280. See also TI, 28; TeI, 14, wherein Levinas notes that the importance of the "horizon" for him is the implication of the "overflowing of objectifying thought by a forgotten experience from which it lives."

in spite of there being no reduction according to Husserlian rules:

Le trait dominant, qui détermine même tous ceux qui ne se disent plus phénoménologues aujourd'hui, c'est que, en remontant à partir de ce qui est pensé vers la plénitude de la pensée elle-même, on découvre, sans qu'il y ait là aucune implication déductive, dialectique ou autre, des dimensions de sens chaque fois nouvelles. C'est cette analyse qui me semble la nouveauté husserlienne...; c'est le fait que si en partant d'un thème je vais vers les "manières" dont on y accède, la manière dont on y accède est essentielle au sens de ce thème même: elle vous révèle tout un paysage d'horizons qui ont été oubliés et avec lesquels ce qui se montre n'a plus le sens qu'il eut quand on le considèrerait directement tourné vers lui. La phénoménologie ce n'est pas ériger les phénomènes en choses en soi; c'est ramener les *choses en soi* à l'horizon de leur apparaître, de leur phénoménalité, à faire apparaître l'apparaître lui-même derrière la quiddité qui apparaît, même si cet apparaître n'incruste pas ses modalités dans le sens qu'il livre au regard. Voilà ce qui reste, même quand l'intentionnalité n'est plus considérée comme acte. A partir de la thématization de l'humain, s'ouvrent des dimensions nouvelles, essentielles au sens pensé. Tous ceux qui pensent ainsi et cherchent ces dimensions pour trouver ce sens font de la phénoménologie.²²

Critchley notes the extent to which this is true in Levinas's work: he reminds and describes, in "rhapsodic, engaging, elliptical, and extremely sensual" terms, a range of everyday experiences "not usually considered philosophically respectable."²³ Paul Ricœur is one of those

²² Emmanuel Lévinas, *De Dieu qui vient à l'idée* (Paris: Librairie Philosophique J. Vrin, 1982, Livre de Poche, 1992), 140, (hereafter cited as DQVI). "The dominant trait, which even determines all those who no longer call themselves phenomenologists today, is that, in proceeding back from what is thought toward the fulness of the thought itself, one discovers - without there being any deductive, dialectical, or other implication therein - dimensions of meaning, each time new. It is this analysis that seems to me to be the Husserlian novelty....It is the fact that if, in starting from a theme or an idea, I move toward the "ways" by which one accedes to it, then the way by which one accedes to it is essential to the meaning of the theme itself: this way reveals to us a whole landscape of horizons that have been forgotten and together with which, what shows itself no longer has the meaning it had when one considered it from a stance directly turned toward it. Phenomenology is not about elevating phenomena into things in themselves: it is about bringing the *things in themselves* to the horizon of their appearing, that of their phenomenality; phenomenology means to make appear the appearing itself behind the quiddity that appears, even if this appearing does not encrust its modalities in the meaning that it delivers to the gaze. This is what remains, even when intentionality is no longer considered as theoretical, even when it is no longer considered as an act. Out of the thematization of the human, new dimensions are opened that are essential to reflected meaning. All those who think in this way and seek these dimensions in order to find this meaning are doing phenomenology." In Emmanuel Levinas, *Of God Who Comes to Mind*, trans. Bettina Bergo (Stanford: Stanford University Press, 1998), 87-88, (hereafter cited as OGCM).

²³ Simon Critchley, *The Ethics of Deconstruction: Derrida and Levinas*, 2nd ed. (West Lafayette, Indiana: Purdue University Press, 1999), 283-284.

who, at times, finds the tone of Levinas hyperbolic.²⁴

Levinas and the Break With Husserl

Richard Cohen²⁵ suggests that the break with Husserl is evident as far back as an early piece published in 1940,²⁶ in which Levinas is already indicating a direction for phenomenology beyond the epistemology of Husserl towards what Cohen characterizes as an "exegesis" inseparable from ethics.²⁷ In subsequent works, Levinas asserts that the work of Husserl never moved beyond the thesis that the notion of existence is "tightly bound to the notion of theory," that it is "inasmuch as we know an object theoretically that we have access to it as existing,"²⁸ (this in spite of elements in Husserl's work which Levinas believes seem to lead to notions of existence other than that of the presence of an object to objectifying thought²⁹). In the Husserlian terminology, objects are "possessed" by acts of intuition,³⁰ their meaning is bestowed by a consciousness which cannot think beyond its own satiety, beyond its own scale,³¹ and in a time which could only be thought of as synchronous presence³²: the recuperable time of

²⁴ Paul Ricœur, *Autrement: Lecture d'autrement qu'être ou au-delà de l'essence d'Emmanuel Levinas*, Collège International de Philosophie (Paris: Presses Universitaires de France, 1997), 20. Ricœur defines

hyperbole as "the systematic practice of *excess* in philosophical argumentation," in *Oneself as Another*, trans. Kathleen Blamey (Chicago: The University of Chicago Press, 1992), 337.

²⁵ Cohen, "Introduction," in Levinas, *Discovering Existence*, xi-xix.

²⁶ Emmanuel Levinas, "The Work of Edmund Husserl," in *Ibid.*, 47-87.

²⁷ Cohen, "Introduction," in Levinas, *Discovering Existence*, xii.

²⁸ TIHP, 134.

²⁹ TIHP, 134. While to be in contact with the world of values does not mean, for Husserl, to know it theoretically, Levinas asserts that nevertheless, theoretical objects remain as their basis: included in each act of consciousness is a doxic thesis (that the object of the intention exists); hence the notion of existence remains bound to the notion of knowledge, including that of values.

³⁰ TIHP, 69.

³¹ Thought, in knowledge, does not transcend itself, since it is given to its own measure. Presence, as the manifestation of being, thus, in the Husserlian schema, excludes all transcendence. OGCM, 158-159; DQVI, 240.

³² OGCM, 102; DQVI, 161.

history and memory.³³ As Wyschogrod notes, for Husserl, the constitution of theoretical objects serves as a model for the constitution of all objectifying acts, regardless of the objects in question: "the material thing plays a privileged role in founding the notion of constitution itself, irrevocably tying existence to consciousness."³⁴ For Levinas, on the other hand, the situation holding for the knowing of objects may not hold for relationships with persons.³⁵ The "possession," the "grasping" of the other are of concern to Levinas, as is the "totalizing" nature of theoretical construction. In the knowing of individual persons, their inner realities are obscured, individualities are subsumed under the singularity of a genus, and the meaning of individuals is derived from this "totality,"³⁶ an impersonal universality which ultimately makes possible the oppression of the State, and the tyranny of war,³⁷ in short, a world indifferent to values.³⁸

Levinas will counter Husserl by asserting that in the intersubjective realm, meaning begins prior to the bestowal of meaning by a knowing subject; meaning "begins prior to that origin, more deeply, in a beginning...lived concretely as the priority of moral exigency,"³⁹ a beginning in a time Levinas will call "diachrony." We are enjoined, as Blanchot notes, to substitute for phenomenological rationality, a kind of reason understood as vigil - a "ceaseless

³³ OB, 88; AE, 141.

³⁴ Edith Wyschogrod, *Emmanuel Levinas: The Problem of Ethical Metaphysics* (The Hague: Martinus Nijhoff, 1974), 47.

³⁵ Derrida, in fact, points out that Husserl insists there is no "pure intuition of the other *as such*," indicating a break within phenomenology, and it was into the space opened by this break that Levinas found his way, in Brendan Purcell *et al.*, "Hospitality, Justice and Responsibility: A Dialogue with Jacques Derrida," in *Questioning Ethics: Contemporary Debates in Philosophy*, ed. Richard Kearney and Mark Dooley (London: Routledge, 1999), 71.

³⁶ TI, 22; TeI, 6.

³⁷ TI, 21-28; TeI, 5-13.

³⁸ Emmanuel Levinas, "A Conversation with André Dalmas," in *Proper Names*, trans. Michael B. Smith (Stanford, California: Stanford University Press, 1996), 154.

³⁹ Cohen, "Introduction," xviii.

awakening," which concerns another who is both in me and outside of me, who cannot be grasped in an experience, in the present of remembered time. In responsibility for that other, we are exposed to the enigma of the nonphenomenal, the nonrepresentable, "within the ambiguity between the trace to be deciphered and the indecipherable."⁴⁰

Levinas and Heidegger

Critchley notes Levinas's early, "almost juvenile" enthusiasm for Heidegger, and his on-going celebration of *Being and Time*.⁴¹ Although in an article in 1951 Levinas was articulating his differences with Heidegger, he continued to celebrate the latter's return to the traditional sources of philosophy, and his positing of the comprehension of being as beyond a mere theoretical attitude - as including all the lived dimensions of the human reality, all the lived preoccupations of the moment. For Heidegger, "the abstract question of the meaning of being as such and the questions of the present hour rejoin one another."⁴²

However, Levinas suggested that Heidegger retained a focus on comprehension - existence is interpreted as comprehension, and comprehension as "the very event that existence articulates."⁴³ Whereas comprehension is appropriate for grasping the meaning of things, in the

⁴⁰ Maurice Blanchot, "Our Clandestine Companion," in *Face to Face*, 48-49. See also Emmanuel Levinas, "La conscience non intentionnelle," in Poirié, *Essai et entretiens*, 173-179, wherein Levinas briefly summarizes the Husserlian assertions, then asks whether there might be other ways of receiving meaning. See also Levinas's discussion of "wakefulness" in "From Consciousness to Wakefulness: Starting from Husserl," in OGCM, 15-32; DQVI, 34-61.

⁴¹ Critchley, *Deconstruction*, 223

⁴² Emmanuel Levinas, "Is Ontology Fundamental?" in *Philosophy Today* 33, no. 2/4 (1989): 122. First published under the title "L'Ontologie est-elle fondamentale?" in *Revue de Métaphysique et de Morale* 56 (1951): 88-98.

⁴³ Ibid., 123. Levinas suggests that Heidegger was, in fact, not consistent in his critique of Western metaphysics as a philosophy of presence, since he ultimately espoused a more subtle and complex notion of presence - "the coming-into-presence of Being"; and as well, that Heidegger's *Dasein* "is its history to the extent that it can interpret and narrate its existence as a finite and contemporaneous story (*histoire*), a totalizing co-presence of past, present and future," in Kearney, *Dialogues*, 56.

comprehension of an Other - the perceiving of an Other "within the horizon of being" - there remains the possibility of negating the true being of that Other, leading to the possibility of domination and injustice.⁴⁴ If the Other receives meaning "only in virtue of its presence within this horizon," only in virtue of its relation to being in general, then knowledge of the particular is made possible only through knowledge of the universal.⁴⁵ Levinas opposes to this the notion that the Other before one calls one to a response before there is comprehension; the response (named, in early articles such as "Is Ontology Fundamental?" and in *Totality and Infinity*, as "speech") is an original relation, in fact a condition of consciousness or comprehension. Thus

Levinas notes:

L'homme est le seul être que je ne peux rencontrer sans lui exprimer cette rencontre même. La rencontre se distingue de la connaissance précisément par là. Il y a dans toute attitude à l'égard de l'humain un salut - fût-ce comme refus de saluer. La perception ne se projette pas ici vers l'horizon - champ de ma liberté, de mon pouvoir, de ma propriété - pour se saisir, sur ce fond familier, de l'individu. Elle se rapporte à l'individu pur, à l'étant comme tel. Et cela signifie précisément, si on veut le dire en termes de "comprehension," que ma compréhension de l'étant comme tel est déjà l'expression que je lui offre de cette compréhension.⁴⁶

⁴⁴ TI, 45; TeI, 36. On the other hand, Levinas contends that Heidegger's practice of phenomenology in *Sein und Zeit* puts him among the great philosophers of history, in Poirié and Levinas, *Essai et entretiens*, 78. Levinas is particularly indebted to the Heideggerian notion of Being as that which becomes one's own, and our consequent necessity to Being; Being *is* through persons. Levinas has read this as the uniqueness of the I coming from the impossibility of slipping away from the other: the core of the I being obligation. OGCM, 92-93; DQVI, 146-147.

⁴⁵ Levinas, "Is Ontology Fundamental?" 124.

⁴⁶ Emmanuel Lévinas, "L'ontologie est-elle fondamentale?" *Entre nous: Essai sur le penser-à-l'autre* (Paris: Éditions Grasset et Fasquelle, Le Livre de Poche, 1991), 18. "A human being is the sole being which I am unable to encounter without expressing this very encounter to him. It is expressly thus that this encounter distinguishes itself from knowledge. In every attitude in regard to the human there is the salutation, if only in the refusal of the latter. Here perception is not projected towards an horizon, which as the field of my liberty, power, and property presents itself as the familiar basis upon which to grasp the individual. It refers to the pure individual, to a being as such and signifies precisely, if one wishes to speak in terms of "comprehension," that my comprehension of this being as such is already the expression that I offer him or her of this very comprehension." In Levinas, "Is Ontology Fundamental?" 124.

Levinas notes that one of his fundamental differences with Heidegger is their differing analyses of death: whereas for Heidegger, death is always *my* death, for Levinas, the anguish is alone for the death of the *other*.⁴⁷ Beyond the strictly philosophical critique, Critchley asserts that the opposition to Heidegger's political affiliations appeared in written form as early as the first publication of *Quelques réflexions sur la philosophie de l'hitlérisme* in 1934⁴⁸; although, as Abensour notes, the opposition did not mention Heidegger specifically.⁴⁹

The Primacy of Ontology Rejected

Throughout his work, Levinas rejects the primacy of philosophy as ontology. As a philosophy of power it has potential to lead to domination and injustice; he opposes to this a metaphysics wherein the ethical relationship with the other precedes the knowing of Being. "Knowing" implies a comparison of what he contends are incomparable: the same, (the self), cannot ascribe meaning to the other; the other must manifest his or her own meaning; rather than questioning herself about the other, the same questions the other⁵⁰; rather than "taming" the other in a theme, the same can, without fault, signify only in a relationship that Levinas calls "proximity."⁵¹

Levinas's search for a mode of thought other than "totalizing" ontology is often characterized as a distinction between "Athens and Jerusalem"; "Athens" implies the rationality

⁴⁷ Levinas, in Kearney, *Dialogues*, 62.

⁴⁸ Critchley, *Deconstruction*, 223, n. 54. See Emmanuel Levinas, *Quelque réflexions sur la philosophie de l'hitlérisme: Suivi d'un essai de Miguel Abensour* (Paris: Éditions Payot & Rivages, Rivages poche, 1997).

⁴⁹ Miguel Abensour, "Le Mal élémental," in *Ibid.*, 32.

⁵⁰ TI, 47; TeI, 39.

⁵¹ OB, 100; AE, 157. Paul Ricœur takes exception to the Levinasian thought (see *Oneself as Another*, especially 335-343); Ricœur's second figure of passivity-otherness, (the relation to the foreign other - intersubjectivity), includes a recognition of another "someone who, *like* me, says T," 335; Levinas would be opposed to the implicit suggestion of the necessity of assessment of similarity before the response to the other.

of Greek philosophy, the power of the sensible representation, reasoned understanding, logic, the transcending of the particular towards the universal, a distrust of the transcendence of inspiration and revelation. "Jerusalem" implies a wholly different orientation: a focus on love of the other, responsibility for the other, a search for meaning beyond incontrovertible assertions, the juxtaposition of justice and love, an openness to inspiration by the Infinite.⁵² Danielle Cohen-Levinas actually makes it clear that it is not a question of "Athens or Jerusalem," but "Athens and Jerusalem"⁵³; Levinas states this in another manner: the interhuman relationship is an interface, where the world of presence and intelligibility, what is "of this world *qua phenomenological intelligibility*, is juxtaposed with what is "not of this world"- *ethical responsibility*.⁵⁴ Levinas maintains, against Heidegger, that philosophy can be ethical as well as ontological, "can be at once Greek and non-Greek in its inspiration"⁵⁵; in fact, he suggests that in founding justice in love of the other, and a recourse to objectivity in justice - that is, in outlining the passage from proximity to knowledge without compromising proximity - he has effected a reconciliation between the spirituality of the Bible and Greek philosophy.⁵⁶

The following sections will distil the essence of the Levinasian thought felt to be pertinent to the topic of this work.

⁵² Ibid., 31-35, 121-123.

⁵³ Danielle Cohen-Levinas, "Introduction: Visage et Sinaï. Pour Emmanuel Levinas," *Rue Descartes* 19 (Février 1998): 9; also Levinas states that "philosophy can be at once Greek and non-Greek in its inspiration," in Kearney, *Dialogues*, 57.

⁵⁴ Levinas, in Kearney, *Dialogues*, 56.

⁵⁵ Ibid., 57.

⁵⁶ Levinas, in Aeschlimann, *Répondre d'autrui*, 12.

II. Ethics as First Philosophy

The Fragile Existence of the *Moi*

To the priority of the comprehension of Being, Levinas opposes a metaphysics wherein the ethical relation with the other takes precedence.⁵⁷ The alterity of the other is preserved, in a relationship, the focus of which is maintenance of society with the other, as opposed to the domination inherent in comprehension. Levinas posits an inviolable alterity, incapable of disappearing in that which it participates, an alterity that cannot be erased by conceptualization. *Totality and Infinity* is partly focused on highlighting that separateness of the same (the self) and the other, but at the same time, the insufficiency and absurdity of a self that would exist for itself. It speaks of an alterity existing in a time outside of, and unable to be absorbed by, common or universal time; in fact, interiority - one's own otherness - for Levinas implies one's "own time."⁵⁸ Pluralism in society is possible only if this inner core of interiority is impregnable.⁵⁹ In *Totality and Infinity*, Levinas appears to both analyze phenomenologically the coming to awareness of the inner life of the separated "I,"⁶⁰ (the *moi*), and to posit its incompleteness; it is not yet the being-for-the-other (the *soi*) which alone can escape the horror of the *il y a*, and alone can be awakened from "the guilt of its ruthless egoism"⁶¹ by the visage

⁵⁷ Critchley notes the extent to which the Levinasian "ethics" is critique: "it is the critical *mise en question* of the liberty, spontaneity, and cognitive emprise of the ego that seeks to reduce all otherness to itself," in *Deconstruction*, 4-5.

⁵⁸ TI, 57; TeI, 50. See below for an expanded discussion of Levinas' conception of time in relation to the relationship with the other.

⁵⁹ TI, 58; TeI, 51.

⁶⁰ In EI, Levinas speaks of the separated being attempting to elude his solitude, "escaping from being" ("the interior relation par excellence") in his pursuit of "terrestrial nourishments." Neither in these nourishments, nor in what concerns knowledge, does the self escape itself, that is, is it put in relationship with an other it cannot contain or bring to its own measure. Only in sociality is there a possibility of escaping from the confines of self (and, paradoxically, of finding the self). EI, 59-61; EeI, 52-53.

⁶¹ Peperzak, *To the Other*, 176.

of the other.

Il y a The notion of the *il y a*, (its "shadow"), underlies Levinas' analyses.⁶² In an early exposition of his thought, *il y a* is described as "existence before existents,"⁶³ "being in general," without form, refusing form, essential anonymity,⁶⁴ the rumbling, anonymous, impersonal rustling of being beneath all that *is*, the "horrible eternity at the bottom of essence,"⁶⁵ the "absolutely impersonal."⁶⁶ It is neither nothingness (although there *is* nothing) nor being, but is described at times as an "excluded middle,"⁶⁷ (although Blanchot notes that, in terms of being, it can be described as "the *impossibility* of not being").⁶⁸ Chalier speculates whether there is, in this notion, an echo of the solitude and chaos of the darkness before creation: a world before the world, a place without place, time without time, (out of which horror only the creative word could enable beings to arise).⁶⁹ There is terror before the thought of this unceasing anonymity, this non-sense, "ce sans cesse,"⁷⁰ and attempt to escape into the illusory stability of one's own being - the *moi*. Levinas notes:

From the "there is," the enveloping presence of anonymity, which weighs heavily on the human being, subjectivity emerges, despite that which annuls it. This first exiting from self, an eruption from being, begins with the recognition of things, but it is also a stage of the enjoyment of life, of self-sufficiency.⁷¹

⁶² EI, 52; EeI, 42.

⁶³ Emmanuel Levinas, *Existence and Existents*, trans. Alphonso Lingis (The Hague: Martinus Nijhoff, 1978), 57, (hereafter cited as EE); *De l'existence à l'existant*, 2^e éd. augmentée (Paris: Librairie Philosophique J. Vrin, 1993), 93, (hereafter cited as DEE).

⁶⁴ DEE, 94-95; EE, 57-58.

⁶⁵ OB, 176; AE, 271.

⁶⁶ Emmanuel Levinas, *Alterity and Transcendence*, trans. Michael B. Smith (New York: Columbia University Press, 1999), 98, (hereafter cited as AT).

⁶⁷ EI, 48-49; EeI, 38-39.

⁶⁸ Blanchot, "Our Clandestine Companion," 49.

⁶⁹ Catherine Chalier, "Ontologie et Mal," in *Emmanuel Levinas: L'éthique comme philosophie première*, Actes du colloque de Cerisy-la-Salle, 23 août - 2 septembre 1986 (Paris: Les Éditions du Cerf, 1993), 66.

⁷⁰ Poirié, *Essai et entretiens*, 103.

⁷¹ AT, 99.

There is an ever-present fear of falling back into the horror of the "night"; beings fearful for their own being are condemned, ultimately, to fight to maintain their perseverance in being. This struggle has not been condemned in a world where deficiency of being is held to be evil, and where the perfecting of being permits untold suffering.⁷² Levinas' ultimate goal is to indicate that subjectivity need not be posited as a struggle for existence, a struggle to escape impersonal being by clinging to the illusory stability of being, of essence. Only a de-posed *moi* - a *soi* - a being-for-the-other, can stop the anonymous rumbling of the *il y a*.⁷³ Meaning, for subjectivity - for the *soi* - need not proceed from essence.⁷⁴

The Satisfaction of Needs Peperzak clearly describes the apparent freedom and spontaneity of a life focused on meeting its own needs:

To live means to behave as the center of a universe that is defined in terms of needs and satisfactions; in living on account of (or "from") the surrounding totality of beings, one confounds one's own individuality and particularities with that totality. Life is the practice of the Same as the active determination of all otherness, without being determined by any other. It is a cynical behavior reducing all otherness to being elements of the vital substance.

Seen as an activity within the self-realization of an isolated human life, thinking is a way of situating oneself within a totality of elements, beings, and relations, while maintaining a distance toward it. The illusory innocence of this spontaneity is, however, demystified by the emergence of the other, who miraculously awakens the vital consciousness to the guilt of its ruthless egoism. This awakening - primordial shame - is the first possibility of an interpersonal relationship.⁷⁵

The egoism of the "I," the inner life to which Levinas gives the name *psychism*, is

⁷² Chaliel, "Ontologie," 69-73.

⁷³ EI, 52; Eel, 42. In this discussion, as in many others, Levinas compares and contrasts his *il y a* to Heidegger's *es gibt*; in the Heideggerian thought, this is a positive notion, the abundance of a being giving itself the gift of anonymity in the face of the anguish of death, EI, 47; Eel, 37; Levinas notes that none of the generosity allegedly present in *es gibt* was apparent during the Nazi regime: DF, 292; DL, 407. See also Poirié, *Essai et enretiens*, 101; TI, 236; Tel, 262-263.

⁷⁴ OB, 76-177; AE, 105-106.

⁷⁵ Peperzak, *To the Other*, 176.

posited as dawning in the happy enjoyment of the satisfaction of needs.⁷⁶ We "live from" what we draw from the elemental, and there is an interesting relationship with the objects of this "living from"; there is a relationship both with the objects - they ensure my life and thus are pursued as ends - but the pursuit of the end becomes an end in itself. In fact, as Burggraeve notes, the end is one's own happiness: a "turning [of] dependence into sovereignty" - the I as "auto-nomy: a *law* unto *itself*."⁷⁷ For example, labour both ensures our living in the physical sense, but we also live from our labour, in that it constitutes the joy and the grace of life.⁷⁸ Our very being can be risked for such happiness, which Levinas notes while emphasizing that "life is not the naked will to be," and thus beyond ontology.⁷⁹ Happiness is the accomplishment of all needs - the "autochthonous I," "at home with itself,"⁸⁰ the ipseity of the I; but at the same time, there is an insufficiency, a ruthless quality, and a "totalizing" aspect to this apparent independence.

The Dwelling Levinas analyses the "at home with" - the privileged role of the private domain -

⁷⁶ TI, 59; Tel, 52.

⁷⁷ Roger Burggraeve, *From Self-Development to Solidarity: An Ethical Reading of Human Desire in its Socio-Political Relevance according to Emmanuel Levinas*, trans. C. Vanhove-Romanik (Leuven: The Centre for Metaphysics and Philosophy, 1985), 50-51.

⁷⁸ TI, 111-112; Tel, 113-114.

⁷⁹ TI, 112; Tel, 115.

⁸⁰ TI, 115; Tel, 119. It seems clear that Levinas is writing from a philosophical point of view. To give a psychological interpretation to the concept of "need," as has Burggraeve, (see his Freudian interpretation in *From Self-Development to Solidarity*, 40-49), would appear to insert a connotation that Levinas does not intend. The latter notes, in DF, that in TI he has used ontological language "in order to exclude the purely psychological significance of the proposed analyses....," 295; DL, 412. In TI, Levinas notes that in their "perceiving" of a nature, "sociology, psychology, physiology are thus deaf to exteriority [alterity]," 291; Tel, 324. Simon Critchley similarly attempts a *rapprochement* between Levinas and Freud, with the admission that there is nothing in the Levinasian intentions to justify such an attempt. Critchley, however, finds the texts suggestive of psychoanalytic categories; for example, he gives a psychological reading to Levinas' discussion of the recurrence of the subject without identification - a discussion which seems clearly related to Levinas' philosophical argument with the Husserlian understanding of identification. See Critchley's "Le traumatisme originel - Levinas avec la psychanalyse," *Rue Descartes* 19, 165-174. Again, in DF, Levinas takes issue with "a psychoanalysis establishing itself behind the spoken word, in order to seek the place of this word in a system of references and so to reduce it to something which it did not mean," 293; DL, 408.

not as the end of human activity, but its condition, its commencement. From "being at home with oneself," one moves to activity in the world, but one can, at any time, retire within - within "one's dwelling".⁸¹ Dwelling implies inwardness, in relation to which, and after which, the objective world is situated.⁸² (Levinas is attempting to counter the notion that the world is initially represented, thematized, by consciousness, quite apart from one's relationship to it; in the Levinasian thought, one becomes conscious of the world only via an aspect of that world; the dwelling is a condition for representing the dwelling.⁸³ In phenomenological terms, the unsuspected *horizons* within which the aspects of the world are intended, [are ascribed meaning], can arise from a non-representative context.⁸⁴)

The "Feminine" as the Hospitality of the Dwelling The dwelling implies that the *moi* is one step removed from the anonymous rustling of the elemental, the *il y a*; the separation makes possible both labour and property. However, the going beyond the dwelling, which labour and property imply, are made possible by a relationship with another, a relationship with "the Woman," the feminine, (although not yet the other for whom one is radically responsible). The relationship with the feminine, in the home, is similar, in Levinas' view, to the I-Thou as understood by Buber.⁸⁵ The "feminine" denotes gentleness, intimacy, the welcome and the hospitality of a refuge, the possibility of the "silent comings and goings" of a language that does not speak.⁸⁶ As Simonne Plourde notes, Levinas' writing on women is "astonishing,"⁸⁷ although

⁸¹ TL, 152; Tel, 162.

⁸² TL, 152-153; Tel, 162-164.

⁸³ TL, 153; Tel, 163.

⁸⁴ TL, 291; Tel, 323-324.

⁸⁵ TL, 155; Tel, 166.

⁸⁶ TL, 156; Tel, 166-167.

⁸⁷ Simonne Plourde, *Emmanuel Lévinas: Altérité et responsabilité* (Paris: Les Éditions du Cerf, 1996), 90.

Levinas makes it clear, at one point,⁸⁸ that it is not the feminine sex to which he is referring, but to one of the "horizons" in which the inner life takes place, the attribute of welcome. Particularly in his focus on the erotic relationship (which Levinas distinguishes from the relationship of the one-for-the-other), he resorts to extravagant language to portray the feminine role: "an extreme fragility....at the limit of being and non-being"; "the exhibitionist nudity of an extravagant presence...wholly profaned"⁸⁹; "immodesty, ...wanton nudity"⁹⁰; "equivocation of the voluptuous....expression ...inverted into indecency"⁹¹; "the troubling depth of the future...announced and concealed by the feminine beauty"⁹²; the beloved "has quit her status as a person" and opposes to the other "an irresponsible animality which does not speak true words."⁹³

In Levinas' defence, Plourde opts for a reading of his work that would take account of the time in which he wrote, and the place of the feminine in Jewish writing and convention; (one notes that Levinas makes this particularly clear in "Judaism and the Feminine," an essay first published in 1960⁹⁴). In the end Plourde would assume a metaphorical reading of the potentially offensive texts. As well, Plourde finds evidence in the Levinasian works that the extravagant language is also applied to the male in the erotic relationship.⁹⁵ Plourde accuses Catherine Chaliel of taking the Levinasian text at its face value in her passionate and eloquent opposition

⁸⁸ TI, 157-158; Tel, 169.

⁸⁹ TI, 256; Tel, 286-287.

⁹⁰ TI, 257; Tel, 287.

⁹¹ TI, 260; Tel, 291.

⁹² TI, 263; Tel, 294.

⁹³ TI, 263; Tel, 295.

⁹⁴ Emmanuel Levinas, "Judaism and the Feminine," in DF, 30-38; DL, 51-62.

⁹⁵ Plourde, 95.

to such metaphors.⁹⁶ It is difficult not to feel that Plourde has not given sufficient weight to Chaliel's protestations. In a world where too many women are nameless, Chaliel speaks of the importance of women hearing their name called in words that do not dissimulate, in words in which they are legitimately present, outside of metaphors they have not chosen.⁹⁷ Neither "masculine" nor "feminine," in Chaliel's view, aid in the speaking of an authentic discourse⁹⁸:

Il est difficile d'en finir avec le jeu rassurant de la symétrie quand les paroles, à propos du féminin et du masculin, gardent souvenir d'une histoire marquée, précisément, par la logique de l'opposition et, donc, par le discours du Même [ie. by the language of totalization and domination].⁹⁹

Levinas's use of the feminine in relation to maternity and responsibility for the other will be discussed below.

Labour Levinas analyses the relationship with things, a relationship radically different from that he posits with other persons. In the labour which a dwelling makes possible, the elemental is grasped, and possessed, its independence is suspended and neutralized as property - becomes what Levinas calls an existent that has lost its being - but in the suspension, possession *understands* the being of the existent, and "the thing" arises. Labour grasps and takes; it is not projected beyond a movement toward the self, (is not a transcendence), but an acquisition; the elemental is related to the goal of the needs of the separated being.¹⁰⁰

A major difference between the relationship with things and that with persons, (one that will be further delineated below), is that in the grasping and possession of things, being is

⁹⁶ Catherine Chaliel, *Figures du Féminin: Lecture d'Emmanuel Levinas*, Collection Questions, dirigé par Jacques Rolland (Paris: La nuit surveillée, 1982).

⁹⁷ *Ibid.*, 47-48.

⁹⁸ *Ibid.*, 84.

⁹⁹ *Ibid.*, 83.

¹⁰⁰ TL, 158-160; TeI, 169-172.

removed from change - the product of labour "remains permanent in time" - power over the future is affirmed.¹⁰¹ As well, the substantiality, the solidity, the phenomenality thus delineated does not depend on the presentation of the thing *in itself*, but on the fact of its having been grasped from the elemental, possessed; and as property, dispersed "in the anonymity of money."¹⁰² Only another person can contest our grasping possession, present *in itself*, as an absolutely resisting visage, making discourse possible.

The "dwelling" which makes labour possible does not, in the end, offer endless security, it only postpones the destruction and death from which there is no escape: we are constituted by the simultaneity of independence from the destructive power of the elemental, and dependence on that destructive power. The postponement of death opens the dimension of time; the time that remains for the separated being between the present and the moment of death. However time presupposes a relationship to another that cannot be grasped in labour; it presupposes infinity: metaphysics.¹⁰³

The Approach of the Other The other approaches from both a position of height - the height that announces "the untraversable infinity of the negation of murder,"¹⁰⁴ and from the depths of the fragility of the universal "orphan, widow and stranger." Said otherwise:

...the other is the richest and the poorest of beings: the richest, at an ethical level, in that it always comes before me, its right-to-be preceding mine; the poorest, at an ontological or political level, in that without me it can do nothing, it is utterly vulnerable and exposed.¹⁰⁵

¹⁰¹ TI, 160; Tel, 172.

¹⁰² TI, 162; Tel, 175.

¹⁰³ TI, 166; Tel, 180.

¹⁰⁴ TI, 171; Tel, 185.

¹⁰⁵ Levinas, in Kearney, *Dialogues*, 63.

Totality and Infinity elaborates less upon the latter aspect than does *Otherwise than Being* and the later writings; in the former, the relationship with the visage is focused upon the discourse that the hospitality shown the other makes possible, (said otherwise, hospitality *is* discourse), whereas, in the latter, the relationship is ultimately characterized as a radical responsibility, a substitution for the other.¹⁰⁶ Discourse, and the teaching it involves are not, however, negated in the relationship of the-one-for-the-other. Discourse implies a peaceable, non-conquering opposition,¹⁰⁷ which calls my powers into question; in fact Levinas designates the very "calling into question" as "language."¹⁰⁸ It does not imply a *maieutic* on my part, which would contest the other, flatter, seduce, persuade with rhetoric, violate the other's interiority.¹⁰⁹ It is, however, none the less rational, in fact it is the "first rational teaching, the condition for all teaching."¹¹⁰ Levinas seeks to counter the philosophical thought that would conceive of the same being "scandalized," limited, and constrained by alterity. On the contrary, the irrational is within, in the egoism of the "I"; one's freedom is exposed as arbitrary and guilty, but in relating to the other, the self is drawn to responsibility for the other; ethics is established. Rational thought implies the teaching of infinity; for Levinas, one's very existing consists in the "incessant overthrowing of self (which is time)."¹¹¹

Discourse is a welcoming of the other's uniqueness, without representation: the other,

¹⁰⁶ See, for example, "Bad Conscience and the Inexorable," wherein Levinas asserts that beyond the prohibition of murder, the uprightness of the visage of the neighbour creates in the self a fear for all that one's perseverance in being could mean for the other: a dread of injustice greater than a dread of one's own death, in *Face to Face*, 38-40.

¹⁰⁷ TL, 197; Tel, 215.

¹⁰⁸ TL, 171; Tel, 185.

¹⁰⁹ TL, 180; Tel, 196-197.

¹¹⁰ TL, 203; Tel, 222.

¹¹¹ TL, 203-204; Tel, 222-224.

absolute exteriority, "presents itself in expressing itself."¹¹² It is contact across a void, with the "non-touchable" other.¹¹³ The height from which the other approaches is designated as "teaching"¹¹⁴; in fact by height, Levinas implies infinity - in teaching, the presence of infinity breaks "the closed circle of totality,"¹¹⁵ (totalizing thought).

The height of the other's prohibition implies the ethical, as does the aspect of language which implies the giving of the world to the other: the things of the world are given a universality in their designation in words, then the world is "put in common" as its things are designated, "given" to the other. The relationship with the other both stimulates generalization, and *is* this generalization. "To see the face is to speak of the world."¹¹⁶

Levinas must posit a structure of otherness, the non-I, that differs from the structure of objects endowed with qualities. While the object disclosed is the visible, or touched, Levinas posits a more spiritual mode of sensing that does not issue in the object. Vision, in itself, discovers nothing that would be absolutely other; it can note a distance between objects (illuminated in space), which the hand can traverse. Objects are thus grasped and given significance in relation to other objects. In vision, there is a forgetting of the horror of the *il y a* due to the agreeableness of enjoyment:¹¹⁷ "contentment with the finite without concern for the infinite."¹¹⁸ Total otherness, the otherness of others, does not refer to enjoyment, but presents

¹¹² TL, 172; TeI, 187. Blanchot notes Levinas's meaning: "I will not speak of the other or about the other, but I will speak - if I speak - *to* the other...not to inform him or to transmit knowledge to him...but rather to invoke him,...to render him witness by a manner of speaking that doesn't efface the infinite distance...." In "Our Clandestine Companion," 45.

¹¹³ TL, 172; TeI, 187.

¹¹⁴ TL, 171; TeI, 185.

¹¹⁵ TL, 171; TeI, 186.

¹¹⁶ TL, 173-174; TeI, 189.

¹¹⁷ TL, 190-191; TeI, 208.

¹¹⁸ TL, 191; TeI, 209.

itself by reference to nothing outside itself - presents in its façade, or visage.

The Visage The visage is presented in *Totality and Infinity* as a "mode of being," to distinguish it from the implication of a symbol to which another would ascribe meaning¹¹⁹; it is not a phenomenon which thought would constitute as a certain "thing," but is a mode allowing the absolutely other to "keep its secret."¹²⁰ The other remains infinitely transcendent, infinitely foreign: an alterity not at all dependent on any distinguishing qualities that would imply a common genus, thus nullifying that alterity.¹²¹ The other's alterity can be nullified only by murder; only the visage provides the unique "matter" for the annihilation of the other - I can wish to kill only an absolutely independent other, whose power infinitely exceeds mine¹²²; but the visage exhorts me not to kill: "Tu ne tueras point." The resistance of the other's visage is ethical, as opposed to real, in that, as noted above, the terms of the struggle are beyond perception and all that perception entails.¹²³ Perception in fact entails the placing of others in contexts, contexts which ascribe meaning; but the visage is meaning by itself.¹²⁴ In its vulnerability and nudity it is "the very *mortality* of the other person."¹²⁵ In spite of the certainty of human mortality, the obligation from the visage is that of immortality.¹²⁶

¹¹⁹ TI, 178; Tel, 193-194.

¹²⁰ TI, 193; Tel, 210.

¹²¹ TI, 194; Tel, 211.

¹²² TI, 198; Tel, 216.

¹²³ TI, 199; Tel, 217-218.

¹²⁴ EI, 86-87; Eel, 80-81. As notes Marie-Louise Mallet, "par son visage, autrui se détache de l'espèce, de la classe sociale, de la fonction, de tout ce qui ramène un *Qui*, irremplaçable, à un *quoi*," a reference to the second chapter of OB/AE in "Écouter un visage?" *Rue Descartes* 19, 185.

¹²⁵ Emmanuel Levinas, "Diachrony and Representation," in *Time and the Other: and additional essays*, trans. Richard A. Cohen (Pittsburg: Duquesne University Press, 1987), 107, (hereafter cited as TO). The article does not appear in *Le temps et l'autre* (Paris: Quadrige/Presses Universitaires de France, 1983), (hereafter cited as TA). It does appear as "Diachronie et représentation," in Emmanuel Lévinas, *Entre nous: Essais sur le penser-à-l'autre* (Paris: Éditions Grasset & Fasquelle, Le Livre de Poche, 1991), 173.

¹²⁶ Emmanuel Lévinas, *Humanisme de l'autre homme*, Le Livre de Poche (Montpellier: Fata Morgana, 1972), 12.

Levinas writes in equivalent terms of *expression* and *visage*; as *visage* one speaks, but not in the sense of an action that would seek to influence or be a determining power; as *expression*, it is a teaching, soliciting word,¹²⁷ soliciting me from the aforementioned humility and height, arousing my goodness, promoting my freedom; herein is the essence of language prior to all disclosure of being, prior to the subjection to any pre-existent thought. This differs from the understanding of existents by the deciphering of the signs, the words, which refer to those existents, those signified. In Levinas's meaning, the signifier him or her self is present in a visage. "The face opens the primordial discourse whose first word is obligation...; [a] discourse that obliges the entering into discourse." The expression of the other's visage precedes "the disclosure of being in general taken as basis of knowledge and as meaning of being"¹²⁸ - ethics precedes ontology. The notion of expression has meaning in relation to the one solicited, as well. Levinas speaks of the surpassing of inward existence consisting in offering another one's being - "expressing oneself," serving the other - thus placing the centre of one's being outside one's being. "The ground of expression is goodness."¹²⁹ The unstable existence of the *moi* becomes, in this offering to the other, the inviolable *soi*.

Amongst Levinas's most lyrical writing is that focused on the visage in *Otherwise than Being*, where the emphasis has become the visage as a trace of a self, more naked than nudity, exposed as "to the cold and the heat of the seasons,"¹³⁰ "a poverty that hides its wretchedness

¹²⁷ TL, 181; TeI, 198.

¹²⁸ TL, 201; TeI, 220. Burggraeve notes that the visage does not take its meaning from the "meaninggiving subject's horizon of meaning...it exists from itself and itself assigns meaning to its own appearance....As opposed to those things which only appear when they are not naked, i.e. when they stand in the 'borrowed light' of a functional form-giving or artistic decoration, the Other appears only in and through the Face's nakedness...breaking through all borrowed light," in Burggraeve, *From Self-Development to Solidarity*, 68.

¹²⁹ TL, 183; TeI, 200.

¹³⁰ OB, 91; AE, 145.

and calls upon me and orders me."¹³¹ It is incumbent upon me to respond to this homelessness which presses up against me, to this trace of an absence which Levinas suggests is a trace of what could not be contained - infinity¹³²; or, as he notes elsewhere;

There is, in the face, the supreme authority that commands, and I always say it is the word of God. The face is the locus of the word of God. There is the word of God in the Other, a non-thematized word.¹³³

Desire Levinas describes the relation with the other, not only as discourse and teaching, but as Desire, distinguishing Desire from the insufficiency of need which the elemental satisfies. Desire is described as a "non-possession more precious than possession, a hunger that nourishes itself not with bread, but with hunger itself."¹³⁴ It is situated beyond satisfaction and non-satisfaction, is nourished by, but never satisfied, in the relationship with Infinity; that is, in the relationship with the other; the Desire for infinity is actually described *as* infinity,¹³⁵ the same containing more than he or she can contain.¹³⁶ The visage of the other awakens Desire, "disquiets"¹³⁷ the one happily enjoying the elemental, awakens one to the "penury" of such satisfaction.¹³⁸ "Hospitality" is the only appropriate response to the Desire which the absolutely transcendent other provokes.¹³⁹ The depth and the radical nature of the meaning of hospitality for Levinas will be made clear only in *Otherwise than Being*.

¹³¹ OB, 90; AE, 145.

¹³² OB, 91-93; AE, 146-148.

¹³³ AT, 104.

¹³⁴ TI, 179; TeI, 195.

¹³⁵ TI, 292; TeI, 325. Also see DF, 294; DL, 410.

¹³⁶ Evocative of the Cartesian "thought thinking more than it can think," Levinas notes that the meaning he gives is more positive, in DF, 294; DL, 410.

¹³⁷ OGCM, 80-81; DQVI, 130.

¹³⁸ TI, 180; TeI, 196.

¹³⁹ TI, 172; TeI, 187.

The *Soi*: the One-for-the Other, Otherwise than Being

Levinas' last major work, *Otherwise than Being, or Beyond Essence*, appeared thirteen years after *Totality and Infinity*. If, in the latter work, Levinas was concerned to effect the inviolable separateness of the same and the other, and to protect that otherness from the grasping and the loss of self in a totality that the "knowing" of being effectuates, in *Otherwise than Being*, his concern is to delineate the full meaning of the response to the Infinity which passes in the visage of the other. "Infinity" is perhaps the overriding link between the two books.

The Infinite In *Totality and Infinity*, Levinas develops his notion of the infinite against the visions of Kant and Hegel. Whereas for Kant the incomplete, the finite, is conceived in relation to the unattainable that is the infinite, for Levinas, the reverse is true: the infinite presupposes the finite. The infinite amplifies the finite infinitely. For Hegel, the finite can become infinite only in the negation of its own infinitude (as in the State), whereas in the view of Levinas, the infinity of the other does not limit the freedom of the same, but "founds it and justifies it" - calling it to responsibility.¹⁴⁰ Levinas suggests that the idea of infinity is introduced : "there is introduce[d] into me what was not in me," implying an origin outside of self, and an overflowing, a receiving of more than I can contain,¹⁴¹ more than I can draw from myself. The receiving is a being taught¹⁴²; "teaching is...the presence of infinity breaking the closed circle of totality."¹⁴³

Another sense of the infinite is given prominence in *Otherwise than Being* - that of the

¹⁴⁰ TL, 196-197; TeI, 214-215.

¹⁴¹ TL, 203-204; TeI, 222-224.

¹⁴² TL, 180, 204; TeI, 196-197.

¹⁴³ TL, 171; TeI, 186.

endlessness of obligation,¹⁴⁴ an obligation that increases the more one responds,¹⁴⁵ an obedience to a command that is stated by the mouth of the one it commands.¹⁴⁶ Levinas is positing a reverting, in which the infinitely exterior - a "voice" from horizons other than those of synchronous time - becomes an inward voice, ordering me by my own voice. This, for Levinas, is the "very way the Infinite in its glory passes the finite."¹⁴⁷

Plourde notes the ambiguity in Levinas's use of the concept of infinity: applying it both to the other whose exteriority is absolute, and to absolute transcendence: Illeity, (designated variously as infinitely Other, absolutely Other, the Most High, and, latterly, God).¹⁴⁸ Thus, at one point in *Time and the Other*, Levinas clearly distinguishes between the finite other and infinity, noting that it is through the various figures of sociality, one of which is responsibility for the neighbour, that there is a relationship to the "Tout Autre, au Transcendant, à l'Infini."¹⁴⁹ Elsewhere, in *Totality and Infinity*, Levinas appears to equate the infinite, the transcendent, and the Stranger: the infinite is the absolutely other.¹⁵⁰ The transcendent is what cannot be encompassed, it implies the absolute gap of separation.¹⁵¹

It would appear, however, that its use as often refers, not to finite others *per se*, but to the access which their visage give to infinity, ultimately to God¹⁵²; and, ultimately, infinity is the

¹⁴⁴ OB, 140; AE, 219.

¹⁴⁵ OB, 142; AE, 223.

¹⁴⁶ OB, 147; AE, 230.

¹⁴⁷ OB, 147; AE, 230.

¹⁴⁸ Plourde, *Emmanuel Lévinas*, 20-21.

¹⁴⁹ TA, 8; TO, 30-31.

¹⁵⁰ TI, 49; Tel, 41. It is unclear whether the use of capitals is intended to convey meaning.

¹⁵¹ TI, 293; Tel, 326. Maurice Blanchot adds an enigmatic note to the discussion of transcendence; without citation, he refers to Levinas' statement that transcendence will always be ready to "veer off" to the point of being confused with the *il y a*, in "Our Clandestine Companion," 49.

¹⁵² EI, 92; Eel, 86.

search for God.¹⁵³ Thus, the manner in which the other overflows every notion I could have of him or her implies infinity; Levinas speaks of the infinity of Desire for the other; and as noted above, to the infinity of my obligation. On being questioned about his use of the notion of the infinite, Levinas indicates that his use has been intentionally enigmatic, in that, in relation to the infinite, the usual distinctions between substance and its manner of appearing disappear. If "infinite" justified the substantive term, it would not be infinite. There is "no God [or Infinite] in his own idea"; this is a different order altogether from the phenomenological passing from the idea to the being. While the idea of God is God in me, it is God breaking up the consciousness that aims at ideas, ideas that encompass the other, including God. It is a "not-letting-itself-be-encompassed" which is also "an exceptional relation with me." It is a "placing of the Infinite in thought, but wholly other than the thought"¹⁵⁴: "human thought as a search for God, Descartes's idea of the Infinite in us."¹⁵⁵ It would appear to be instructive here to mention Jacques Rolland's opinion that "tout l'effort de Levinas dans *Autrement qu'être*, dans les textes contemporains...consiste, si l'on peut dire, à rendre à Dieu Sa liberté."¹⁵⁶

The infinite is "glorified" in all that Levinas implies in the relationship of the one-for-the-other: the imperialistic ego given over to sincerity as *saying*; the inequality between the same and the other; non-indifference; substitution; election; the sign made to the other of the giving of signs and the impossibility of slipping away.¹⁵⁷ The "*me voici*" in which the same responds to its own voice is a witness to the Infinite - a witness that does not thematize what cannot be

¹⁵³ OGCM, 95; DQVI, 150.

¹⁵⁴ OGCM, 63; DQVI, 105.

¹⁵⁵ OGCM, 94-95; DQVI, 150.

¹⁵⁶ Rolland, "Postface," 279.

¹⁵⁷ OB, 144-145; AE, 225-227.

thematized, does not show itself except in the announcement of peace to the other,¹⁵⁸ and in responsibility for the other.¹⁵⁹

This section will focus on the themes which "glorify" Infinity in the relationship of the one-for-the-other. As Levinas notes, the different themes are so intricately interwoven that they "do not lend themselves to linear exposition, and cannot be really isolated from one another without projecting their shadows and their reflection on one another."¹⁶⁰ An attempt will nonetheless be made here to offer such a linear exposition, with a focus on those aspects of the Levinasian thought particularly pertinent for the thesis as a whole.

Dia - chrony One aspect of the thought which is key to an understanding of all the themes is Levinas's insistence on the coincidence of primordial responsibility with a time he calls *dia-chrony*. In his preface to the republished edition of *Time and the Other*, in 1979, Levinas notes that his manner of characterizing time when the piece was first published (in 1947¹⁶¹) remains crucial to his thought. Time is presented thus:

...non pas comme horizon ontologique de *l'être de l'étant*, mais comme mode de *l'au delà de l'être*, comme relation de la "pensée" à l'Autre et...comme....relation ou religion qui n'est pas structurée comme savoir, c'est-à-dire comme intentionalité. Celle-ci recèle la représentation et ramène *l'autre* à la présence et à la co-présence. Le temps, par contre, signifierait, dans sa *dia-chronie*, une relation qui ne compromet pas l'altérité de l'autre, tout en assurant sa non-indifférence à la "pensée."¹⁶²

¹⁵⁸ OB, 148; AE, 231.

¹⁵⁹ OB, 146; AE, 229.

¹⁶⁰ OB, 19; AE, 37.

¹⁶¹ Emmanuel Levinas, "Le temps et l'autre," in J. Wahl, *Le Choix, Le Monde, L'Existence* (Grenoble-Paris: Arthaud, 1947).

¹⁶² TA, 8-9. "...not as the ontological horizon of the *being of a being*, but as the mode of a *beyond being*, as the relationship of "thought" to the other....It is a relation or a religion that is not structured like knowing - that is an intentionality. Knowing conceals representation and reduces the *other* to presence and co-presence. Time, on the contrary, in its *dia-chrony*, would signify a relationship that does not compromise the other's alterity, while still assuring its non-indifference to "thought." TO, 30-31.

Time is the relationship with the other, signifying that the other is "forever beyond me, irreducible to the synchrony of the same."¹⁶³ Synchronous time signifies the "dispersion of the *being of a being* into mutually exclusive moments,"¹⁶⁴ moments which, when assimilated in comprehending thought, would inadequately furnish the idea of either the other or eternity. Time as dia-chrony implies a relationship to that which is not assimilable, to what "would not allow itself to be com-prehended," to the other whose alterity could never coincide with, or be compared with that of the same, to the "always" of this non-coincidence, and to the "always" of the relationship.¹⁶⁵ "To cast [existence] into the time of clocks made for the sun and for trains" would be to "reify" human existence, committing a sin against the human spirit.¹⁶⁶

In *Time and the Other*, the erotic and the paternal relationships are presented as prime examples of the Levinasian meaning. The emphasis in relation to time in *Totality and Infinity* continues the focus on fecundity\paternity begun in *Time and the Other*; Levinas notes that fecundity must not be understood exclusively as the biological structure, since it is emblematic of the relations "between man and man and between the I and itself not resembling the structures constitutive of the State."¹⁶⁷ Fecundity implies a discontinuous time, unburdened by the interpretations of a remembered past, permitting the welcome of what is absolutely other than the self.¹⁶⁸ In this book, there is also a focus on space as an expression of the relationship between human beings; the "curvature of intersubjective space." The inference is to the superiority and the height of an alterity that deflects the totalizing vision of the same in order

¹⁶³ Levinas, in Kearney, *Dialogues*, 57.

¹⁶⁴ TO, 31; TA, 9.

¹⁶⁵ TO, 31-32; TA, 9-10.

¹⁶⁶ EE, 97; DEE, 168.

¹⁶⁷ TI, 306; TeI, 342-343.

¹⁶⁸ TI, 282-284; TeI, 315-317.

to present itself. The truth of the other is beyond, surplus to any idea the same could have of it, signifying the "divine intention of all truth. This 'curvature of space' is, perhaps, the very presence of God."¹⁶⁹

In *Otherwise than Being*, on the other hand, these emphases give way to diachrony as signifying the relationship of the-one-with-the-*any*-other. Jacques Rolland notes:

La situation de face-à-face serait *l'accomplissement du temps*; l'empiétement du présent sur l'avenir n'est pas le fait d'un sujet seul, mais la relation intersubjective. La *condition du temps* est dans le rapport entre humains....¹⁷⁰

The "Saying" and the "Said" Levinas employs the concepts of "saying" and "said" in relation to synchronous and diachronous time. Identification, the ascription of meaning, its solidification in linguistic systems,¹⁷¹ is given in a "said," which fixes meaning in the present of synchronous time.¹⁷² This thematization is possible only in relation to a past recalled, and reassembled into a representation which neutralizes all divergences, all differences.¹⁷³ The said retains the possibility of exercising power over the beings so thematized, and is emblematic of deficient relationships. It is not the expression of a meaning, but proclaims and establishes meaning - *this* is proclaimed as *that*, and held to that meaning over the time of consciousness.¹⁷⁴ (Levinas notes that in the said lies the birth of ontology - Being identified.¹⁷⁵)

However in the other "intrigue of time," the concept "saying" more adequately implies

¹⁶⁹ TI, 291; TeI, 324.

¹⁷⁰ Jacques Rolland, "Postface: De l'autre homme," in Emmanuel Levinas, *Dieu, la mort et le temps, établissement du texte, notes et postface de Jacques Rolland* (Paris: Éditions Grasset & Fasquelle, Livre du Poche, 1993), 269.

¹⁷¹ OB, 6; AE, 17-18.

¹⁷² OB, 37; AE, 64-66.

¹⁷³ OB, 9; AE, 22-23.

¹⁷⁴ OB, 36-37; AE, 63-64.

¹⁷⁵ OB, 42-43; AE, 73-74.

the sociality of the responsibility for the other,¹⁷⁶ a relationship of a higher order than that possible in the conception of ontology¹⁷⁷: saying is the defection of self identity, and of ascription of meaning to the other; it is signification before the ascription of meaning - a going to the other outside of representation; it is the complete gratuity of the giving of self to the other, exposure to the other's need.¹⁷⁸ Saying implies a temporality beyond the manifestation of the essence of all otherness, beyond the discovery of the qualities of things in the lived experience.¹⁷⁹ The temporality that is diachrony implies a past that cannot be recuperated, cannot be retained in the identification that identifies the essence of being only in relation to my own identity.¹⁸⁰ In the disjunction of diachrony, identification no longer has any relation to the same; identification comes from without - comes, despite the itself of the same, from the uniqueness of having been elected by another, the Good.¹⁸¹ The being of the subject "dies away turning into signification"; what ultimately is signified is the "kingdom of the Good," or the kingdom of a non-thematizable, a non-contemporaneous, non-present, God¹⁸²: what is signified is transcendence. The enigma, and the great difficulty, lies in the fact that, as Critchley notes, it is always a question of saying what cannot be said, of proposing what cannot be stated in propositions.¹⁸³ Of interest is Levinas' contention that not only must the said be unsaid, but

¹⁷⁶ Levinas, "Diachrony," 103.

¹⁷⁷ OGCM, 106; DQVI, 167.

¹⁷⁸ OB, 153; AE 239.

¹⁷⁹ OB, 31; AE, 55.

¹⁸⁰ OB, 89; AE, 141-142.

¹⁸¹ OB, 123; AE, 195-197. Levinas refers here to the assignation as a desire for the "non-desirable...the stranger in the neighbour"; and elsewhere he refers to the Desirable commanding me to the "undesirable *par excellence*, to another," OGCM, 68; DQVI, 113. We are left with no dispute over the radical nature of his proposals.

¹⁸² OB, 52; AE, 88-89.

¹⁸³ Critchley, *Deconstruction*, 167.

saying itself must continually be unsaid: "there are no definitive formulations"¹⁸⁴; it is incumbent upon us to be eternally vigilant.¹⁸⁵

Passivity Diachrony implies, for Levinas, a passivity, as one is passive before the erosion of ageing, wherein passing time is not retained, does not return to the present, wherein there is a permanence of the loss of self. The import of this passivity is that the self cannot retrospectively contemplate itself, but remains a unity, albeit a restless unity, the very core of which is exposed to wounds and outrage in the responsibility for the other.¹⁸⁶ The alternative to the utter vulnerability of this passivity is the absurdity of an I positing himself *for himself*, with the possibility, then, of pride, an imperialist ego, and the treating of another as an object.¹⁸⁷

The full meaning of the passivity of responsibility for the other could not be expressed unless it were seen to strike at the heart of the ego's enjoyment - its complacent well-being - to strike as does the pain and nakedness of a "skin laid bare."¹⁸⁸ The full meaning would be missing did it not imply the very taking of the bread out of one's own mouth, of nourishing the other with one's own fasting.¹⁸⁹ Nor could the full meaning be expressed without noting that the possibility exists for the suffering of the same to be for nothing - to be "non-sense," otherwise, in the world's time, assessment would have made this clear prior to the response, and the needs of the same would intervene.¹⁹⁰ In this time, of knowing, of thematization, wherein signs are given, communication can become blocked; however in the one-for-the-other, the one becomes

¹⁸⁴ OGCM, 88; DQVI, 141.

¹⁸⁵ OB, 161-165; AE 251-256.

¹⁸⁶ OB, 106-109; AE, 167-173.

¹⁸⁷ OGCM, 83; DQVI, 133.

¹⁸⁸ OB, 49; AE, 83.

¹⁸⁹ OB, 56; AE, 94.

¹⁹⁰ OB, 50; AE, 85.

a sign, there is disclosure of self in the leaving of the comfort of the in-dwelling, there is exposure to wounds and outrage, but without reflection - a "denuding of denuding" in Levinasian terms - an unblocking of communication, an uncovering of dissimulation.¹⁹¹

The "necessity" of the same being of service to the other is related to the fact that obedience comes before any voluntary decision to offer oneself: it comes from the "hither side of my freedom, from a 'prior to every memory'"¹⁹²; I respond before the call is heard, and my debt to the other increases in the measure to which I respond.¹⁹³ This is the diachrony of an election by the Good, an election which "impoverishes and denudes." Levinas, in fact, designates the subject *as* diachrony, in its "always wanting with respect to itself" - its never being able to catch up (with itself) - and in its election without identification, without thematization.¹⁹⁴

Proximity Time as diachrony is implicated, as well, in the responsibility of the-one-for-the-other expressed as "proximity," in which there is no implication of spatial proximity.¹⁹⁵ This is the paradoxical notion of both the suppression of the distance of "consciousness of..." (the other), and the opening of the distance of a "diachrony without a common present, where distance is the past that cannot be caught up with, an unimaginable future, the non-representable status of a neighbour behind which I am late and obsessed by the neighbour.... Proximity is a disturbance of the rememberable time....non-said time, where the present is but the trace of an immemorial past." In the "common time of clocks," the other is revealed in his or her image, but

¹⁹¹ OB, 49; AE, 83.

¹⁹² OB, 10; AE, 24.

¹⁹³ OB, 54-55; AE, 91-93.

¹⁹⁴ OB, 57; AE, 96.

¹⁹⁵ OGCM, 80.; DQVI, 129.

the contact between the same and the other is broken - the I becomes capable of accounting for everything in relation to self, and finds excuses to be responsible only to the measure to which one assesses oneself to be capable.¹⁹⁶

In proximity, given the absence of such assessment, there is no question of reciprocity, of any determination of what the other might do for me. Proximity involves an obsession with the other, an obsession that excludes any thought of the obsession; it is a "one-way irreversible being affected...; subjectivity...going to the other without concerning oneself with his movement toward me"¹⁹⁷ - complete gratuity, "saying." The obsession is a "non-indifference" to the other¹⁹⁸; one is exposed as in a naked exposure, but there is no question of the drawing of any redemptive value from the suffering - it is a total putting into question of any self-affirmation, of all egoism.¹⁹⁹ If the notion of persecution were not posited, then the ego would "arise" to protect the self. Bereft of such protection, the self is "in itself" only through others²⁰⁰; but it is in passing from the outrage undergone to being uniquely responsible for the other, that subjectivity is constituted.

Levinas's insistence upon the non-reciprocal nature of the one-for-the-other is a significant departure from much of philosophy. He notes the departure from the reciprocity that Buber's posits in the I-You relationship; Levinas rejects the implication of a commercial transaction in a reciprocity that no longer involves generosity, but "the exchange of good

¹⁹⁶ OB, 89; AE, 141-142.

¹⁹⁷ OB, 84; AE, 134.

¹⁹⁸ OB, 85; AE, 136.

¹⁹⁹ OB, 111; AE, 175-176.

²⁰⁰ OB, 112; AE, 177-178.

behavior."²⁰¹ Levinas and Ricoeur also differ in this respect, Ricoeur insisting upon a continual reversal of roles, of reciprocity²⁰²; and in her explication of the thought of Kant, Christine Korsgaard emphasizes the extent to which personal relations are characterized by reciprocity in his thought, indeed in that of Aristotle.²⁰³

Substitution One of the implications of the "saying" of proximity is that there is no limit or measure to the responsibility posited: the same is responsible to the point of substitution for the other. Levinas notes that he has attempted to formulate the notion of substitution as "the ultimate meaning of responsibility."²⁰⁴ It is related to his insistence on the self receiving its uniqueness from the singularity of its assignation to serve the other: the "not-being-able-to-slip-away,"²⁰⁵ and the non-reciprocity of responsibility for the other. The uniqueness differs from that arising from the uniqueness conferred by unique substantial qualities, which implies a general concept in which the I can be subsumed. The reflected-upon I of ontology is already within this generality, is already capable of an overriding focus on self.²⁰⁶ Levinas quotes Dostoyevsky in illustrating the different use of "I": "Each of us is guilty before all, for all and for everything, and I more than the others." The I of the second clause is no longer a particular case of the general I, (as in "each of us"); it is "the unique point that supports the universe," in

²⁰¹ AT, 100-101.

²⁰² Ricoeur, *Oneself as Another*, 339. Ricoeur suggests that the mediation of "the opening of the Same onto the Other and the internalization of the voice of the Other in the Same" calls for the contribution of the resources of communication belonging to language, and hence of reciprocity. See the comparison between the two in René Simon, *Éthique de la responsabilité* (Paris: Les Éditions du Cerf, 1993), 123-124; 142-144; 144-146 n.19.

²⁰³ Korsgaard, *Kingdom of Ends*, 189-195.

²⁰⁴ OGCM, 80; DQVI, 130.

²⁰⁵ OGCM, 92; DQVI, 147.

²⁰⁶ OGCM, 84; DQVI, 135.

the sense both of enduring the unendurable, and of supporting all.²⁰⁷

Substitution is signification²⁰⁸; I exist for the other and through the other, on the hither side of the limits of identity, *otherwise than being*, the reverse of the *conatus*.²⁰⁹ The other is "in me and in the midst of my very identification"²¹⁰: "in" the same, but not "as" the same - there is no assimilation, no alienation, only awakening, inspiring, awaiting, and desiring of the other²¹¹; the only possible answer to the visage of the other is the non-indifference of the "here I am." In this inversion of identity there arises a different freedom from that arising in the taking of initiative by an autonomous "I"; there is, in substitution, no question of a subjective will deciding to offer itself in another's place.²¹² In substitution, the limitation involved in the ontological maintenance of self in a concept (the limitation implied in the "knowing" of being) gives way, not to submission to another, but to openness, "an openness in which being's essence is passed in inspiration." In this "possibility of every sacrifice for the other," implied in openness, there is a paradoxical coincidence of activity, and the extreme passivity on which Levinas insists.²¹³

Levinas turns again to the feminine (as maternal, in the narrow sense of gestation), in delineating the extent of the passivity of substitution *par excellence*. Both Levinas and

²⁰⁷ OGCM, 84; DQVI, 134-135. In her moving tribute to Levinas, Mallet notes the importance that the great works of literature have had for his thought, mentioning particularly Shakespeare, Molière, Dante, Cervantès, Goethe and Pushkin, besides Dostoyevsky., "Écouter un visage?" 187. Mallet recalls Levinas' having written that it seemed to him that the whole of philosophy is but a meditation of Shakespeare. See TO, 72-73; TA, 60-61.

²⁰⁸ OB, 13; AE, 29.

²⁰⁹ Chaliel, "Ethics and the Feminine," in *Re-Reading Levinas*, Robert Bernasconi and Simon Critchley, eds. (Bloomington and Indianapolis: Indiana University Press, 1991), 125.

²¹⁰ OB, 125; AE, 198-199.

²¹¹ OGCM, 80; DQVI, 130.

²¹² OB, 145; AE, 228.

²¹³ OB, 115; AE, 181-182.

Catherine Chalier write with great beauty of this complete "being for the other."²¹⁴ For Levinas, the suffering of one body for another is a "pure undergoing"²¹⁵; it is bearing *par excellence*, which bears "even responsibility for the persecuting by the persecutor."²¹⁶ Chalier notes that the maternal time, before birth, is one of saying and the passing of transcendence.²¹⁷ However, since such a saying is not reducible to signs, to the said, then there is exclusion once the postnatal paternal time of the law, of social obligation, and of genealogical succession take over.²¹⁸ A sign of this exclusion, of this rupture, is the use of the patronymic, rather than the matronymic. Chalier quotes Julia Kristeva's contention that the social order is founded on this denial of any continuing rapport to the mother.²¹⁹

To speak the knowledge of the passing of the transcendent which women possess, Chalier suggests that there must be found a language not regulated by the processes of appropriation and representation,²²⁰ (a saying must be spoken in a said, in spite of the inherent problems).²²¹ She proposes a language designating a journey, or passage, and finds that Hebrew holds the possibility of by-passing the positivity of the said - a language of sojourners, appropriate to the saying of the trace, and to what disturbs the world's order:

Refus de l'être comme présence et du présent de l'être, la langue hébraïque jouerait dans l'espace de la trace en passant au-delà de l'être, vers une signification irréprésentable qui désarticule le présent. Langue de la métaphore en ce sens, elle apprendrait à entendre la transcendance qui passe en elle mais ne s'y réduit pas. Elle parlerait à la signification

²¹⁴ OB, 108; AE, 170-171.

²¹⁵ OB, 79; AE, 127.

²¹⁶ OB, 75; AE, 121.

²¹⁷ Chalier, *Figures*, 123.

²¹⁸ *Ibid.*, 110-111.

²¹⁹ *Ibid.*, 122, from Julia Kristeva, "Le sujet en procès," in *Séminaire sur l'identité* (Paris: Grasset, 1976), 236.

²²⁰ Chalier, *Figures*, 128-129.

²²¹ *Ibid.*, 140.

fondatrice de tout langage, au pro-logue. C'est-à-dire l'orientation vers l'Autre. En ouvrant la pensée à ce qu'elle ne peut comprendre, l'hébreu ferait passer au temps de l'Autre, de celui qui ne lève pas son énigme mais rend soudain au sens.²²²

"Woman" must come to be understood in a language that is able to preserve the rich meaning of its being for the other: "Il s'agit de penser un langage qui n'identifie pas, ne consacre pas des propriétés, mais signifie avant toute désignation, avant même la rencontre du monde."²²³ Biblical narratives such as the story of Rebecca give a meaning to the feminine (and, one might add, to the wider meaning of responsibility) that goes beyond motherhood, to encompass the "disruption of being by goodness" - election to serve the other who is a stranger, with no thought of cost to one's own freedom - an election to a new identity, but one without security or any guarantees.²²⁴

The one-for-the-other includes the "possibility of every sacrifice," which means not only being responsible for the outrage that the other might inflict on me, but also for the other's suffering: for "the wretchedness and bankruptcy of the other."²²⁵ One is a hostage,²²⁶ which implies that one, one alone,²²⁷ is responsible even for the other's responsibility²²⁸ -

²²² Ibid., 144.

²²³ Ibid., 148.

²²⁴ Ibid., 127-128.

²²⁵ OB, 117; AE, 185.

²²⁶ Note has been taken regarding Levinas' use of both "military" metaphors (hostage, besieged, attacked, etc.) and "pathological" metaphors (obsessed, dispossessed, disturbed, etc.) throughout his argumentation, in J. de Greef, "The Irreducible Alienation of the Self," in *Analecta Husserliana*, Vol. VI, The Self and the Other, The Irreducible Element in Man, Part 1, ed. Anna-Teresa Tymieniecka (Dordrecht-Holland: D. Reidel Publishing Company, 1977), 27-28; Paul Ricoeur refers to the "terrorisme verbal" of the Levinassian metaphors, in *Autrement*, 26. Levinas, on the other hand, stresses his need to use hyperbole to emphasize the urgency of the designation, without being able to slip away. OGCM, 91; DQVI, 145-146.

²²⁷ OB, 167, AE, 159.

²²⁸ OB, 117; AE, 186. See OB, 117 n. 21; AE, 186 n. 1, wherein Levinas notes the "anarchic trace of God" in passivity. In the suffering of suffering, before all reflection, he discerns a suffering "for God" who suffers from my suffering.

"subjectivity...answers to the point of expiating for others"²²⁹; hostage in the sense of being conscious of never having done enough, the endlessness of responsibility.²³⁰ Levinas emphasizes that it is the self, not the imperialist ego that is hostage - this is the "prehistory" of a imperialist ego posited for itself. The unconditionality of being hostage is described, not as the apogee of solidarity, but as the condition for all solidarity.²³¹

The full meaning of "solidarity," of "enduring the unendurable," and of "preferring injustice sustained to injustice committed"²³² are under some dispute amongst Levinasian scholars. As Chalier notes, Maurice Blanchot offers a radical understanding to which she would not necessarily subscribe. He suggests that on meeting the destitute visage of the other, one must no longer wish for happiness for the self; in fact while one might hope for the well-being of others, one must hope to be excluded from happiness oneself.²³³ Chalier believes that, for Levinas, the well-being of humanity is not justified by individual unhappiness.²³⁴ (While agreeing with Chalier's interpretation, this thesis would, however, note that Levinas's point is that one must not be obsessed by concern for one's own happiness, one's own "place in the sun"; in fact the very question of one's right to that place in the sun is central: is not my perseverance in

²²⁹ EI, 100; EeI, 96.

²³⁰ AT, 106.

²³¹ OB, 117; AE, 186.

²³² Emmanuel Levinas, "Bad Conscience and the Inexorable," in *Face to Face*, 40.

²³³ Maurice Blanchot, *L'écriture du désastre* (Paris: Gallimard, 1980), 40, in Chalier, "Le bonheur ajourné," 32.

²³⁴ DEE, 156; quoted in Chalier, "Le bonheur ajourné," *Rue Descartes* 19 (Février 1998): 37. Chalier also reminds us of Levinas's discussion of the three truths learned from the Holocaust: one is that, in the midst of crucial times when all appears lost, human dignity consists in believing in the return of the values which make for peaceful living (returning "to the shade of one's own vine and fig tree"); another is that the highest duty consists in feeling responsible oneself for the return of those values, and the third is the importance of teaching the new generations the strengths they will require to be "strong in isolation," in Levinas, *Proper Names*, 120-122.

being usurping the place of another?²³⁵)

Levinas's focus on substitution inevitably leads to the question of Messianism; is the ultimate substitution that of the suffering servant, the one who was wounded for our transgressions, whose punishment would make us whole, and by whose bruises we would be healed? Chaliel emphasizes Levinas's refusal of the notion that one particular person would come to free humanity from affliction, that there would be a One who stops history; rather, all persons are the Messiah, in their support for the suffering of all. "L'interruption de la persévérance dans l'être par une manifestation de bonté désintéressée, telle serait donc la première condition de la venue des temps messianiques."²³⁶ By the same token, Levinas thinks of prophetism in a wider sense than the special vocation of particular individuals: all testify to the glory of the Infinite in the assumption of responsibility for the other.²³⁷ Chaliel notes, moreover, that Levinas does not think in terms of history inevitably progressing toward a better and happier time. The only hope (Chaliel's term) in such a world, the only hope where there is no hope for one Messiah, is "cette ouverture du moi sur l'altérité."²³⁸ The "eschatological vision" is thus a relation with infinity in the one-for-the-other of signification.²³⁹

Sensibility The vulnerability of the self subjected to pain and outrage in responsibility for the other is referred to as "sensibility"²⁴⁰; there is an equivalence of substitution for the other, the

²³⁵ EI, 120-122; EeI, 119-121.

²³⁶ Catherine Chaliel, *Lévinas: L'utopie de l'humain* (Paris: Éditions Albin Michel, 1993), 145.

²³⁷ EI, 113-114; EeI, 111-112.

²³⁸ Chaliel, *L'utopie*, 145. One notes that Levinas delights in recalling the dark work of the Russian novelist, Vassili Grossman, for whom the only goodness remaining is perceived in isolated acts between humans; a goodness quite apart from all doctrine, all institutions promising salvation, whether political or religious. *Répondre d'autrui*, 15; see also Poirié, *Essai et entretiens*, 165-166.

²³⁹ TI, 23; TeI, 7-8.

²⁴⁰ OB, 14-15; AE, 30-32.

subjectivity of the subject, and sensibility.²⁴¹ The concern is to demonstrate that the immediacy characteristic of sensibility is primordial, proceeding the structures implied in the knowing of being,²⁴² preceding "totalizing" theoretical construction: without the mediation of any principle,²⁴³ the "anarchy of the Good."²⁴⁴ There is an immediacy, a vulnerability, to the sensible which is repressed in the process of knowing.²⁴⁵

Sensibility, in the Husserlian use of the concept, implies intuition of the essence of being, the grasping of being, the "intellectual act of apprehension" - hunting for images; whereas in the Levinasian use, it implies a being grasped, the passivity of being hunted, obsession by a non-manifested other, another who does not appear - a non-phenomenon.²⁴⁶ The "giving" that is implied in sensibility does not suggest a non-corporeality, although it does imply a being bound to others before a tie or a concern for one's own body. Whereas the philosophy of consciousness posits the constitution of corporeality on the basis of the consciousness of sensible experience, Levinas would suggest the opposite: a subject is of "flesh and blood" because subjectivity *is* sensibility - the vulnerability of the one-for-the-other - and because matter is the locus of this responsibility (the materiality of clothing the other, giving lodging, maternal relations, the giving of the very bread from one's own mouth). Roger Burggraeve, given such texts, posits the overwhelmingly economic nature of the responsibility for the other.²⁴⁷ His concern is that responsibility for the other not be understood as "merely spiritual

²⁴¹ OB, 15; AE, 31.

²⁴² OB, 64; AE, 104-105.

²⁴³ OB, 100; AE, 158.

²⁴⁴ OB, 75; AE, 120.

²⁴⁵ OB, 64; AE, 104.

²⁴⁶ OB, 75; AE, 120-121.

²⁴⁷ Burggraeve, *From Self-Development to Solidarity*, 92-97.

sympathy," with little implication of sacrifice on the part of the giver. "Economic" giving implies meeting the other with full hands, with gifts that entail painful self-denial, gifts that are the "fruits of my I-directed appropriation and transformation of the world."²⁴⁸

This would appear to be a rather narrow reading of Levinas, although it is unquestionably part of his meaning. Other texts would appear to indicate that a giving of self-respect, of self-esteem, is also included in responsibility for the other. Levinas speaks of simple courtesies as signalling the one-for-the-other,²⁴⁹ and not allowing the other to die alone as a response to the other's appeal.²⁵⁰ In terms of a gift that is costly to the giver, one might suggest that there may, in fact, be many "gifts" offering self-esteem - acknowledging the status of "human"- that are far more costly than the economic, such as offering the whole of one's self to those despised by society, who may have no need for the material. The suppression of the imperialist ego with thought only for its own preservation may, in the for-the-other of responsibility, in the end be far more devastating to the I than the giving of treasured material goods. The offering of succour to the Jewish populations of many countries during the Nazi era was an acknowledgement of their humanity: a costly gift, at that point. Offering hospitality and an opportunity for esteeming the self to those such as the addicted, who have not "measured up" to society's standards of self-control, might be a costly gift in the world's terms.

Communication The relationship with the other is also characterized by Levinas as communication. It refers, not to the exchange of certainties between sovereign egos, egos for whom others are but limitations inviting domination and war, but to an opening of self, the one-

²⁴⁸ Ibid., 96.

²⁴⁹ Levinas, in Kearney, *Dialogues*, 68.

²⁵⁰ Ibid., 60.

for-the-other of responsibility. Levinas refuses the suggestion that communication could be simply the placing of a truth from within the self to the outside. Communication is not, first, a communicating of truths, but a "sign of the giving of signs," signification signified - "a witness given of the infinite."²⁵¹ Communication is responsibility, a "self-exposure of sincerity,"²⁵² before it is empirical speech. There is, in this original communication, the uncertainty of risk (as opposed to the "knowing" of consciousness, wherein there is the urgency of "coinciding" with the self, the recovery of the self, self-consciousness); in the communication of proximity, there is no certainty of the other's presence,²⁵³ no "truth" about the other; to be in a position to state a truth about the other, or the relationship, would be to lose it: would be "to leave the absolute passivity of the self."²⁵⁴ Communication and knowledge must not be confused.²⁵⁵

Justice

A problem arises in proximity: the Other and the same are, in fact, not alone. In "the eyes of the Other" are seen all the others, the whole of humanity, in similar need.²⁵⁶ All the others obsess me. Given this obsession, there is a necessity of weighing those needs, measuring my substitution for the other, judging.²⁵⁷ There is an evolution in Levinas's portrayal of justice. In *Totality and Infinity* justice refers to the ethical relationship itself - the rapport, the discourse, with the visage of another²⁵⁸; in *Otherwise than Being*, justice is the rapport which makes

²⁵¹ OB, 119; AE, 189-190.

²⁵² Levinas, in Kearney, *Dialogues*, 64.

²⁵³ OB, 120; AE, 191.

²⁵⁴ OB, 121; AE, 192.

²⁵⁵ OB, 167; AE, 259.

²⁵⁶ TI, 213; Tel, 234. Critchley, in fact, particularly emphasizes the extent to which the ethical discourse with the Other is, from the beginning, "troubled and doubled" into a political discourse with all the others, in *Deconstruction*, 231.

²⁵⁷ OB, 158-159; AE, 247.

²⁵⁸ TI, 213; Tel, 234-235.

society possible,²⁵⁹ (although as will be seen, the relationship of the one-for-the-other remains a benchmark for justice).

Questions arise at the advent of the third: What are the others for one another?; What have they done to one another? - and most significant - What have I to do with justice? This "question of consciousness," this arousal of conscience, provoked by the entry of the third, is described thus:

L'entrée du tiers, c'est le fait même de la conscience, du rassemblement en *être* et, à la fois, dans l'être, l'heure de la suspension de l'être en possibilité, la finitude de l'essence accessible à l'abstraction du concept, à la mémoire rassemblant l'absence dans la présence, la réduction de l'être au possible et la supputation des possibles; la comparaison des incomparables....²⁶⁰

It is the thematization of the same, but the difference between this intrigue and that of ontology, is that here, proximity, the relationship with the other, is the basis for the knowing.

Levinas notes, paradoxically, that the arrival of the third is a correction of the asymmetry of proximity - I am approached as an other for the others - "Thanks to God' I am another for the others" (without understanding God as an interlocutor here). While there is "correction" or "betrayal" of the "anarchic relation with illeity," a trace of transcendence remains in what is now a reciprocal relationship.²⁶¹ Levinas notes that the arrival of the third party is the source of justified repression: while I owe the one other everything, including the harm he or she does me,

²⁵⁹ OB, 158-159; AE, 247. Jacques Rolland offers a careful delineation of the differential use of "justice" in the two books: while in *Otherwise than Being* it could be said that one progresses from love, to justice, and then to charity once again, in *Totality and Infinity*, there is no terminological difference between love and justice. "Un chemin de pensée: *Totalité et Infini - Autrement qu'être*," *Rue Descartes* 19 (Février 1998): 48.

²⁶⁰ AE, 246. "...[as] the very fact of consciousness, assembling into being,...the finitude of essence accessible to the abstraction of concepts, to the memory that assembles in concepts, the reduction of a being to the possible and the reckoning of possibles, the comparison of incomparables." OB, 158. Levinas notes that the arrival of the third "is the hour of consciousness and intentionality," in "Diachrony and Representation," TO, 106.

²⁶¹ OB, 158; AE, 247.

when that other harms another, then that violence may be stopped by violence.²⁶²

In the comparison of the incomparable arises work, representation: the saying is "fixed in a said, written, becomes a book, law and science."²⁶³ In short, the rise of institutions is inevitable. The substitution of self for the other is measured and moderated, however if the justice which this implies does not bear the "trace of the transcendent," is not based on an obsession with the other and the others, then it is not justice. When justice is viewed simply as a "legality regulating human masses," the harmonization of warring factions, then the possibility exists that the State will be able to justify the subjection of individual needs to its own totalizing schemes. Proximity is a benchmark for society, the State and its institutions, work, and business, as well as justice - all of which are ever in danger "of having their centre of gravitation in themselves...." The forgetting of self moves justice:

...la justice ne demeure justice que dans une société où il n'y a pas de distinction entre proches et lointains, mais où demeure aussi l'impossibilité de passer à côté du plus proche; où l'égalité de tous est portée par mon égalité, par le surplus de mes devoirs sur mes droits.²⁶⁴

There must be an obsession with the needs of all, not "all" as in a faceless, objectivized totality; but "all" as unique, non-objectifiable, differentiated others. Peperzak describes this well:

The domain of social justice, i.e., the institutional totality that is demanded, is not a purely anonymous realm ruled by universal laws. If that were the case, the individuality of its members would be destroyed. The social totality demanded by the claims of justice is composed of relations relating concrete egos who maintain their unicity while forming a community.²⁶⁵

²⁶² OGCM, 83; DQVI, 134. See also AT, 172.

²⁶³ OB, 159; AE, 247.

²⁶⁴ AE, 248. "...justice remains justice only, in a society where there is no distinction between those close and those far off, but in which there also remains the impossibility of passing by the closest. The equality of all is borne by my inequality, the surplus of my duties over my rights." OB, 159.

²⁶⁵ Peperzak, *To the Other*, 177.

Catherine Chaliel makes it clear that Levinas does not view the State as inherently evil, in spite of the vigilance which must oversee it. His view of the state differs markedly from the political philosophers who posit the state as a social contract limiting the violence of those whose natural predilection is to persevere in the aggrandisement of their own being. The basis of the state, in the Levinasian view, is the obsession to meet the needs of all the others as well as those of the neighbour. The obsession calls for justice, the weighing of needs, the limitation of my responsibility for the one other (since in refusing this focus, injustice may be done to the others). The Levinasian philosophy thus is the antithesis of utilitarianism. The state, rather than being the instrument which guarantees to each the highest possible degree of freedom, in fact finds its legitimacy in limiting the infinite responsibility of the one-for-the-other. Fraternity and equality, justice and peace, are the watchwords of the legitimate state, rather than liberty.²⁶⁶

The problem which the third poses for proximity leads inevitably to the disclosure of being, the gathering into concepts, the comparing of the incomparable, "saying" betrayed in a "said," (problems which have been Levinas's concern in all his writing); is there an answer to this enigma? Is there a way, once and for all, to prevent totalizing structures from arising? Apparently not; the answer, at least in *Otherwise than Being*, appears to lie in an eternal vigilance, a vigilance to which philosophy is committed. It must alternate between justifying and criticizing the laws of the city, and of being, which arise for justice; it must also, in the Levinasian view, both bring equity into the asymmetrical one-for-the-other, and guard against the loss of individuality of the one and the other.²⁶⁷ "Politics must be able in fact always to be

²⁶⁶ Chaliel, *L'utopie*, 113-115.

²⁶⁷ OB, 161-165; AE, 251-256.

checked and criticized starting from the ethical."²⁶⁸

Levinas's understanding of justice could be seen as a juxtaposition of impartiality and love. A Talmudic narrative is illustrative: a judge, having sentenced a guilty person, notices that he is destitute, cannot pay the fine; the judge still requires the fine, but reimburses the guilty one from his own resources.²⁶⁹ Chalier adds to Plourde's focus on the Talmudic influence: justice entails both a refusal to be swayed from impartial judgement (not seeing the visage of the one being judged before the judgement, lest a powerful, privileged visage appear, and garner favour), and an attention to the suffering of the unique person (a turning to the unique visage once the judgement has been rendered, irrespective of the severity of the crime). "Cela signifie que celui qui subit sa peine ne doit pas être considéré comme déchu de son humanité mais, au contraire, appelé à la vivre."²⁷⁰ Maintaining the singularity of the one subject to judgement allows "the apology" to be heard.²⁷¹

However, it would appear that even God cannot forgive some crimes; in the Levinasian view, infinite pardon "tempts us to infinite evil":

Que la patience divine puisse être à bout, qu'il existe des péchés consommés - c'est la condition du respect porté par Dieu à l'homme pleinement responsable. Sans cette finitude de la patience divine, la liberté de l'homme ne serait que provisoire et dérisoire, et l'histoire un jeu. Il faut reconnaître la majorité de l'homme. Admettre le châtement,

²⁶⁸ EI, 80; Eel, 75. Critchley notes the juxtaposition of Athens and Jerusalem in this regard: "the hierarchy and totality of the Athenian democratic political order and the philosophical question that Socrates raises about the legitimacy, or *arche*, of that order need to be supplemented by the anarchic ethical particularity of Jerusalem," in *Deconstruction*, 240. Pierre Hayat emphasizes that Levinas allows a tension rather than a disjunction to appear between the totality and the infinite, in "Preface: Philosophy Between Totality and Transcendence," in AT, xix.

²⁶⁹ Emmanuel Levinas, *Au-delà du verset: Lectures et discours talmudiques* (Paris: Minuit, 1982), 129 n.1; quoted in Plourde, 105, n. 8.

²⁷⁰ Chalier, *L'utopie*, 116-117. TI expresses this in other words: I am summoned to go beyond the "straight line of justice," to go infinitely beyond the limit fixed by an objective law, 245; Tel, 274.

²⁷¹ TI, 244; Tel, 273.

c'est admettre le respect de la personne même du coupable.²⁷²

In spite of diverging from Levinas at this point - this work does not share this particular vision of a limit to divine forgiveness - one can only remain silent before a judgement that cannot but have been informed by a memory of the unspeakable evil of the Holocaust: a "wound that bleeds for all time."²⁷³ This thesis will contend that to ascribe blame and to cause guilt for those who may have some responsibility for their poor health, is to depart from the examples of God's love and compassion found in both Testaments.

III. Levinas in Relationship with Judeo-Christian Faith

To read Levinas is to be introduced to the richness of the Jewish texts, and Talmudic interpretation, although it is clear that they are not employed as philosophical proof-texts.²⁷⁴ Chalier notes that Levinas felt it incumbent upon himself, as a survivor of the Shoah, to share with the world the wisdom of the Hebrew texts, a wisdom that, in spite of philosophy and of Christianity, the world still lacked.²⁷⁵ In the midst of persecution and inconsolable grief, Levinas was able to suggest that one must yet "choose Life."²⁷⁶

While Levinas himself makes no such comparison, and in fact poses altogether different meanings for "messiah, and for "prophet," it would be impossible to read Levinas without noting

²⁷² DL, 197. "The idea that divine patience might have come to an end, and that there are sins committed, is the condition for the respect given by God to the fully responsible man. Without this finitude to divine patience, man's finitude would be only provisional and derisory, and history just a game. We must recognize man's coming of age. To acknowledge punishment is to acknowledge respect even for the guilty party's person." DF, 139.

²⁷³ OGCM, 148; DQVI, 210.

²⁷⁴ Levinas, "Dialogue," in: *Face to Face*, 18.

²⁷⁵ On the other hand, Levinas states that he clearly separates the two languages: philosophical and confessional, and does not employ Talmudic or Biblical texts as proof or justification. See Levinas, in Kearney, *Dialogues*, 54.

²⁷⁶ Chalier, *L'utopie*, 34-35.

the parallels with the teachings of Jesus, actually to the "teaching" or the "signification" which is His whole life and death. Striking parallels can be drawn with the Gospels, particularly that of Matthew. One's good works glorify God (5:16), the glory is not for oneself (6:1-2); a concern for the other, as opposed to the self, may bring persecution and hatred for the self: the road is hard, and the "gate narrow" (5:1-11 and 7:14); the other's worth must not be judged - all are to be loved, including one's enemies (5: 43-48); in caring for the wounded other, one is caring for the Transcendent (25:31-46).²⁷⁷ There is an overwhelming focus on tangible care for the destitute other throughout the Gospels; the import of the law hangs on the two great commandments: loving God and loving one's neighbour (22:34-40).²⁷⁸

Roger Burggraeve draws similar parallels, particularly that with Matt. 5: 43-48, in its command of universal love of the neighbour, and also with John 15:13, in its focus on death for the other as the apogee of love. Burggraeve attempts as well to indicate a convergence of the happiness or blessedness of which the Beatitudes speak, with the "joy" of the Levinasian Desire²⁷⁹; however, it is just here that it would appear that an alternate reading could be given, and a difference noted between Levinas and the Gospels. While blessings for the self are obviously not portrayed in the Bible as the sole reason for goodness shown to the other, there

²⁷⁷ Levinas notes that he refers often to this passage; his focus is that the others' needs are sacred; my responsibility to meet them precedes any notion of a contract on my part. In Poirié, *Essai et entretiens*, 114.

²⁷⁸ The "as yourself" which follows in Matthew 22:29 is variously interpreted: Levinas, in fact, suggests that readings such as "it is this love of the neighbour which is yourself," or "love your neighbour, he is yourself" fit more closely the whole Biblical context, where there is always a priority of the other in relation to the self. OGCM, 90-91; DQVI, 144-145. The question of the law resting on love, rather than the reverse, is noted here with caution, given Levinas' insistence that, for him, there is not a question of an interiorization of the Law; the Law is the living presence of love. Noted in Catherine Chalié, *Pour une morale au-delà du savoir: Kant et Levinas* (Paris: Bibliothèque Albin Michel Idées, 1998), 195.

²⁷⁹ Burggraeve, *From Self-Development to Solidarity*, 91, quoting from Emmanuel Levinas, *En découvrant l'existence avec Husserl et Heidegger* (Paris: Librairie Philosophique J. Vrin, 1949), 175.

is unquestionably a focus on ultimate consolation for those "persecuted for righteousness": one's reward in Heaven will be great; Christ's spirit will be with those who love him and keep his commandments (John 14:15-21); and we are enjoined to forgive as we have been forgiven: "seventy times seven" (Matthew 18: 21-35). Levinas's one-for-the-other has no implication of thought for the self, for what blessings might accrue to the self as a result of selflessness; goodness, indeed, is a "heavy burden."²⁸⁰ While "happily" in relation to justice, others may ultimately take thought for the self, the bench mark for justice remains the asymmetry of the one-for-the-other.

Levinas makes particular reference to the relationship between philosophy and religion; he is clear that philosophy does not console, in fact he states that he does "not believe that philosophy could console": consolation is a function of religion.²⁸¹ ("Je ne crois pas que la philosophie puisse consoler. La consolation est une fonction tout à fait différente; elle est religieuse."²⁸²) Although by "philosophy" Levinas often means the mainstream of Western philosophy, which elsewhere he has defined as representation, the emphasis of presence, the "remaining-the-same-as-being," and as immanence itself,²⁸³ (wherein any notions of consolation, or of salvation refer to a certain quality of knowledge²⁸⁴: "Greece" in other words), neither has it been Levinas's intention to console, in the understanding of the term used in the Gospels. The God whose trace passes in the visage of the wounded other promises no kingdom, to either the

²⁸⁰ AT, 106.

²⁸¹ OGCM, 86.

²⁸² DQVI, 137

²⁸³ OGCM, 61-62: DQVI, 103-104. Levinas in fact notes, here, that religious experience interprets God in terms of philosophical discourse - being, presence, immanence - and that there is another way of "saying" Him.

²⁸⁴ Chaliel, "Ajourné," 37-38.

wounded other or to the same who is elected to respond; that is, the consolation is a human, not a divine, affair; it is in responding to the wounded other that there is salvation for the *soi*.²⁸⁵

In spite of Levinas' cautions regarding consolation, and regarding hope, which he also leaves to the purview of faith,²⁸⁶ there is no question but that his thought is "hope-full" in comparison to the systems which posit different provenances for responsibility and charity. There is hope, surely, if Levinas is correct in contending that before belonging to the order of being, humans belong to an order of goodness, an order, the memory of which belongs to a time other than the present. Both Levinas, and as Chalier notes, Kant, refer to the original goodness of creation from the Genesis narrative. This hidden attachment to the good can be perceived at the darkest moments, revealing a human soul capable of more than the struggle for the right to "be."²⁸⁷ On the other hand, Levinas also speaks of the "murderous" nature of the human will to put its own existence first; he speaks of a nature called to conversion or reversal by "the word of God speak[ing] through the glory of the face." Thus while the ethical situation is a human situation, it is beyond human nature, since God, who effects conversion, is not of this world - is other than Being.²⁸⁸ It is beyond the purview of this work to focus specifically on Levinas's understanding of the essential nature of the human, however such statements call for further study.

Should the call to conversion remain as the last word or must one take cognizance of Burggraeve's concern that, given the fact of human inadequacy, there will be inevitable guilt and

²⁸⁵ Ibid., 36-38.

²⁸⁶ OB, 95; AE, 152.

²⁸⁷ Chalier, *L'utopie*, 140-142. For further discussion, see Chalier, "Ethics," 126, in relation to a good act restoring hope even in the darkest times.

²⁸⁸ Levinas, in Kearney, *Dialogues*, 60-61.

remorse at the impossibility of meeting the unending responsibilities for the others? Where is there help and redemption for such distress? In Burggraeve's view, the faith perspective offers the hope of liberating grace to enable one to carry on with the overwhelming task, and the hope and promise of "ultimate and recreating completion" in the "eternal Kingdom." He thus proposes that "the ethical heteronomy of responsibility through the Other should be surpassed and supplemented with the '*faith-heteronomy*' of liberation through God."²⁸⁹ One must admit Burggraeve's concern, given the suggestion in the following section that the Levinasian thought has relevance for practice. Might it be suggested that it is not a question of Athens and Jerusalem, but, at least for those whose faith perspective happens to be Christian, a question of Athens, Jerusalem and Calvary?

There will be no escaping the fact that all the "saying," all the transcendence, that is implied in both "Jerusalem" and Calvary" will continue to be said in the "totalizing" language of Greek philosophy, with its resultant destruction of that transcendence.²⁹⁰ This implies the necessity for an on-going attempt to "unsay" (*dé-dit*) the rigidities of meaning and practice which "knowing" brings to both Levinas's notion of the Good, and the Christian contributions to what it means to be human.

IV. Conclusion

The Possibility of Precepts from the Levinasian Thought

If Levinas is speaking philosophically, as opposed to psychologically, or sociologically,

²⁸⁹ Burggraeve, 90-91 n. 131. Burggraeve is apparently referring to F. Bussini, *L'homme pécheur devant Dieu*, *Cogitatio Fidei* 91 (Paris: Éditions du Cerf, 1978), 70-76.

²⁹⁰ OGCM, 56; DQVI,

as he has maintained, and as has been emphasized here, it is legitimate to inquire whether there can be practical implications for ethical behaviour in everyday life drawn from his philosophical propositions. There are a number of points which may be pertinent. In the first place, Levinas's overriding concern in all his writing, the "shadow" behind all his work, is the unspeakable horror of the Holocaust, and his contention that it was ultimately facilitated by a philosophy and an understanding of a way "to be" that glorified destructive persistence in "being." If his concern was to offer an alternate understanding of how subjectivity might be conceived, he would presumably have hoped that it would make a real difference in the world, make a difference to those who for so long have suffered from "totality," which would suggest translation of his theoretical constructions into practical exigencies. On the other hand, Levinas does indicate that while norms for the moral order might be drawn from his philosophy, that has not been his intention²⁹¹; he clearly distinguishes the moral order from its ethical foundation, which in his view is the "ethical norm of the interhuman....a vigilant passivity to the call of the other....that must continue to inspire and direct the moral order," in view of the latter's capacity to "harden its skin," to look beyond the individual.²⁹²

Secondly, in a discussion of the work of Sartre, Levinas notes that his admiration for Sartre was partly related to the fact that his philosophy "was not confined to purely conceptual issues but was open to the possibility of ethical and political commitment,"²⁹³ suggesting that such attempts in relation to his own philosophy might not be remiss.

Thirdly, Levinas himself speaks of concrete examples of what his "utopia" might mean

²⁹¹ EI, 90; EeI, 85.

²⁹² Levinas, in Kearney, *Dialogues*, 65-66.

²⁹³ *Ibid.*, 53.

in practical terms:

I remember meeting once with a group of Latin American students, well versed in the terminology of Marxist liberation and terribly concerned by the suffering and unhappiness of their people in Argentina. They asked me rather impatiently if I had ever actually witnessed the utopian rapport with the other which my ethical philosophy speaks of. I replied: "Yes, indeed, here in this room."²⁹⁴

The concern for the other remains utopian in the sense of being other than the "ways of the world," in Levinas's view, but there are many examples of it in the world.²⁹⁵ Indeed, the "after you, Sir" as one gives place to another is emblematic of all that responsibility for the other implies, up to death for the other.²⁹⁶

Fourthly, Levinas appears to address the question in another fashion. He suggests, in the Preface to *Totality and Infinity*, that the traditional opposition between theory and practice disappears "before the metaphysical transcendence by which a relation with the absolutely other, or truth, is established, and of which ethics is the royal road."²⁹⁷ He notes that traditionally, theory and practice were conceived as either a "solidarity" or a "hierarchy," with practice preparing the way for the "pure exercise" of theoretical thought. Levinas, on the other hand, conceives of both as "modes of metaphysical transcendence," and suggests that if he appears to be confusing theory and practice, the confusion is deliberate.²⁹⁸ This considered "confusion" is perhaps well illustrated in what Critchley terms Levinas's "attempts to build a bridge" between

²⁹⁴ Levinas, in Kearney, *Dialogues*, 68. See also DQVI, 131; OGCM, 81. One is reminded of the writing of Márcio Fabri dos Anjos, who in calling for a more responsible bioethics for the developing world, suggests that "a great deal of idealism is necessary if one is to forge ahead with developing a bioethics that allies itself with so many "losers" and with so many people who are excluded from the onward march of society," in "Bioethics in a Liberationist Key," 145.

²⁹⁵ Levinas, in Kearney, *Dialogues*, 68.

²⁹⁶ Poirié, *Essai et entretiens*, 105.

²⁹⁷ TI, 29; Tel, 15.

²⁹⁸ TI, 29; Tel, 15.

ethics and politics by positing a political order based on other than "totalizing or immanentist conceptions of society."²⁹⁹

While it may be therefore legitimate to consider "practice," to speculate as to what the Levinasian thought could mean for daily life, it would be utterly contrary to that thought to suggest that specific rules for individual conduct could be thereby deduced, particularly in an area such as the focus of this work. It would be to suggest, contrary to that thought, that the reality of an individual situation could be known prior to that individual's presentation of his or her own reality - his or her own "manifestation" of self. It would be to suggest that there should not be a focus on a patient's total situation before the making of significant decisions for care. It would be to suggest that individual patients are but parts of the "totality," to be considered *en masse*. Levinas cautions thus:

As *prima philosophia*, ethics cannot itself legislate for society or produce rules of conduct whereby society might be revolutionized or transformed. It does not operate at the level of the manifesto or *rappel à l'ordre*: it is not a *savoir vivre*. When I talk of ethics as a 'disinterestedness,' (*dès-intér-essement*), I do not mean that it is indifference; I simply mean that it is a form of vigilant passivity to the call of the other which precedes our interest in Being, our *inter-esse* as a being-in-the-world attached to property and appropriating what is other than itself to itself. Morality is what governs the world of political 'interestedness,' the social exchanges between citizens in a society. Ethics as the extreme exposure and sensitivity of one subjectivity to another, becomes morality and hardens its skin as soon as we move into the political world of the impersonal 'third'....But the norm which must continue to inspire and direct the moral order is the ethical norm of the interhuman.³⁰⁰

Could Levinas be seen to speak to the North American obsession with personal autonomy, and with the meeting of one's own needs before all else? The "meontological version of subjectivity," which Levinas suggests is put forth particularly in *Autrement qu'être*, asserts

²⁹⁹ Critchley, *Reconstruction*, 222.

³⁰⁰ Levinas, in Kearney, *Dialogues*, 65-66.

that the subject is not the highest value nor does the freedom of the self come before the freedom of the other. The freedom of the self is a difficult freedom, in that it arises in bondage, so to speak, to the needs of the fragile other. I am defined as subjectivity "precisely because I am exposed to the other."³⁰¹

The obsession within bioethics to find the appropriate encompassing theory, or the middle ground of an appropriate set of operative principles, could be seen as illustrative of the totalizing thrust of philosophy as ontology, in contrast to Levinas's ethics as first philosophy. Thus an initial placing of a patient with an addiction within an accepted theoretical construct - related either to health or to moral theory - could be seen as a violation of that other's reality, insufficiently responsive to that other's fragility, and potentially heedless of the suffering altogether, depending on the theory in question.

That the needs of health-related institutions are in danger of obscuring those of suffering patients is a recurrent theme in bioethics. Levinas would counsel eternal vigilance that the benchmark for just institutional policy remain the relationship of the one-for-the-other; and that financial considerations not eclipse the needs of persons.

The radical Levinasian focus on the extent of responsibility for the fragile other - responsibility to the point of being responsible for the other's responsibility - could be applied to the question of the complex etiology of addiction. That all in society, including political institutions, must bear responsibility for the effects of the misuse of substances such as alcohol and tobacco, is an overwhelming assertion of this work, confirmed, it would appear, by the

³⁰¹ Ibid., 62-63. It must be emphasized that Levinas is not denying altogether the freedom of the autonomous subject, but asserting that ethics redefines that subjectivity as an heteronomous responsibility that precedes ontological freedom.

accumulation of research in the field: the ambivalence of government policy, insufficient attention to the social conditions that foster substance-dependent behaviour, a social ethos accepting of behaviour that is substance-enhanced, being but three of a number of the factors involved.

Levinas and the Alternate Voices

The voices posited in chapter 3 as alternatives to the prevailing thrust to find all-encompassing theory in bioethics could be variously seen as approaching the thought of Levinas. Besides the eschewal of over-arching theory, most of the approaches noted tend to highlight the importance of responding to the needs of all persons. Carol Gilligan points to the paradoxical notions that we know ourselves as separate selves only insofar as we are in connection with others, and that we may experience relationship only insofar as we are differentiated from others.³⁰² Nel Noddings believes that it is a feminine stance to respond before analyzing; as well, she is close to Levinas in her use of the maternal paradigm for caring; the central place of "relatedness"; and the notion that ethics *is* first of all, that relatedness, that feeling of "I must" arising before analytical thought. On the other hand, her depiction of caring as an impulse originating in the self separates her from Levinas.³⁰³ Wendell stresses human interdependence, and the need for a different human paradigm, one that would less sharply distinguish the world of the disabled from that of strength and production. This philosopher notes the struggles within the disabled community regarding the concept of "otherness"; Levinas's insistence on all being "other" could be seen as one manner to resolve that struggle.³⁰⁴

³⁰² See this thesis, 99.

³⁰³ Ibid., 99-101.

³⁰⁴ Ibid., 104-106.

The thought of Iris Marion Young is perhaps closer to that of Levinas than any of the others mentioned. As does Wendell, she speaks of the celebration and acknowledgement of difference, and the possibility of oppression arising from theory such as the distributive paradigm.³⁰⁵ Young also alludes to the notions of asymmetry and transcendence, relating this to the inappropriateness of a contractual model in addiction treatment;³⁰⁶ and while she does not stress the irreversibility of the exchange, to the same extent as does Levinas, she does acknowledge Levinas's noting that one must only trust that there will be reciprocity.³⁰⁷

In their optimism regarding the ability to come to a deep comprehension of the other's situation, both the phenomenological and the narrative approaches obviously differ from Levinas, however the expressed need to allow the other to express the reality of his or her suffering, before any imposition of theory, is similar.³⁰⁸ There is striking affinity between aspects of the Levinasian thought and the phenomenologist Richard Zaner's delineation of the complex moral dimensions within the experience of illness, including the vulnerability and appeal of the ill person and the concomitant importance of the caring response of the healer; plus the asymmetry of a relationship within which one party must not take advantage of the other's fragile position. Zaner's delineation of the patient/physician relationship is reminiscent of Levinas's one-for-the-other.³⁰⁹

A virtue-based ethic, such as that espoused by Pellegrino, provides a compelling description of a loving response to a suffering other, although Levinas would not suggest that

³⁰⁵ Ibid., 97-98.

³⁰⁶ Ibid., 111-112.

³⁰⁷ Ibid., 112.

³⁰⁸ Ibid., 109-111.

³⁰⁹ Ibid., 110.

such a response arises from the physician's covenantal role, or that it should be considered supererogatory for the lay population.³¹⁰

The following and final chapter will return to the specific question of the giving of scarce resources to those willing to engage in risky behaviour; it will attempt to indicate what Levinas's "vigilant passivity to the call of the other" could mean for those seen to be in danger from totalizing societal attitudes and structures.

³¹⁰ Ibid., 111-113.

CHAPTER SIX

A CHANGE OF PERSPECTIVE

Introduction

A return to the question which provoked this study, and to a tentative answer, may now be possible. The question - whether those thought to have provoked their own illness, such as the addicted, should be provided with scarce curative resources, such as organs - has led to a number of potentially relevant foci: the array of meanings surrounding human freedom and responsibility; the plethora of theories about just distribution within health care; the current understandings about the etiology of addiction; and the history of and current situation in the field of organ transplantation. This extended perusal appeared to confirm the initial intuition that a compassionate solution to the problem would not be found within mainstream bioethics or amongst the philosophers routinely cited in the bioethics literature. The depth of the disagreements surrounding freedom and responsibility, the array of competing theories and positions in the area of justice, and, at times, a seeming want of compassion, all appear to contribute to the impasse.

That the question might be differently posed had also been one of the initial intuitions; thus direction was sought within the work of Emmanuel Levinas, who indeed focuses on responsibility, but with emphasis on the responsibility *for* the other, and on response before the "knowing of being." This final chapter will attempt to delineate what the Levinasian thought might mean for those in danger of being marginalized by a health care system, the resources of

which are increasingly scarce. It will also seek support from theology: it will be proposed that the support that the Levinasian thought lends to the latter, and vice versa, could be the basis for a prophetic stance that provides a challenge to the direction in which the health care system appears to be rushing, a challenge which would not be without its effects on the population with which this study is concerned.

I. The Contribution of the Levinasian Philosophy

As was pointed out in the preceding chapter, to expect precise prescriptive norms from Levinas's work is to misread the author's intent. To suggest that a norm, a principle, or some comprehensive theory could legislate a meaningful or adequate response to the needs of particular suffering patients would be to suggest that the mystery and depth of their reality could be known before they had had a chance to present it themselves. It would be a good example of the reduction of the other to the same - an ascription of meaning based, at best, on the limits of the understanding of the members of the health care team, and at worst, on ends other than the human good, such as those dictated by monetary considerations, or the prestige of the institution. One great contribution of the Levinasian thought, in the view of this work, is some resolution to the debate sketched in chapter 3 over which theory of justice would most adequately speak to the needs of the addicted. Levinas's answer is "an-archic"; "totalizing" theory is not the answer, at least as an initial response to a suffering other, and when justice must be dispensed, as it surely must, it is only just when the "anarchy" of the affirming response to the individual remains its benchmark.

However health care does require standards of practice, and practical directives in order

to function. Of what use is the Levinasian thought, indeed of any philosophical or ethical system, to a struggling transplantation team faced with a choice between giving a scarce organ to a patient addicted to a harmful substance, and another who has followed a more healthy lifestyle? The propensity to turn to ready principles or the tenets of comprehensive theories is easily understood in the light of the devastatingly difficult decisions that must be made. The reading of Levinas suggests directives of a sort, more properly labelled dispositions arising from a perspective, and related, in the first place, at the micro level, to the form of the welcome and the tenor of the relationship that any patient entering the system should expect; and in the second, to the macro level of the goals of a medicine within a culture of individualism, technical imperialism and efficiency. The nature of the suggested response at these two levels will be discussed below.

At the Micro Level

Hospitality

The Levinasian "one-for-the-other" suggests that the first response to a patient be one of welcome, of hospitality - a response arising, not from the duty prescribed by a professional role, or from the dictates of theory, but in fact, from the imperative addressed from the visage of the fragile other. The intervention of a "role" already suggests a welcome one step removed from the response of which Levinas speaks.

The difference between the two types of response becomes evident in the bioethics literature. On the one hand, in the perspective of a role-based ethic, rather than initial responses of caring and compassion, there are assessments of degrees of obligation stipulated by the

nature of the contractual situation.¹ In Beauchamp and Childress's *Principles of Biomedical Ethics*, the legal and moral requirements of prior contractual relationships are key in detailing what they refer to as the "obligations of specific beneficence" that derive from special relationships such as institutional roles. When such roles are absent, then legal and moral issues must be assessed before the response to the fragile other is given.² The authors suggest that it is inappropriate to construe beneficent medical care as personal commitment or altruism. It is comprised, they suggest, of both a general beneficence emanating from the reciprocal give and take of every day living, and of a specific role-derived beneficence. In the situation described by Engelhardt - whether or not to assist a stranger - they suggest there is some minimally decent obligatory care.³ Compassion and care, in the Beauchamp and Childress corpus, are characterized as virtues that would be dominant in a paternalistic model of medicine.⁴

The general tenor of Beauchamp and Childress's discussion of virtue and ideals in professional life is one of calculation. For example, they have developed a continuum of obligatory acts - that range from acts of the strictest obligation to those beyond obligation (considered supererogatory and divided into low and high-level supererogation); one example of low level supererogation is the generous assistance of a visitor lost in the hospital corridors.⁵

¹ In a telling example, Engelhardt notes that the physician may not, in fact, have any obligations to strangers in need; although it could not be denied that the obligations differ from those of the physicians own patients, the minimalist tone is disturbing. Engelhardt, *Foundations*, 1st ed., 97; 2nd ed., 128.

² Beauchamp and Childress, *Principles*, 4th ed., 270-271.

³ *Ibid.*, 270-271.

⁴ *Ibid.*, 464. That paternalism has been so negatively defined in American bioethics is related to the status the latter gives to the value complex of "individualism, underscoring the principles of individual rights, autonomy, self-determination, and their legal expression in the jurisprudential notion of privacy.... [H]owever well-meaning and concerned with the good and the welfare of another person it may be, it interferes with and limits an individual's freedom and liberty of action." In Fox, *Sociology of Medicine*, 229.

⁵ Beauchamp and Childress, *Principles*, 4th ed., 485.

Some "beneficent and caring" actions fall between points on their continuum, such as the professional obligation to "encourage and cheer" patients: not every professional, in their view, will recognize this as obligatory.⁶

Pellegrino and Thomasma, on the other hand, present a covenantal model. While they also differentiate between the "prevailing morality" and that shown by health professionals (suggesting that the role may play some part), in contrast to Beauchamp and Childress, they suggest that the position of a health professional *vis à vis* fragile others calls for a high level of virtuous conduct; reduced self-interest and altruism are possible: in fact, only a virtuous person could resolve the dilemmas between the two - "no amount of deft juggling of rights, duties, or principles will suffice to resolve that tension."⁷ They do not fear speaking of what is entailed by virtue, including a higher level of self-effacement.⁸ The ideal relationship which they postulate between patient and professional rests on three axioms:

...first, that the essence of a true profession lies in its public promise to act in certain ways required by the nature of its role in society; second, that the primary commitment of a true profession, distinguishing it from other activities, is the higher degree of altruism it calls forth in the interest of those it serves; and, third, that the obligations of health professionals are grounded in the nature of the illness, in faithfulness to their promise to help, and in the power to help that resides in professional knowledge and skill.⁹

William May presents another sensitive and nuanced delineation of the covenantal relationship in medicine. He notes that professional codes have tended to be derived from the Hippocratic Oath, which is more philanthropic than covenantal; in fact the covenantal element

⁶ Ibid., 486.

⁷ Pellegrino and Thomasma, *For the Patient's Good*, 123.

⁸ Ibid., 124.

⁹ Ibid., 205.

is focused on the indebtedness of medical students to their teachers.¹⁰ An element of the Oath is a vow made to the gods to fulfill duties to patients, however May suggests that, in spite of this, the vow differs from the Biblical covenant in important respects:

...it offers no prefatory statement about the actions of the divine to which the human promise responds; and second, its form deemphasizes the responsive nature of the physician's action, for he swears *by* the gods to fulfill his professional duties. His promise by the gods simply gives gravity and shape to the details of the Oath.

Detached altogether from this religious vow, both the Hippocratic Oath and the profession that it helped to shape move further toward a purely codal definition of duties to patients. These duties, as transmitted in a clinical setting, largely prize the ideal of technical efficiency. But, as engraved in the written tablets of the profession, they evolve into the compensatory and ultimately pretentious ideal of philanthropy.¹¹

The vow implies that the professional commitment to patients is wholly gratuitous rather than a responsive act; modern codes acknowledge no indebtedness to a transcendent source, nor a physician's indebtedness to the community - implying "the godlike power to draw its life from itself alone, and to act wholly gratuitously."¹² There is a "reciprocity of giving and receiving" between physician and patient that is often forgotten. May cautions the following:

The derivation of the professional covenant from a divine-human covenant should not seduce us into slotting healers (and other professionals) into the position of God....Despite all flattering impressions to the contrary, professionals undertake their responsibilities not as godly benefactors but as those who, first and foremost, benefit. The human activities of healing, teaching, parenting, and the like, do not create - that is God's work - but, from beginning to end, respond. Only within a fundamental responsiveness do professionals undertake their secondary little initiatives on behalf of others.¹³

The contrast with a "marketplace contractual ethic" is striking; the notion of covenant,

¹⁰ William F. May, *The Physician's Covenant: Images of the Healer in Medical Ethics* (Philadelphia: The Westminster Press, 1983), 109-110.

¹¹ *Ibid.*, 112.

¹² *Ibid.*, 112-114.

¹³ *Ibid.*, 116.

founded on the Biblical notion, obliges the more powerful to accept responsibility for the more vulnerable in the relationship, and does not permit "a free rein to self-interest, subject only to the capacity of the weaker partner to protect himself or herself through knowledge, shrewdness, and purchasing power."¹⁴ May is intent on indicating that for those nurtured in the Christian understanding of "new covenant," human need, sufferings and death become more bearable; there is less need to avoid ties to the perishing; the dying are no longer marked by the absence of God.¹⁵ On the other hand, when divorced from such an understanding, philanthropy, technical proficiency, code and contract tend to offer help without the complications of binding ties to the fragile, without "drowning in the plight of the other": "contractors guard their own interest, specifying carefully the precise amount of time and service for sale."¹⁶

The shape of the higher degree of altruism postulated by Pellegrino and Thomasma, and the insights regarding response, and the "needy" professional contributed by May, might be understood as having some echoes in Levinas's "one-for-the-other"; however there are important distinctions: the Levinasian "one-for-the-other" does not emanate from any habituation to virtuous behaviour, is not dictated by the special position of any profession, prescribed by any institutional rules or professional roles, or even supported by any reciprocal relationship of giving and receiving, but is called forth by a fragile other with needs. The affirming response is prior to any "knowing" in relation to the intricacies of obligation, the

¹⁴ Ibid., 124.

¹⁵ Ibid., 127-128. This view is echoed in Richard Gunderman, "Illness as Failure: Blaming Patients," HCR 30, no. 4 (2000): 7-11. Gunderman suggests that there is much that health professionals can learn from the tenor of God's love for his covenant people; the patience, fidelity and efforts to develop a compassionate and understanding relationship, regardless of any sense that the patient may carry some blame for the illness, may well leave the professional open to suffering; but Gunderman would remind professionals that limitation and vulnerability are aspects of what it means to be human.

¹⁶ May, *The Physician's Covenant*, 129.

closeness, or not, of the relationship, or whether the fragile other is in any way considered "undeserving" (by those who wish to make such distinctions, based on either their own marginalizing attitudes or any theoretical constructs). Thus the Levinasian response to a patient presenting to the system for whatever reason, is one of affirmation of inestimable worth; of welcome; of assurance that, whatever will be the eventual outcome of medical investigations, integrity and self-esteem will be protected; and of assurance that he or she will not be abandoned. These are surely encompassed by Levinas's "*ne tueras pas*," and his "at least, do not let me die alone." That the provision of hospitality is difficult within the current medical crisis hardly needs to be stated; under-funded hospitals and clinics with exhausted staff; resident and physician rotation that makes the forming of relationships of trust difficult; and an overwhelming preoccupation with technical prowess and fiscal restraint are but three of the factors mitigating against any sense of welcome.

One of the goals of hospitality would be to allow the patient to present his or her own reality - to tell his or her own story. This becomes particularly relevant in addiction; given the many different theories regarding etiology, none privileged, it is obvious that patients could be confronted with many differing attitudes about the extent of their "responsibility" for their condition. As well, the various members of the health care team would have their private assumptions about personal freedom and responsibility in general: assumptions that colour the attitudes brought to the clinical setting. The potential exists for the "being" of patients to be "known" before they have had a chance to present their own selves; the potential for thus

violating those selves is great.¹⁷ This work has asserted that the addicted, particularly those addicted to alcohol, can be viewed as an oppressed, marginalized group, with the attendant possibility that there will be discrimination in the health care setting, much of it subtle.

It has already been suggested above that the "tribunal" appropriate to the legal system is inappropriate for a health care setting; it may be difficult to avoid its application altogether; thus the need for the on-going vigilance over societal institutions of which Levinas speaks: ever keeping in view the relationship of the "one-for-the-other." There must be a continual asking of the searching questions that philosophers and social scientists such as Honderich and Iris Marion Young have posed about the logical and moral supportability of the theories of punishment and of treatment underlying our acting.

With Young, we must continue to ask whether our treatment models perpetuate a contractual, atomistic society; indeed, in her view, it is just such a society which supports a retributive theory of punishment (the "law-breaker" has violated an implicit promise, thus deserves to be punished by fellow citizens); but is just such a society which tends to obscure the fact that many of those defined as criminals and punished are, in fact, not "equal"¹⁸; and of course Levinas would remind us that we are in an asymmetrical relationship with any other before us.

Gatekeeping

One of the issues in dispute in relation to the allocation of scarce resources is that of

¹⁷ On the other hand, it might be noted that the presence of a multi-disciplinary team could be a corrective to attitudes that marginalize; a well-functioning team has the potential to respectfully evaluate the range of attitudes, and act as a corrective to those that are less than compassionate.

¹⁸ Young, *Intersecting Voices*, 80-81.

"gatekeeping": finding the proper balance between physician advocacy on behalf of individual patients and social responsibility towards the needs of society at large. Two aspects are implied: whether a primary care physician should be empowered to spare no resource for his or her patients, irrespective of the needs of the wider patient population; and whether physicians should be the ones to choose, amongst patients known to them, those who will receive scarce life-saving resources such as organs. While the latter aspect is of particular interest in this study, it will be suggested that Levinas's discussion of justice and the relationship of the "one-for-the-other" indicate directions for both.

The views in the bioethics literature vary greatly. On the one hand, writers such as Robert Veatch suggest that "the clinician ought not to be society's cost-containment agent," and that the proper locus for decisions that threaten lives is at the societal level, not at the bedside.¹⁹ The rationale, at least for Veatch, arises from the physician's duty to preserve lives, a duty invested by society²⁰; Veatch would not have the physician bound to offer care that is not beneficial, however he suggests even that decision should, in a general way, be made at a societal level. Veatch's watchword is equity; and his implication is that the "broader public" is best situated to have the least bias in such decision making.²¹ Eric Cassell suggests, not so much that physicians should not make life-threatening choices at the bedside, but that they should be made based, not on justice, but on the virtues of love of humanity, compassion and mercy; his

¹⁹ Robert M. Veatch and Carol Mason Spicer, "Medically Futile Care: The Role of the Physician in Setting Limits," *American Journal of Law and Medicine* 13, nos. 1 & 2 (1992): 29.

²⁰ *Ibid.*, 31.

²¹ *Ibid.*, 28-29. Veatch suggests that society should reserve certain roles, such as that of the clinician, for "unilateral advocacy," in "Physicians and Cost Containment: The Ethical Conflict," *Jurimetrics Journal* 30, no. 4 (1990): 470.

stress is not equity, but the reality of fundamental differences amongst persons. Since the nature of the person cannot be separated from "diagnosis, treatment, or prognosis," then wisdom must dictate the application of the relevant virtues to the difficult decisions of distribution amongst patients.²²

Edmund Pellegrino, writing from a stance that is equally respectful of individual patients, one that believes that the "moral exigencies of the patient care relationship must always be primary,"²³ yet warns that acting in the best interests of individual patients is all too easily construed as a "blank check" to do everything patients request, or everything that can be done; doing so is not necessarily good medicine.²⁴ Pellegrino notes that at the bedside, as elsewhere in the real world, ethics, law and economics interact unavoidably. While it is reasonable to suppose that there will continue to be ongoing conflict and tension amongst them, physicians have obligations to ease the tensions by eschewing futile treatments; dealing honestly with both the system and patients; maintaining a technical expertise that would assist in the development of valid clinical guidelines and rational policies; and becoming effective advocates for a just system.²⁵

Another approach also focuses on the impossibility of removing life and death decisions from the bedside entirely, and suggests it is not a strict either/or situation; Menzel, whose focus

²² Eric J. Cassell, "Do Justice, Love Mercy: The Inappropriateness of the Concept of Justice Applied to Bedside Decisions," in Shelp, *Justice and Health Care*, 80-82. Cassell suggests that much more could be done to awaken and teach the virtues required at the bedside; Ronald M. Green does not disagree, but suggests that professional training does not necessarily preclude exposure to the difficult economic and allocative decisions that must be made, in "Altruism in Health Care," in Shelp, *Beneficence and Health Care*, 249.

²³ Edmund D. Pellegrino, "Allocation of Resources at the Bedside: The Intersection of Economics, Law and Ethics," *Kennedy Institute of Ethics Journal* 4, no. 4 (1994): 315.

²⁴ *Ibid.*, 312.

²⁵ *Ibid.*, 315-316.

is more that of efficiency than either equity or compassion, advocates a prior-consent model for resolving the dilemma. On joining a health plan, patients themselves would be asked to consent to a certain specific level of life-extending care, thus taking the most difficult decisions out of the purview of the physician, and Menzel believes, lending moral force to the policies.²⁶ Nancy Jecker also believes that it is not an either/or situation, given the fact that physicians have long undertaken a dual commitment to serve both as patients' advocates and to serve the public good. The dual commitment implies a weighing of rights and thus striking a balance between the two commitments.²⁷ Jecker admits, however, that she has not answered the dilemma of what a physician should do when patients are equally entitled to a share of relevant resources.²⁸

Levinas's privileging of the relationship of the one-for-the-other, allied with an assertion that the third is ever present "in the eyes of the other" might also suggest that an either/or position is to be eschewed. While just solutions must never lose sight of the relationship with the one suffering other, neither must the needs of the third be abandoned (no one is privileged when it is a question of justice). A Levinasian thrust would suggest that a utilitarian approach to justice is inadequate, in that there is insufficient focus on all of the suffering others; nor is a concern with cost-benefit adequate, nor is an approach such as that of Veatch, which places

²⁶ Paul T. Menzel, *Strong Medicine: The Ethical Rationing of Health Care* (New York: Oxford University Press, 1990), 10-19, 52-53. The general approach of Menzel could be seen to be an example of a bioethics co-opted by prevailing societal values - thus the focus on cost containment in line with the prevailing societal preoccupation (see Fox's note about "a categorical moral imperative of bioethics," in *Sociology of Medicine*, 230); and with that focus, little attention to the wider social issues that might have contributed to the need for cost-containment.

²⁷ Jecker cautions that the two sets of rights are only partly grounded in the relevant commitments, and also that social responsibilities can be fully discharged only beyond the clinical encounter; in Nancy S. Jecker, "Integrating Medical Ethics with Normative Theory: Patient Advocacy and Social Responsibility," *Theoretical Medicine* 11 (1990): 136.

²⁸ *Ibid.*, 136-137.

insufficient emphasis on wider needs. It is of interest that Cassell would reject any application of justice "at the bedside," however it could be suggested that his use of the concept is the narrow distributive paradigm which Iris Marion Young would agree is inappropriate for the distribution of health, self-respect, and life itself.²⁹ Young's definition, which focuses on the oppressed, and the need for a social justice that is cognizant of individual difference, and the marginalization that the oppressed have suffered, is closer, it is felt, to Cassell's actual meaning³⁰; it approaches Thomasma's notion of justice as the attempt to honour each individual as far as is humanly possible,³¹ and Levinas's insistence on concern for any other.

It seems obvious that the physician must be trusted to use sound clinical judgement for a wide range of patient-related issues, given the differences between patients, and given a presumption of both clinical skill and trust that it will be applied appropriately, (a trust which seems to be lacking in the approach of Veatch, and also in the approach of Mark Hall³²). However, when a physician is perceived to be the one choosing between his or her own patients for life-saving resources, and when the choice is clearly beyond being based on purely medical criteria, then the potential is far too high for considerations of value to creep in, for patients to lose a sense of self-worth, and for the relationship to become one of distrust and suspicion, thus

²⁹ Young, *Justice*, 8.

³⁰ Of interest is a recent article in which Cassell revisits the dilemma of how both justice and the best norms of clinical medicine could be practised at a particular patient's bedside; he continues to believe that their conjunction is impossible, but his fear is that, in the present climate, justice has won the day. See Eric J. Cassell, "The Principles of the Belmont Report Revisited: How Have Respect for Persons, Beneficence, and Justice Been Applied to Clinical Medicine?" HCR 30, no. 4 (2000): 12-21.

³¹ David C. Thomasma and Erich H. Loewy, "Exploring the Role of Religion in Medical Ethics," *Cambridge Quarterly of Healthcare Ethics*, 5, no. 2 (1996): 258.

³² Mark A. Hall appears to be of the opinion that, without reinforcing incentives, whether educational, professional, or financial, physicians will not be faithful in applying rule-based rationing, in "The Problems with Rule-Based Rationing," *The Journal of Medicine and Philosophy* 19 (1994): 326. It is all too easy to forget that distrustful attitudes toward health care personnel may have far-reaching, unintended negative consequences.

lose its value. Presumably, most patients are aware that their physicians must ration a number of resources, most obviously their time; however, it is suggested that the majority of patients would react negatively to a suggestion that their physicians had to weigh their death against that of another patient. If it is correct to suggest, as this study does, that the professional commitment is a response to an entreaty to preserve an other's integrity, then it is difficult to entertain the possibility of a relationship of trust were such decisions made by primary care physicians. To the concern that one's own physician is better placed to allocate with sympathy and care than are impersonal bodies whose foci could be financial or open to the pressures of special interests,³³ there could be the rejoinder that a patient's sense of self worth is far more easily shattered by a feeling of betrayal by a trusted physician, than by the deliberations of impersonal bodies, especially if the latter were explicitly attempting to be free of considerations of differing social value. Not an inconsequential consideration is also the difficult position, the "ethical and existential predicament," in which a physician is placed by assuming the role of decision maker: a predicament "unprecedented both in anguish and in scope."³⁴

Thus the position advocated here eschews an either/or position between rule-based rationing and bedside rationing; it suggests that physicians should be trusted to weigh the good of society against the good of their patients for a wide range of services; it suggests that rule-based rationing for a host of non-life-threatening services is probably both inevitable (given endless human desires), and more easily agreed upon in the Canadian as opposed to the American health care system; and finally, that decisions about who will live and who will die be

³³ Hall, "The Problem with Rule-Based Rationing," 323.

³⁴ Fox and Swazey, *Courage to Fail*, 328-329.

made beyond the bedside. The rationale rests more on the effects on patients' feelings of self worth than on a distrust of clinical judgement (although it is obviously acknowledged that inappropriate value considerations can be involved at any level, particularly in relation to the vexed area of addiction).

How to Choose: A Lottery, or First-come, First-served?

The question then arises as to the best measures to protect a patient's sense of self worth, given the inevitability of choice at some level. Assuming that medical criteria have been used to ascertain that a transplantation would be successful, and given the strong belief in this thesis that any choice based on other than medical criteria is inappropriate to the maintenance of individual self-esteem, it would appear that the best option, (or at least the least bad option), would be to place patients' names on a waiting list, and to choose according to the random principle of "first come, first served."

There is controversy in the literature regarding the best means of randomly selecting patients.³⁵ The means suggested here is criticized for possible unfairness, since patients are not always referred to a list at the same point in their illnesses, and there are apparently widely differing referral practices.³⁶ On the other hand, a lottery has a frivolous connotation, felt here to be inappropriate for life and death issues; and to inflict the patient with the possibility of yet another loss at the "wheel of fortune" (on top of the loss which occasioned the need for a

³⁵ See the extensive discussion of random selection in Kilner's *Who Lives?*, 192-207. See also the views of George J. Annas, which concur with those expressed here, in "The Prostitute, the Playboy, and the Poet: Rationing Schemes for Organ Transplantation," in *American Journal of public Health* 74, no. 2 (1985): 182-189.

³⁶ *Ibid.*, 198-203, 228-229.

transplant), appears overly cruel.³⁷ If there is concern about differing referral practices, or manipulation of the process, then it could be suggested that there is a need for on-going consultation and education for those referring to the organ registries.

The Patient as Research Subject

An issue related to that of gatekeeping is that of the conflicts which potentially arise when a patient is being treated by a physician who, at the same time, has included the patient in clinical research: can it be assumed that the interests of the patient will prevail over the power of "technical rationality"?³⁸ The striking example in this regard is the history of the American development and deployment of the artificial heart.³⁹ In the too-hasty initiation of human trials and the eventual difficulties in halting the experiments, (related partly, it appears, to the complex American ethos, professional pride, the demands of the market, and political power); in the over-estimation of the post-implementation quality of life (in the hype surrounding which the media played an important role); in the disavowal of cautionary voices from many quarters, (including regulatory agencies and elements in the medical system⁴⁰); in the apparent disregard of alternate uses of the funds poured into the project, (over a 24 year period, \$240 million came from the National Heart, Lung and Blood Institute alone⁴¹), it became clear that human needs

³⁷ This view is echoed by Jon Elster, who suggests that, while the randomness of lotteries "may be superior to the potential *capriciousness* of discretionary selection, both are often perceived as more unfair than a system in which cases are judged publicly on the basis of easily verifiable criteria," in *Local Justice: How Institutions Allocate Scarce Goods and Necessary Burdens* (New York; Russell Sage Foundation, 1992), 244.

³⁸ Henk A.J.M. ten Have, "Medical Technology Assessment," HCR 25, no. 5 (1995): 18.

³⁹ The story is told in detail, and with great compassion and understanding for all of the players, by Fox and Swazey, with the assistance of Judith C. Watkins, in *Spare Parts*, 95-193; and see this chapter, 276-277.

⁴⁰ The disturbing features of this particular experiment are thought by Fox and Swazey not to be unique: the ineffective societal controls related, in their view, to predictable confidence in professional self-regulation, and group self-protectiveness, *Ibid.*, 193.

⁴¹ *Ibid.*, 147.

were being overlooked. The five patients experimented upon endured catastrophic "physical and psychic ordeals"⁴²; all eventually died; yet they were hailed by the researchers involved, and the media, as courageous pioneers on "cosmic voyages" analogous to those of the pioneers in space.⁴³ Of particular interest to this study is the fact that all four American recipients were "white Americans of North European origins with traditional American family, community, religious, and patriotic 'commonfolk' values and styles of life"⁴⁴; it could be surmised that the motivations behind such choices are similar to those behind the choices for organ transplants: choices that have so disfavoured the addicted.

In summary, at the micro level of medical care, the Levinasian thought would appear to encourage a welcome for any patient - based on an imperative far more basic than that issuing from a prescribed role; it suggests that an "either-or" approach to gatekeeping may not be just; it lends support to a manner of choosing patients that does not destroy self-esteem; and it helps to highlight the dangers for individuals when institutional foci become dominant.

At the Macro Level: Re-thinking the Goals of Medicine

Arising from a concern for just solutions, and the weighing of needs, is the question as to whether, in fact, the use of large amounts of the available funds on high-tech solutions is the most just route to be following. This concern emerges in the context of a health care system in peril, both in Canada and the United States, and of a grossly inequitable situation worldwide: the developed world apparently willing to pour resources into increasingly costly high-tech cures for the few, while the developing world struggles with providing primary care. One of the

⁴² Ibid., 184.

⁴³ Ibid., 162.

⁴⁴ Ibid., 160.

obvious questions is why Western health care systems are in peril; the clear answer for many is a need for increased efficiency: obvious in the rationales presented for federal and provincial budget cutting. This solution is, however, a particular target of Daniel Callahan, the most significant voice, within bioethics, for a different paradigm for healthcare. Within a North American climate focused on the cure of individuals, and obsessed with an ever-lengthening life span; and within the context of an increasing population of chronically-ill, ageing patients (occasioned partly by the success of expensive technological medicine), Callahan unequivocally asserts that our needs, given this continuing climate will never be met:

We have for many years now just drifted along, creating a healthcare system that not only costs too much for what it delivers, but fails to deliver what it could for millions of people. It has drifted into some serious imbalances in what it actually brings people. It has led us to spend too much on health in comparison with other social needs, too much on the old in comparison with the young, too much on the acutely ill in comparison with the chronically ill, too much on curing in comparison with caring, too much on individual health needs in comparison with less expensive societal health needs, and too much on extending the length of life rather than enhancing the quality of life....

The faith in economic salvation from problems of that kind should be put aside, along with the myth that a still larger research investment will allow us to turn some corner on costly care, or that a more informed, cost-conscious patient will make the decisive difference, or that technology assessment will do the trick. They are all ways of evading not just the hard choices, but the hard questions, and all the more seductive because some of them are truly needed and respond to part of the problem. But it is as if the optimism of the scientific enterprise has infected the way we think about the social enterprise, that if we can make limitless medical progress, we must therefore be able to make limitless progress in coping with its individual, economic, and social problems and costs. That is a profound mistake, but one whose power animates each new cost-containment and efficiency scheme. What will it take to convince ourselves otherwise? Still greater deterioration in our system? One more failed cost-containment plan? One more stab at improved competition? And when they fail, will we continue to berate ourselves that we have not tried hard enough? Or blame the doctors for charging too much, the juries for awarding too heavy malpractice damages, or the medical manufacturers for their cupidity? Will we, that is, round up the usual suspects?⁴⁵

⁴⁵ Callahan, *What Kind of Life*, 261-263.

The Goals of Medicine

The economic solutions are inadequate, in Callahan's view, because the question to which they are inadequate solutions is a moral one.⁴⁶ The answer requires a profound questioning of what the goals of medicine should be. To that end, the Hastings Center, of which he was the director at the time, coordinated an international project, the results of which appeared in 1996. It is felt here that the goals that were accepted by that group, and the practical aims and implications of those goals, are pertinent for the topic of this study. Four goals of medicine were agreed upon:

- 1) The prevention of disease and injury and promotion and maintenance of health.
- 2) The relief of pain and suffering caused by maladies.
- 3) The care and cure of those with a malady, and the care of those who cannot be cured.
- 4) The avoidance of premature death and the pursuit of a peaceful death.⁴⁷

The practical aims and implications drawn from the goals are particularly pertinent:

A fresh look at the goals of medicine makes possible a practical approach to important questions about the future priorities of biomedical research, the design of health care systems, and how physicians should be trained. A model of research should be developed that would incorporate expertise in epidemiology and public health to provide a broader understanding of various diseases in society. Efforts to develop health care systems should begin with a solid core of primary and emergency care, and consider the needs of society's most frail humans. Medical students should be taught that death is inevitable, and that they will not always be able to cure. They must learn to address the problems of chronic illness. The new physicians must also be schooled in economics, the humanities, and the organization of health care to meet the economic realities of contemporary health care systems.⁴⁸

Extracting from the goals and their practical implications, and relating them to the

⁴⁶ Ibid., 262. Callahan's view is echoed by Fox and Swazey, who suggest that areas such as organ transplantation have received so much public and professional attention because they "constitute a paradigm of these essentially moral and religious problems with which modern Western society is grappling," in *Courage to Fail*, 330.

⁴⁷ HCR, "The Goals of Medicine: Setting New Priorities," Special Supplement (November-December, 1996): S10-14, (hereafter cited as HCR "Goals").

⁴⁸ HCR "Goals," Executive Summary.

questions surrounding transplantation for the addicted, the discussion that follows will focus on the following areas: the excessively reductionistic scientific approach in medicine; issues surrounding research and technology; the excessive emphasis on cure, with the implications for chronic illness; and the overwhelming difficulties which the medical ethos poses for the question of death.

a) *Medicine's Reductionistic, Scientific Approach*

That there has been such enthusiasm for, and such excessive funding directed at organ transplantation is explained partly by the biomedical, scientific approach in medicine: the thrust of its research having been "analytic, biochemical, and sometimes reductionistic, seeking to determine the causes and mechanisms of physical and mental pathology at the deepest possible biological level."⁴⁹ At the clinical end, it has encouraged the treatment of patients, not as whole persons, but as "collections of organ or molecular systems."⁵⁰ Such an approach facilitates the viewing of the living parts of a person as simply organs to be harvested, and the newly deceased body as a receptacle available for disassembling and "plunder"⁵¹; it facilitates the viewing of the person receiving an organ as the "recipient" of these "spare parts," a recipient, the complexity and mystery of whose wholeness cannot be encompassed within a biomedical model; it does not leave room for the experience of family members, the body of whose loved one is so in demand; nor does it encompass the suffering experienced by the medical personnel who become so personally involved with those they are trying so desperately to save.⁵² The emotional and

⁴⁹ Ibid., S17.

⁵⁰ Ibid., S17.

⁵¹ Fox and Swazey, *Spare Parts*, 207-208.

⁵² Ibid., 201.

spiritual suffering accompanying organ donation and transplantation are thus not well captured; it may therefore be legitimate to question the extent to which organ transplantation should be aggressively pursued. The question echoes the concerns of Fox and Swazey noted above: as they left the sociological study of the transplantation field, they decried the "human suffering and the social, cultural, and spiritual harm...such unexamined excess can, and already has, brought in its wake."⁵³

b) *The Artificial Heart: A Paradigm Case for Research, and Technology Assessment*

Fox and Swazey left the field of transplantation following their chronicling of the development and trials of the artificial heart⁵⁴: a paradigm case, it would appear, which highlights a depersonalized, market-driven, competitive medicine, for which human suffering is a secondary consideration, and the "overridealization" of the life that transplantation makes possible. Highlighted as well are questions about technology assessment, and the equally ethical question about where available funds for research should be directed.

During the early days of experimentation with an artificial heart, an already severely ill Barney Clark underwent an implant operation; during the operation, a number of difficulties were encountered, including a broken valve, nosebleeds, and pulmonary problems. During the 112 days of its functioning, Clark suffered serious side effects: acute renal failure, fever, hemorrhage resulting from the anticoagulant drugs, diarrhea, vomiting, and seizures. Furthermore, the device in use at that point required that patients remain connected to an air

⁵³ Ibid., 210.

⁵⁴ Ibid., 204. As noted above, the authors left the field because of their concern over the "missionary-like ardor about organ replacement," and the "overridealization of the quality and duration of life that can ensue."

compression unit, and that leaving a hospital room for longer than short periods, even if health permitted, was impossible.⁵⁵

The feasibility studies and cost estimates conducted before experiments with the heart began were grossly inaccurate: the estimated need for the device was obtained by simply splitting the difference between the lowest and highest estimates; the cost estimate was low by well over \$245,000. (Caplan suggests that one of the factors in the problems with estimating the costs of a number of technologies, including renal dialysis and organ transplants, is that biomedical and bioengineering experts pay less attention than they should to the costs of managing complications or failures of the technology.)⁵⁶ The zeal with which this research was pursued is apparent in the attempts made to evade the strict ethical and regulatory guidelines for any federally-funded institutions: one of the pioneering doctors simply moved his research to an "aggressive for-profit corporation" where a less stringent review process approved more implants relatively quickly.

There is concern that such processes mobilize public opinion towards their use, overwhelming more moderate voices; there is also concern that such a system of technology development may produce technologies that neither the medical profession nor the concerned public would agree are needed.⁵⁷ When pitted against the economic ambitions of the biotechnology industry, the health needs of the most fragile, especially those so easily blamed for their plight, can be lost from view. Lost from view as well can be the wider societal

⁵⁵ Caplan, "The high cost of technological development: A caveat for policymakers," in *If I were a rich man*, 294-295.

⁵⁶ *Ibid.*, 294-295.

⁵⁷ *Ibid.*, 296-298.

implications of the vast amounts directed to new technology: the moral costs of tragic choices between patients; the subtly adverse results of technology introduced without adequate consideration for the complexities of context⁵⁸; the societal implications of fewer research dollars and less human effort directed towards the human suffering in other areas besides the strictly health-related: areas such as social, cultural and spiritual suffering (which, of course, do have relevance for health).⁵⁹

In relation to the addicted, it could be suggested that a more judicious use of research funds might be made in the direction of epidemiological and public health research; the former is important for health promotion (particularly in helping to counteract confusing information on health risks and benefits); and the latter in assessing the best methods of both preventing health problems, and of changing behaviours that appear to contribute to them.⁶⁰ Were there to be a stronger focus on the wider societal conditions which appear to play a part in addiction: poverty, homelessness, etc., and a greater collaboration between the various social sciences whose foci would be encompassed in such an undertaking, the need, in the end, for organ transplantation (and its attendant costs, both financial and human) might be lessened.⁶¹

⁵⁸ Of interest in this regard is Henk ten Have's discussion of the subtle effects of cochlear implants; after a slow recognition and acceptance of sign language and other communication systems developed amongst the deaf community, he notes that there is now a fear that implants will lead to pressure to adapt to the hearing world (learning to communicate with implants is more difficult than learning sign language). Thus instead of creating their own world and being accepted as "normal in a shared culture," the adaptation of the deaf will be partial within the hearing world, and their marginality continuously reinforced, in "Medical Technology Assessment," 13.

⁵⁹ For an instructive focus on the power and the attendant problems of modern technology, see Hans Jonas, "Toward a Philosophy of Technology," HCR 9, no. 1 (1979): 34-43.

⁶⁰ HCR "Goals," S18.

⁶¹ Of particular note in this regard is the critique of Renée Fox that American bioethics has, at the highest levels, consistently neglected to forge significant links with the social scientists who might collaborate in such a task; the reasons she suggests, are related to a bioethics obsessed with individualism and autonomy, and its dominance by philosophy and philosophers who regard the social sciences as insufficiently humanistic, with value concerns alien to their own, in *Sociology of Medicine*, 237-239.

"The Goals of Medicine" suggests that other important foci for research should be the forces (economic, professional and moral) which shape the manner in which health professionals respond to new research findings,⁶² and also on the "various procedures and mechanisms that can encourage physicians to change their behaviour when the evidence suggests they should."⁶³ This thesis suggests that such foci are particularly pertinent for the addicted, so vulnerable to attitudes of exclusion and censure: attitudes not easily changed. It is not surprising, given the excessively reductionistic approach to both patients and to research, combined with what is increasingly being understood as a multifactorial etiology for addiction, that there is such difficulty in identifying the underlying causes.

Related to an earlier concern about principlism in bioethics, there is some fear that unless bioethics itself changes its own "technological orientation," then it will be of little use in addressing all of the moral issues which expanding technology brings.⁶⁴ Rather than a technical application of principles to cases and dilemmas: an application introduced, often secondarily, to "evaluate and calculate effects, and to control and eliminate problems," ethics might contribute to the process in a different and more useful fashion, helping medicine and society to ask the more difficult, critical questions before a technology is entrenched. The difficult questions would relate to whether the technology can be justified. The technologies in question rest on a set of often implicit values; ethics must explicate these and facilitate a dialogue with other motivating values in society. It is interesting that ten Have associates the power of our

⁶² HCR "Goals," S18. The document is referring to response to new findings in technology, however it would surely apply to new etiological findings, etc.

⁶³ Ibid., S18.

⁶⁴ ten Have, "Medical Technology Assessment," 13-19.

"technical rationality" with the lessening of interest in, and diminishment of, patients' personal experiences: the decline of the clinical dialogue. This concern and decline were seen above to be motivations behind the critiques of principlism, and the calls for change. The author obviously does not feel that a principlist ethics is capable of challenging that technical rationality.⁶⁵

c) *Care Rather than Cure*

Addiction has not generally presented the medical or the research establishments with the opportunities for dramatic, high-profile breakthroughs for cure that acute illnesses present. As well, although whether addiction can be classified as a chronic illness is disputable, there is no question but that the addicted considered to be in need of an organ transplant, or those who have already received a transplanted organ, would be considered chronically ill; and thus addiction would share with chronic illnesses a number of difficulties presented by a reductionistic approach. The latter, focused on cure, can be neglectful of a caring function, and of the fact that "healing may in a broader sense be possible even in those cases where medicine cannot cure."⁶⁶ (Healing, for the addicted, might come with acceptance, rather than rejection, of whatever she or he presents; and with acknowledgement of the suffering, for both the patient and the wider family, that has accompanied the condition.)

"The Goals of Medicine" acknowledges that medicine, even with a caring approach, has no answers for some of the questions which occasion patient suffering: Why am I sick? What is the point of my suffering? The response to the question may include some medical

⁶⁵ Ibid., 18.

⁶⁶ HCR "Goals," S12.

knowledge, but more often is simply that of one human being to another human being⁶⁷ - in Levinasian terms, the relationship of the one-for-the-other: compassion and fellow feeling with no thought of reciprocity, in fact, possibly involving some recognition of the extent to which all can hold themselves responsible for this patient's distress.

Addiction shares with chronic illnesses the fact that patients, particularly those who have received organ transplants, must be helped to learn how to live with their altered health, possibly an altered self; management rather than cure is the watchword: "the empathic and continuing psychological care of a person who must, one way or another, come to terms with the reality of illness."⁶⁸ At the root of effective help in management is surely a genuine acceptance of the patient, without any weighing of the extent of his/her responsibility for the condition.

d) *Death as the Enemy*

The addicted in need of a transplanted organ share with many patients the anguishing dilemma that, without the help of technology, death will occur; and they share with them the fear that, if denied a life-saving resource, they will be abandoned. For contemporary medicine, death would appear to be the "supreme enemy"⁶⁹; the dying whom medicine has failed to cure have all too often not received humane care: as though they had "forfeited medicine's claim to attention, human presence, and effective palliation."⁷⁰ Thus one of "The Goals of Medicine" was seen to be provision of the clinical circumstances in which a peaceful death is possible:

⁶⁷ Ibid., S12. The authors suggest that herein lies the boundary of finite medicine.

⁶⁸ Ibid., S13.

⁶⁹ Hans Jonas suggests that we all too often forget that life is coextensive with death; he writes of the burden and the blessing of mortality: the burden related to the peril, yet the certainty, of at some point ceasing to be; and the blessing, to the fact that we will die, with all the creative implications for evolution and diversity that finitude brings. Jonas writes that our dream of immortality takes form in "our technological intoxication," in "The Burden and Blessing of Mortality," HCR 22, no. 1 (1992): 34-40.

⁷⁰ HCR "Goals," S13. Also see Fox and Swazey, *Courage to Fail*, 320-326; and *Spare Parts*, 204-210.

adequate palliation to minimize pain and suffering, never abandoning or neglecting patients, and considering their care to be as important as that of those who will survive.⁷¹ Suffering obviously has meaning beyond the physical, and as noted below, is one area to which it is felt that a theological perspective has a unique contribution to make.

In summary, the question which initiated this study has been answered in an indirect manner: the thought of Emmanuel Levinas has suggested perspectives, or paradigms, within which the question could be considered, and from these have emerged suggestions for significant changes within medicine. While the changes might not provide an organ transplant for an addicted person, they have as their focus the preservation of the integrity, dignity and identity of any suffering other, and the assurance that compassionate care will be provided until life ends, whether or not that patient has engaged in risk-taking habits. Ultimately, the changes suggested might obviate some of the needs for transplantation: many such results can emerge from enhanced primary care, an attention to the stressors which might be contributing to addiction, a more careful assessment of proposed new technologies, and so on.

II. Philosophy, Theology, and Bioethics

The relationship between the Levinasian philosophy and theology is complex. On the one hand, Levinas has stated that, in his writing, he makes a clear distinction between philosophical and confessional texts; the essential characteristic of philosophy, he suggests, is a certain "specifically Greek, way of thinking and speaking,"⁷² and, as noted above, he does not

⁷¹ Ibid., S13.

⁷² Levinas and Kearney, "Dialogue," 18.

believe that philosophy can console.⁷³ On the other hand, the thrust of his work would appear to be to argue for another philosophical language - the approach to meaning and truth arising from "Jerusalem," which does not equate meaning and truth with "presence," but with justice and concern for the other. It was Biblical language which influenced Levinas's philosophical "reading of the interhuman," and it is in this "interface" between humans that he asserts that God must be thought.⁷⁴

The complex relationship between Levinas's philosophical writings and their theological roots cannot be fully explored here, however it is of interest, since the question now arises whether theology has anything further to add to the dilemma with which this thesis has been wrestling. A perusal of recent texts focused on theology's contribution within bioethics indicate that, while there are contributions specific to theology, there are striking parallels between the Levinasian "ethics as first philosophy" and a theology informed by and seeking to understand faith.⁷⁵ It will be suggested, in the end, that the unique convergence could not but issue in prophetic challenge.

A Unique Convergence

The contributions offered by theology to the enterprise that is bioethics would include the following: the asking of questions about the meaning of the life that is so arduously being saved, and of the death that is so strenuously being avoided; a valuing and love of others, in the fullest sense of that term, irrespective of whether their moral claims on society, in the words of Richard

⁷³ OGCM, 86; DQVI, 137.

⁷⁴ Levinas and Kearney, "Dialogue," 19-21.

⁷⁵ "Faith informing reason" is McCormick's phrase, in "Theology and Bioethics," HCR 19, no. 2 (1989): 5. As McCormick notes, there are many different faiths and theologies; he speaks as an adherent of the Catholic faith; his approach is compatible with the one underlying this work.

McCormick, are difficult to establish - "the poor, the outcasts, the sociopaths, the alcoholic, the noncompliant in the care of their own health"⁷⁶; a questioning of the kind of patient/physician relationship being promoted, and the type of human being created by the individualistic thrust of both society and bioethics; and a questioning about the type of medicine and society that the technological imperative is producing. Thus theology, at least within the multidisciplinary of the bioethical enterprise, questions many of the assumptions that underlie society's accepted practices, and at the same time invites questioning of its own premises.⁷⁷

Speaking particularly of a Roman Catholic approach, Pellegrino, Langan and Harvey, while they note the contribution of the "special fusion of theology and philosophy that is the distinctive mark of the Catholic intellectual tradition," appear at the same time to be contrasting a Catholic theological approach with much of present day philosophical ethics' historical and material biases. While they note that the theological position is not inconsistent with traditional medical ethical principles, it transcends ethics as a discipline: its ultimate law is that of Charity "as enunciated in the Sermon on the Mount." Its sources of moral insight are "neither central nor normative for a purely philosophical ethics."⁷⁸

As mentioned, it is of the utmost interest that many such contributions could be drawn from the Levinasian thought; in fact "ethics as first philosophy," a unique blending of "Greece and Jerusalem," is meant partly as a correction to the biases of which Pellegrino, Langan and

⁷⁶ Ibid., 8-9.

⁷⁷ Many of these thoughts have been drawn from Hubert Doucet's "Bioethics and the Practice of Christian Faith," in *Défis présents et à la venir de l'université catholique / Present and Future Challenges Facing Catholic Universities*, ed. Jacques Croteau (Ottawa: Saint Paul University, 1990), 221-232.

⁷⁸ Edmund D. Pellegrino, John Langan and John Collins Harvey, "Introduction: Catholic Perspectives and Contemporary Medical Morals, in *Catholic Perspectives*, 3.

Harvey speak. Furthermore, just as the Levinasian corpus cannot be mined for specific directives for clinical practice, theological work, as Richard McCormick notes, "in the past decade has rejected the notion that the sources of faith are a thesaurus of answers"; they should be viewed as a story from which profound perspectives, themes and insights are drawn.⁷⁹ Lisa Cahill reiterates this view, noting that in the New Testament, there is less a striving for an objective moral perspective than an emphasis on "participation, involvement, spontaneity, Spirit-inspiration....an urgency about making present the Kingdom of God....[in which] even love of enemies and self-sacrifice are not presented as distant, supererogatory ideals, but as constitutive of discipleship." The life of Christian discipleship as presented in the New Testament does not at all, in her view, preclude an agreement with the moral conclusions of those outside the faith.⁸⁰ That there could be such an agreement is, of course, of immense importance, given the acknowledged pluralism and secularism of North American society and the bioethics it has spawned. Given his Judaic roots, and his wish to celebrate the wisdom of "Jerusalem," it is not surprising that there is a unique convergence between the Levinasian thought and the moral imperatives drawn by Christian scholars: the centrality of a meaningful response of love for any other, a love that does not exclude the possibility of self-sacrifice; and the eschewal of any solutions not fully human.⁸¹

⁷⁹ McCormick, "Theology and Bioethics," 8.

⁸⁰ Lisa Sowle Cahill, "'Theological' Medical Morality: A Response to Joseph Fuchs," in *Catholic Perspectives*, 95; and in the same volume, Monica Hellwig suggests that "answers to new and complex questions about life, health and resources cannot be drawn by deduction from any principles contained in a deposit of revelation," in "Doctrinal Starting Points," 124.

⁸¹ It is of interest that McCormick notes, taking his lead from Vatican II, that in terms of its influence on bioethics, the Christian faith directs the mind to solutions that are "fully human" in "Theology and Bioethics," 7.

Contributions Uniquely Theological

It will be suggested that Christian theology makes a contribution to bioethics beyond the contributions of "ethics as first philosophy" in at least three areas that are relevant for this thesis. The first has been mentioned above: Levinas has not meant that his philosophical position should console; the second is a richer meaning for human suffering and death. The third, revelation of the meaning of love, compassion and sacrifice, will be discussed in relation to prophetic prophecy.

Consolation

Levinas has asserted that it is religion, not philosophy, which consoles,⁴² although he elsewhere speculates that consolation is not possible from any source:

Are we entering a moment in history in which the good must be loved without promises? Perhaps it is the end of all preaching. May we not be on the eve of a new form of faith, a faith without triumph, as if the only irrefutable value were saintliness, a time when the only right to a reward would be not to expect one?

The first and last manifestation of God would be to be without promises.⁴³

Levinas appears to use the concept of consolation in the sense of a reward for good actions; this thesis is referring to the concept, noted above, of acknowledgement and support for one's finite, thus flawed nature, and the inevitable difficulties in attaining acknowledged goods. In a complex area such as organ transplantation, to leave consolation out of the consideration would be to project a truncated view of the human reality. Not to postulate a measure of consolation, in the form of God's forgiveness and some hope of redemption,⁴⁴ is to leave both the addicted,

⁴² OGCM, 86; DQVI, 137.

⁴³ Levinas, AT, 109.

⁴⁴ Levinas makes a clear distinction between "transformation of the world," which he suggests is possible, and "redemption of the world," which he suggests is not. DF, 141; DL, 200.

and those who fail to adequately respond to them, in a bleak condition.

A Meaning for Death

While the death of the other, and the human response to that "impossibility of possibility"⁸⁵ is central for Levinas, there is a sense in which, once there has been profound human response to that death, the rest of the narrative, as philosophy is able to tell it, is but a darkness. This assertion is not meant to suggest that a theological stance offers a cheap way to avoid the mystery, the sadness, and the suffering that death entails. Allen Verhey alludes to our temptation to both a spiritual or a technological triumphalism that suppose that prayer "working like magic," or righteousness and faith, or "some new piece of medical wizardry" could rescue us from our "vulnerability to death and suffering."⁸⁶ He writes thus:

People die still, and die sometimes premature and horrible deaths. People suffer still, and suffer from causes sometimes too powerful to fight. People ask still, and there is silence still. People seek still, and still do not find. People bloody their fists with their knocking, and there is yet no answer.⁸⁷

The addicted, as did the psalmist who lamented and despaired in Psalm 88, still suffer oppression, discrimination, rejection, illness and premature death. Verhey sees Psalm 88 as an antidote against triumphalism, and thus a word of God. The lessons drawn from that word, apart from that of a dearth of easy answers, are that we must work diligently to remove the obstacles to human flourishing and that we must take lament seriously, recognizing that the "darkness may deepen," and that anger and anguish are appropriate. Simply being silently

⁸⁵ Levinas, AT, 155.

⁸⁶ Allen Verhey, "Meditation: Is the Last Word 'Darkness'?" in *Religion and Medical Ethics*, 148.

⁸⁷ Ibid., 149. And see the thought of Dorothee Soelle, who throughout her work, offers strong support for both Verhey's abhorrence of easy answers in the face of profound suffering, and of Levinas's refusal to turn away from the visage of the suffering other; in *Suffering*, trans. Everett R. Kalin (Philadelphia: Fortress Press, 1975).

present to those who suffer is at times the only available response - an important lesson for medicine. The Levinasian thought offers strong support here.

However McCormick reminds that suffering and dying are to be viewed as part of a larger redemptive process:

...suffering is not mere pain and confusion, dying is not merely an end. These must be viewed...as occasions for a growing self-opening after Christ's example, as various participants in the paschal mystery. Such perspectival nuances may not solve clinical dilemmas nor are they in any way intended to glorify suffering and dying. But they powerfully suggest that in approaching such realities healing can never be seen as fixing; autonomy is not a mere "being left alone," but a condition for life-shaping: care is never merely material provision, but a "being with" that reinforces a sense of worth and dignity: dying can never be seen as "cosmetized passing" whose dignity is measured by the accumulation of minutes.⁸⁸

As Verhey notes, God's last word is one of light and life: God's grace and peace, God's mercy and justice.⁸⁹

III. A Prophetic Challenge

It is felt that an appropriate conclusion to the discussion in this thesis would be to suggest a need for a strong prophetic stance; a number of the areas which could be addressed in such a stance have become clear in the preceding discussion. The convergence of the Levinasian corpus and Christian theology could be seen as particularly fruitful in this regard. Both the prophets of the Old Testament and Christ in the New point to suffering being, not avoided, but shared, and endured "for the sake of others and for the cause of God in a world like this one."⁹⁰ While sharing and endurance may imply a silent accompanying of the sufferer,

⁸⁸ McCormick, "Theology and Bioethics," 9.

⁸⁹ Verhey, "Meditation," in *Religion and Medical Ethics*, 147-150.

⁹⁰ Ibid., 148.

they might also imply an attempt to root out the causes of that suffering. It is of interest that, in one of his specifically religious writings, one focused on prophecy in Isaiah, Levinas suggests that it is the accomplishment of the ethical which accomplishes the religious.⁹¹

The moral meanings of prophecy, which arise, in the view of Courtney Campbell, from an "embodied ethical tradition and a community with a history that makes it capable of remembering,"⁹² rather than from "a philosophical method of detached reflection,"⁹³ have a particular relevance for medicine. The prophetic witness of which he speaks manifests three components: exposing hypocrisy; preserving memory and re-membering; and embodying promise.⁹⁴ It will be suggested here that all three components have parallels with the Levinasian thought, and that this is not surprising, given that thought's persistent memory of the faith journey of a particular people, and its insistence on a philosophical style that transcends a detached knowing of being.

The first component of prophecy is an articulation of the profound disparity and incongruence between the moral world we live in and that world as it could or should be⁹⁵; the Levinasian thrust to justify and criticize the *polis* is unquestionably in line with this component. The interpretation of Critchley must be noted in this regard; he places great emphasis on the Levinasian insistence on philosophy as "the discourse which, through its activity of open,

⁹¹ Emmanuel Levinas, *Beyond the Subject: Talmudic Readings and Lectures*, trans. Gary D. Mole (Bloomington, Indiana: Indiana University Press, 1994), 5-6.

⁹² While Campbell writes from a Christian perspective, he notes that religious traditions do not have a moral monopoly over the forms of prophetic witness; however they "nevertheless are best socially suited to express a credible witness in biomedical ethics because they are visible, embodied communities of moral discourse and meaning," in "Principlism and Religion: The Law and the Prophets," in Dubose, Hamel and O'connell, *A Matter of Principles?*, 206.

⁹³ *Ibid.*, 198.

⁹⁴ *Ibid.*, 190-207.

⁹⁵ *Ibid.*, 190.

agnostic critique, ensures that the community remains an open community, at the service of ethical difference."⁹⁶ A prophetic critique of a society with ambivalent attitudes and practices in relation to those who are addicted is surely in order.

Preserving memory and re-membering have particular relevance for the ethical questions surrounding transplantation. The technological imperative, seemingly creating its own values, can be countered by reminders of the generally accepted morality embedded in our culture - a morality of which the medical ethos has been a significant part, and of which, at a minimalist level, the bioethical principles, allied with the richer more contextually sensitive approaches, give concrete evidence.⁹⁷ A prophetic stance points to inconsistencies between that shared morality and emerging values: thus the inconsistency between a public acknowledgement of the worth and dignity of human life, for example, and an apparent willingness to entrench medical practices which must make tragic choices between persons. A prophetic stance thus suggests enhancing preventive medicine, rather than continuing the costly focus on an excluding, curative medicine.

The prophetic stance of Paul Ramsey in this regard has only become more pertinent thirty years after its articulation. Since everything cannot be done in the service of health, he asked whether the "American Way of Not Dying" was the best choice. Should the greater effort go towards spectacular technology, or better medical care for the poor? Or should wider issues such as eradication of poverty, and aiding the developing world be of primary concern? He wrote:

⁹⁶ Critchley, *Deconstruction*, 238.

⁹⁷ Campbell, "Principlism," 193ff.

Under conditions of poverty of medical resources relative to need, when not everything can be done, it does not necessarily follow that the maximum research and personally and socially costly medical care should be expended upon the most desperate cases first. And under conditions of poverty, it does not necessarily follow that medical care ranks first among our medical goals. We may have to learn the ancient wisdom concerning the acceptable death of all flesh.⁹⁸

Ramsey was not unaware that a society is an "unfocused organization of many diverse, often conflicting, interests and pursuits," and that there could be no expectation of unanimity in prioritizing, hence some toleration of the high technology of organ transplants was in order, as long as there was also a focus on the urgent primary needs of many: the key to some accommodation being thorough public debate about the ordering of medical priorities.⁹⁹

Preserving memory has a particular significance for the questions surrounding transplantation. Campbell suggests that it includes a "re-membering" of the moral self, meaning a reminder that we are embodied, not simply rational, self-interested choosers, distinct from bodies that thus so easily become available for exchange in a commercial market.¹⁰⁰ As embodied selves, we have capacities for relationship and community, for responsible and compassionate stewardship for the world around us; we are dependent and vulnerable.¹⁰¹ Campbell suggests that embedded in the gift model of organ procurement are the twin senses of the re-membering of one body (and thus of the person's self) through transplantation, and the opportunity for relatives who have given permission for donation of a loved one's organs to be "engaged in a process of memory and remembering": a process of "profound human meaning

⁹⁸ Ramsey, *The Patient as Person*, 275.

⁹⁹ *Ibid.*, 274.

¹⁰⁰ Campbell, "Principlism," 204-205.

¹⁰¹ *Ibid.*, 196.

and moral depth."¹⁰² The parallels with Levinas are clear, including his focus on the embodied nature of the human: the body, integral to personhood, and not to be killed, has more than instrumental or economic value.

Prophetic promise offers hope and transformation beyond the prophetic critique and the expressing of moral memory. The source of such promise lies beyond "detached reflection," or Engelhardt's "frail capacities of human reason,"¹⁰³ in a substantive vision "pronounced from 'somewhere' rather than a morally agnostic view pronounced from nowhere."¹⁰⁴ That the "somewhere" is a particular faith community, as is the case with this work, need not be cause for dismissal on the part of the wider society. It can be pointed out that, while the position may not be publicly shared, it may, none the less, have public relevance: in its asking of the questions of ultimate meaning posed with difficulty by secular sources, and particularly in the actual witness it gives to alternative meanings of what it means to be human.¹⁰⁵ While the Levinasian philosophy is not tied to an embodied faith community, its somewhat ambiguous connections with a particular faith community have been noted; its content unquestionably offers suggestions for the meaning of "human" which would profoundly challenge and inspire any embodied community.

¹⁰² Ibid., 205.

¹⁰³ H. Tristram Engelhardt, Jr., "Understanding Faith Traditions in the Context of Health Care: Philosophy as a Guide for the Perplexed," in Martin E. Marty and Kenneth L. Vaux, eds., *Health / Medicine and the Faith Traditions: An Inquiry into Religion and Medicine* (Philadelphia: Fortress Press, 1982), 168.

¹⁰⁴ Campbell, "Principlism," 198.

¹⁰⁵ Ibid., 198-202. Campbell notes that the fact that the witness of the Christian promise of transformation can have any relevance for a secular society is related to the ultimacy of its underlying questions: one response to questions of concern for all. Ibid., 201. This vision is in striking contrast to Engelhardt's minimalist conception of the contributions possible from religious viewpoints; in his view, their narrow focus and "certain answers" on issues such as contraception could only engender a "context of tension in a pluralist society," in Engelhardt, "Understanding Faith Traditions," 164.

Concluding Reflection

This work was inspired by the perceived need to give some direction to those faced with the difficult task of deciding whether scarce replacement organs should be given to those apparently willing to take risks with their health: in common parlance, those labelled "irresponsible." It was felt that the apparent impasse, at least within the bioethics literature, was related to the asking of the wrong questions. The search for more appropriate questions has encompassed a number of issues felt to be pertinent: whether the various understandings of justice are adequate to a humane distribution of organs; whether meta-ethical theory adequately speaks to the suffering of individual patients; what it appears to mean when a person is labelled "irresponsible"; and finally a search for understandings of responsibility felt to more adequately encompass both an understanding of what it means to be human, and a more compassionate response to the human "other."

The focus on "responsibility" was not meant to attempt to suggest that persons do not have a measure of choice in relation to risk-taking behaviour; what exactly the extent of that choice might be is difficult to determine, and obviously one of the reasons for the impasse in the first place. Even a cursory perusal of the relevant addictions literature suggested that such a focus would lead to losing one's way in "an obscure wood." One question for this work was to ask why discovering the extent of responsibility was felt to be so essential: does the labelling of others in this manner satisfy subtle psychological needs to marginalize those who appear to be different from the norm? Or are we simply hoping to effect change in the relevant others by some form of punishment - a punishment given with no recourse to defence and due process, and a punishment with a dubious record of efficacy?

Emmanuel Levinas's "ethics as first philosophy" has been seen to speak to both the question of the efficacy of applying all-encompassing theory, and the concerns over responsibility. Allowing that some paradigmatic suggestions might be drawn from that work, it has been proposed that those with addictions be welcomed within the health care system, before a "totalizing" theory assigns their reality, and that this welcome encompass a covenantal relationship with health care personnel - a relationship that involves assurance that human dignity and wholeness be preserved. It would appear to be anathema to the Levinasian thought that the preservation, or not, of physical integrity be used as a judgmental measure; thus this work will assert unequivocally that, unless contra-indicated medically, scarce organs should be distributed to those who have taken health risks. However, the Levinasian corpus would also appear to point to wider issues within health care: issues which, ultimately would impact both on the population focused upon here, and patients in general: questions related to what the goals of medicine should be, and the nature of the humanity to which our technology-dependent policies might be expected to give rise.

In the end, the answer to the initial question leads to a prophetic challenge for a change in the direction in which medicine appears to be rushing, a challenge arising from a perceived convergence of the Levinasian thought and the contributions from theology.

SIGLA

AE	<i>Autrement qu'être ou au-delà de l'essence</i>
ARF	<i>Addiction Research Foundation</i>
AT	<i>Alterity and Transcendence</i>
CBA	cost-benefit analysis
CCOHTA	Canadian Coordinating Office for Health Technology Assessment
CORR	Canadian Organ Replacement Register
DF	<i>Difficult Freedom: Essays on Judaism</i>
DL	<i>Difficile liberté: Essais sur le Judaïsme</i>
DQVI	<i>De Dieu qui vient à l'idée</i>
EE	<i>Existence and Existents</i>
EeI	<i>Éthique et Infini: Dialogues avec Philippe Nemo</i>
EI	<i>Ethics and Infinity: Conversations with Philippe Nemo</i>
ESRD	end stage renal disease
DEE	<i>De l'existence à l'existant</i>
HAH	<i>Humanisme de l'autre homme</i>
HCR	<i>Hastings Center Report</i>
JAMA	<i>Journal of the American Medical Association</i>
JME	<i>Journal of Medical Ethics</i>
NEJM	<i>New England Journal of Medicine</i>
OB	<i>Otherwise Than Being, or Beyond Essence</i>

OGCM	<i>Of God Who Comes to Mind</i>
TA	<i>Le temps et l'autre</i>
TeI	<i>Totalité et infini: Essais sur l'extériorité</i>
TI	<i>Totality and Infinity: An Essay on Exteriority</i>
TIHP	<i>The Theory of Intuition in Husserl's Phenomenology</i>
TO	<i>Time and the Other</i>

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