WHAT IT MEANS TO BE human

THE CASE FOR THE BODY

IN PUBLIC BIOETHICS

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2

An Anthropological Solution

Everyone has an anthropology. There is no not having one. If a man says he does not, all he is saying is that his anthropology is implicit, a set of assumptions he has not thought to call into question.

—WALKER PERCY, "REDISCOVERING *A CANTICLE FOR LEIBOWITZ*" IN *Signposts in a Strange Land*

What do law, policy, and politics have to do with "anthropology," defined in its original sense as an account of what it means to be human? At the very deepest level, law and public policy exist *for the protection and flourishing of persons.* Thus, all law and public policy are necessarily built upon presuppositions about what it means to be and thrive *as persons.* Accordingly, the pathway to the deepest understanding of the law requires a searching anthropological inquiry. The wisdom, justice, and intelligibility of the law's means and ends are fully graspable only once its underlying vision of human identity and flourishing is uncovered and assessed.

This is no small task. The question of human identity has bedeviled humankind since the emergence of the capacity for self-reflection. As ethicist James Gustafson observed, this question is "probably as old as critical human self-consciousness."[1] In his 1944 "An Essay on Man," German philosopher Ernst Cassirer noted that in the history of philosophy, the matter of human self-knowledge has been "the Archimedean point, the fixed and immovable center of all thought."[2] Augustine lamented "I have become a puzzle to myself and this is my infirmity."[3] And the Psalmist famously asked the creator of the universe, "What is man that you should be mindful of him?"[4]

Even the very definition of "person" is itself perennially vexed. The word is etymologically connected to the Latin word "persona," which referred to the mask worn by ancient Etruscan and Roman stage actors, through which their voices (and thus their roles) were expressed. As philosopher Kenneth Schmitz has observed, this connection to speech led Latin teachers of grammar to adopt the term "person" for the singular and plural forms of verb conjugation.[5] It is also connected to the Greek word "prosopon," variously translated as face, mask, stage character, and eventually person. From Boethius's famous definition of "person" offered in the sixth century ("an individual substance of a rational nature"), to Locke's ("a thinking intelligent being that has reason and reflection and can consider itself as itself"), to Joseph Fletcher's more recent multiple "indicators of humanhood," and Mary Anne Warren's "five traits which are most central to the concept of personhood," the substance and even intelligibility of "person" (and who counts as a person) as a descriptive and normative matter have been vigorously contested.[6]

Indeed, German phenomenologist Max Scheler lamented that the advance of knowledge across the disciplines has resulted in more rather than less perplexity on this matter: "We have a scientific, philosophical, and theological anthropology which know nothing of each other. . . . The ever growing multiplicity of sciences studying man has much more confused and obscured than elucidated our concept of man."[7]

And yet, any legal and policy apparatus that aims at the protection of persons and the promotion of their flourishing necessarily depends upon a prior, if unstated, vision of who and what persons are. This is, *a fortiori*, true of American public bioethics, which regularly engages the "boundary" question of *who counts* as a person—as a member of the legal and moral community whose rights and interests must be respected, whose good must be considered as an element of the common good. When it enters the law, the grounding vision of human identity and flourishing can mean the difference between life and death (or even how these concepts are defined).

Relatedly, as will be discussed further below, sociologist John Evans has shown empirically that one's anthropological premises strongly correlate with one's view of the scope and substance of human rights.[8] Different anthropologies expand or contract the circle of human concern and protection.

The primary substantive claim of this book emerges from an inductive legal analysis (that is, taking the law as it currently exists) meant to uncover the "anthropology"—the premises about human identity and flourishing—of American public bioethics. That is, when interrogated from an anthropological perspective, the law and policy in this area are in certain core

matters deeply flawed, especially as evidenced by its response to those who are vulnerable, dependent, or particularly constrained by natural limits.

These defects in law and policy follow directly from the adoption of a reduced and incomplete vision of persons that fails to take seriously the meaning and consequences of human embodiment. To remedy this problem, the law must expand and augment its grounding conception of human identity and flourishing and integrate goods, practices, and principles that are appropriate to the fully lived reality of embodied human beings.

Before turning to the specific case studies that bear out this proposition (and point a possible way forward), it is necessary to identify and offer a preliminary discussion and critique of the anthropological conception—the vision of human identity and flourishing—that will emerge in the inductive analysis in the chapters that follow as the key anchor and driver of the law and policy of some of the core vital conflicts in American public bioethics. Put most succinctly, the dominant anthropology of American public bioethics in these conflicts most closely resembles what social scientist Robert Bellah first termed "expressive individualism."[9]

EXPRESSIVE INDIVIDUALISM

From 1979 to 1984, sociologist Robert Bellah and colleagues conducted interviews with 200 individuals, in efforts to identify and understand how Americans understood themselves as persons and how they derived meaning for their lives. In the 1985

classic *Habits of the Heart,* Bellah detailed his team's findings and identified a vison of human identity and flourishing that he dubbed "expressive individualism." Across a variety of contexts, both public and private, people interviewed by Bellah affirmed the view that the individual person considered in isolation is the fundamental and defining normative reality. Bellah found that human flourishing consists in the expression of one's innermost identity through freely choosing and configuring life in accordance with his or her own distinctive core intuitions, feelings, and preferences.

This unique anthropology combining individualism and this sense of "expressivism" has been further explored, deepened, and critiqued in various ways by contemporary philosophers such as Charles Taylor, Alasdair MacIntyre, Michael Sandel, and others. As will be shown in the chapters that follow, this is the anthropology that underwrites some of the core vital conflicts of American public bioethics. The work of these thinkers is thus highly valuable for the task of illuminating and critiquing this domain of law and policy.

But first, it is necessary to more specifically and succinctly summarize the vision of human identity and human flourishing that will emerge from the following chapters' inductive analyses of concrete domains of law and policy.

The anthropology of American public bioethics begins with the premise that the fundamental unit of human reality is the individual person, considered as separate and distinct from the manner in which he is or is not embedded in a web of social relations. Persons are identified with and defined by the exercise of their will—their capacity for choosing in accordance with

their wants and desires. Thus, this conception of personhood decisively privileges cognition as the indispensable criterion for membership in this category of beings. In this way, it appears to be dualistic, distinguishing the mind from the body. The mind and will define the person, whereas the body is treated as a contingent instrument for pursuing the projects that emerge from cognition and choice. Moreover, under this anthropological approach, capacity for cognition is not only the hallmark of individual personhood, it defines the very boundaries of the world of persons versus nonpersons. (This, of course, becomes of crucial importance when operationalized in the vital legal and policy conflicts of American public bioethics.) Thus, given its singular focus on the thinking and choosing atomized self, the anthropology of American public bioethics represents a strong form of *individualism*.

The anthropology of American public bioethics is likewise strongly *expressivist* in its conception of human flourishing. As used here, "expressivism" holds that individuals thrive insofar as they are able to freely create and pursue the unique projects and future-directed plans that reflect their deeply held values and self-understanding. These projects and purposes emerge from *within* the self; neither nature, "natural givens," nor even the species-specific endowments and limits of the human body, dictate the ends of individual flourishing. Put another way, the anthropology of American public bioethics is strongly anti-teleological. It does not recognize natural "ends" that guide understanding of the flourishing of the individual human.

Within the anthropological framework of American public bioethics, it seems that human relationships and social arrangements are likewise judged in light of how well or poorly they serve the self-defining projects of the individual will. Under this account, individuals encounter one another as atomized wills. These individuals come together in collaboration to pursue mutually beneficial ends and separate when such goals are reached or abandoned. Or perhaps they encounter one another as adversaries, who must struggle to overbear one another in order to achieve their self-defined and self-defining objectives.

Accordingly, the anthropology of expressive individualism elevates the principles of autonomy and self-determination above other competing values in the hierarchy of ethical goods, such as beneficence, justice, dignity, and equality. When operationalized in law and policy, the focus turns to eliminating obstacles, perhaps even including natural limits, that impede the pursuit of the self-defining projects of the will. As will be seen, given its history, tradition, and culture, in *American* public bioethics, the primary mechanism toward this end is the assertion of "negative" rights.

The concepts of "individualism" and "expressivism" have received a great deal of attention—both positive and negative—from philosophers, theologians, writers, and artists from antiquity to the present day. There is a rich and extensive literature exploring, critiquing, and disputing these notions. There are, to be sure, many "individualisms," variously attacked and defended by theorists across the history of ideas. Philosopher Roderick Long has offered a fascinating and lengthy taxonomy of individualisms and individualists stretching from Plato's rendering of Callicles (in *Gorgias*), Glaucon, Adeimantus, and Thrasymachus (in *Republic*), through the works of Hobbes, Adam Smith,

Locke, up to twentieth-century figures including economic theorists such as Frederich Hayek.[10] Philosopher Tibor Machan has offered his own detailed historical and analytic account, alongside a defense of his preferred form of individualism.[11] One theater of intellectual reflection and contestation regarding individualism has been the "libertarian versus communitarian" debates of the latter part of the twentieth century, featuring such eminences as Nozick, Taylor, Sandel, Bellah, and MacIntyre. Still another anthropological counterproposal set forth in opposition to individualism has been "personalism," championed in a variety of forms by such diverse thinkers as Emmanuel Mounier, Gabriel Marcel, Max Scheler, Paul Ricoeur, Martin Buber, Robert Spaemann, and Pope John Paul II.

It is far beyond the scope of this book to wade into this rich, dense, and fascinating thicket of debates. It will thus eschew the embrace of any of the panoply of isms that populate the landscape of these disputes, and it will certainly not seek to adjudicate the perennial arguments among these learned discussants. Instead, the analytic posture of this book is *inductive*. The goal is to understand and critique the regnant anthropology of American public bioethics by analyzing the law and policy (and the academic discourse that undergirds them) as they currently stand.

That said, the forms of individualism and expressivism described and analyzed by certain participants in the above debates—including especially Sandel, Taylor, and MacIntyre—are valuable for this inductive project. In different ways, they describe a vision of human identity and flourishing that strongly resembles the active, operative anthropology for American public

bioethics that will emerge as foundational in the chapters that follow. As stated, this book takes no position on whether these thinkers (often referred to—mostly by others—as "communitarians") have accurately characterized and successfully critiqued their opposite numbers in these theoretical debates (often referred to by others as "individualists," "libertarians," "liberals," and the like). The particular accounts of individualism and expressivism offered by Sandel, Taylor, MacIntyre, and others are what come to the surface when one interrogates some of the key vital conflicts of American public bioethics, even though these thinkers have not deployed these concepts in their own reflections on matters of public bioethics; with the exception of Sandel, most of these thinkers have not addressed this domain at length. Accordingly, it is worthwhile to briefly discuss these accounts (and critiques) of individualism and expressivism before pressing ahead further.

INDIVIDUALISM

The term "individualism" is most often attributed to Alexis de Tocqueville in the nineteenth century (though Israeli historian Yehoshua Arieli notes that the word was used a few years before in both an American political magazine and in Michel Chevalier's *Lettres sur l'Amerique du Nord*).[12] In his travels in America, Tocqueville observed with distress the emergence of a new self-understanding that drew people away from their communal ties and sense of shared obligations into an isolated focus on a tight circle of family, friends, and their own limited interests. Individualism did not merely weaken the ties to the

community and the sense of corporate responsibility for others, it also led people into the view that they "owe no man anything and hardly expect anything from anybody. They form the habit of thinking of themselves in isolation and imagine that their whole destiny is in their hands."[13] Tocqueville worried that this illusion of self-sufficiency and the abstraction of the individual would even lead people to "forget their ancestors" as well as their descendants. In the embrace of individualism, "each man is forever thrown back upon himself alone, and there is danger that he may be shut up in the solitude of his own heart."[14]

Robert Bellah drew upon these same concerns in his analysis of twentieth-century America. He traced the roots of the phenomenon identified by Tocqueville to a reaction to the hierarchies and roles imposed by monarchical, aristocratic, and feudal societies. Bellah, following many other thinkers, pointed to the Protestant Reformation as a reflection of a kind of incipient individualism—a rejection of the need for a mediator between a person and his god. And, with others, Bellah argued that in the seventeenth century, John Locke's image of pre-political man living in a state of nature offers an exemplar of what he calls "ontological individualism," namely, "a belief that the individual has a primary reality whereas society is a second-order, derived or artificial construct."[15] Machan, Long, and others point to Thomas Hobbes as earlier theorizing man as naturally and fundamentally atomized and alone, fearful and driven by desperation to survive a war of all against all. This vision of individualism served in part as Hobbes's rationale for the creation of a totalizing state that provided the only certain protection from

lethal private violence. It was the sole entity capable of providing a peaceful coexistence among people.

Bellah described the individualism of Hobbes and Locke as utilitarian, in that it was driven by the desire to maximize self-interest in light of the hoped-for benefits (in the case of Locke) or the promise of protection from feared threats (in the case of Hobbes) that lead people to consent to form and join society. Tibor Machan calls Hobbes's approach "radical individualism," which understands human beings as "numerical separate bare particulars."[16] Subsequent thinkers, including Adam Smith, held that the aggregated pursuit of individual interests can serve the good of the general population, so long as the natural liberty of others is respected.[17]

However, with the advent of twentieth-century developments in politics, economics, novel corporate forms, and modern psychology, Bellah suggested that a new category of individualism emerged, with "the autonomous individual" at its center, "presumed able to choose the roles he will play and the commitments he will make, not on the basis of higher truths" (or, one might add, lower fears), "but according to the criterion of life-effectiveness as the individual judges it."[18] This is what he terms "expressive individualism."

In an influential essay entitled *Atomism,* Canadian philosopher Charles Taylor described (and criticized) a vision of society, rooted in seventeenth-century political theories such as those of Hobbes and Locke, composed of discrete individuals seeking to fulfill individual ends. As the name "atomism" suggests, this conception rests upon an understanding of human nature and the human condition as reductively and relentlessly individualistic.

On Taylor's account, it posits unconditional and inalienable individual rights and freedoms, but no corresponding obligations or "principle of belonging" to the community. Atomism rests on the premise of "the self- sufficiency of man alone, or if you prefer, of the individual."[19]

Atomized individualism defines human flourishing as the exercise of the freedom of the will. Taylor suggested that the proto-Atomist Hobbes rejected the notion of natural ends or perfections that determine in what human flourishing consists. Instead, he defined persons fundamentally as "agents of desire"—defined by the objects of their will: "Whatsoever is the object of any man's desire . . . that is it which he for his part calleth good."[20] Indeed, under this view, a human being's very attachment for life is driven by the "desire to go on being agents of desire."[21] In its modern form, Taylor argued, atomized individualism emphasizes the freedom to "choose life plans, to dispose of possessions, to form one's own convictions, and within reason to act on them, and so on."[22]

In his thoughtful taxonomy and genealogy of "individualisms," Roderick Long likewise identified "atomistic" individualism, which he associated with Hobbes and others, as a conception of human beings "as radically separate selves locked in a struggle for survival or power."[23] This individualistic vision of human identity only recognizes as binding those moral demands that cohere with the will, interests, and preferences of the individual. There are no "unchosen obligations" within this anthropology.

Political philosopher Michael Sandel likewise identified a conception of the person, which he termed "the unencumbered

self," that closely resembled the atomized individualism flagged by Taylor and others. The occasion for Sandel's observation was his critique of John Rawls, whose late twentieth century political theory is arguably among the most influential in modern American politics, law, and public policy. In his essay entitled *The Procedural Republic and the Unencumbered Self,* Sandel takes Rawls to task for building his theory of justice and political liberalism on a vision of the person that is false and impoverished. According to Sandel, Rawls seeks to translate and adapt the moral theory of Immanuel Kant, who famously located the foundation of the moral law not in any discernible natural ends or externally manifest purposes of human life, but rather from within the human *subject* himself, capable of autonomous will—a "subject of ends." According to Kant, for the individual autonomous will that is the source of moral principles and judgment to be truly free, it must not be conditioned by or responsive to external influences. Thus, in Sandel's words, "the rational being must be made the ground for all maxims of action."[24] In this way, the acting subject—the self—is prior to the moral ends that he pursues.

Sandel suggested that Rawls sought to adapt this general principle, abstracted from Kant's complex philosophy of German Idealism, and translated it into a form palatable to modern American political sensibilities. Rawls posited that it was not appropriate to build a set of rules for the community based on conceptions of normative ends or "the good." Instead, for a pluralistic polity whose members strongly disagree about ultimate goals for and the meaning of life, the "right"—the operational regulative principles of justice that govern the community—must

take precedence over and be prior to "the good." In Rawls's words, "We should therefore reverse the relation between the right and the good proposed by teleological doctrines, and view the right as prior."[25] Accordingly, Rawls argued that the rules adopted by a polity should not be rooted in a particular vision of the good life, but instead should merely provide background procedures and conditions that allow individuals to pursue their own purposes and plans. Rawls envisioned a procedural framework to provide equal liberty for all, admitting only those inequalities that would benefit the least advantaged members of the community.

Sandel noted that for Rawls's procedural vision to work, the individual self must be understood as prior to and not determined or defined by any purposes or ends (just as "the right is prior to the good").[26] Thus, the vision of human identity at the core of Rawls's political philosophy was an "unencumbered self." According to Sandel, Rawls's vision "ruled out *constitutive ends*. No project could be so essential that turning away from it would call into question the person I am."[27]

Having separated the person from defining ends and purposes, the essence of human identity for Rawls was not to be found in the object of one's choices, but rather in the capacity to choose itself. This is an anthropology of the solitary, free, and independent choosing self. And the realm of choice extends not only to pathways of action, but also the construction of ultimate meaning. "Freed from the dictates of nature and the sanction of social roles, the human subject is installed as sovereign, cast as the only author of moral meanings there are."[28] Rawls's person was, in Sandel's words, a "self-originating source of valid claims."[29]

This vision of the unencumbered self for whom no external purposes or relationships can be constitutive of identity causes severe problems for a coherent theory of moral obligation to the community and indebtedness to others, especially for those others to whom "more than justice is owed."

The anthropology grounding American public bioethics is not merely individualism, it is a relatively modern iteration of this conception of human identity, namely, *expressive* individualism. This vision of personhood understands human flourishing as the pursuit of projects of one's own invention and choosing—endeavors that express and define our true selves. To more fully grasp how expressive individualism animates the law and policy concerning bioethics in America, it is useful to turn once again to Bellah, Taylor, and briefly to Alasdair MacIntyre.

EXPRESSIVISM

As noted above, Bellah identified "expressive individualism" as a reaction to the more utilitarian version of individualism that placed a greater premium on the net social goods that emerge from the aggregated pursuit of self-interested individuals operating within a well-regulated system of laws. By contrast, expressive individualism "holds that each person has a unique core of feeling and intuition that should unfold or be expressed if individuality is to be realized."[30] Bellah connects this development in self-understanding to the Romantic literary movement of the eighteenth and nineteenth centuries as well as the evolution of psychotherapy combined with new managerial corporate practices and culture in the twentieth century. He pointed

to American poet Walt Whitman as a pristine representative of expressive individualism whose "Leaves of Grass" is an anthem of sorts. Whitman wrote "I celebrate myself/I loaf and invite my soul" (lines 1 & 4). Whitman saw enormous promise in American freedom and viewed its highest use as facilitating the exploration and expression of the individual's inner self. Bellah likewise cites the work of Emerson, Thoreau, and Hawthorne as emphasizing the "deeper cultivation of the self" instead of individualism as a vehicle for maximizing utilitarian ends.[31]

In his *Journals,* Ralph Waldo Emerson clearly articulates this vision of an internally generated individual quest for self-expression:

> A man contains all that is needful to his government within himself. He is made a law unto himself. . . . Good or evil that can befall him must be from himself. . . . There is a correspondence in the human soul and everything that exists in the world; more properly, everything that is known to man. Instead of studying things without, the principles of them all may be penetrated into within him. . . . The purpose of life seems to be to acquaint a man with himself. . . . The highest revelation is that God is in every man.[32]

In its modern form, Bellah observed that expressive individualism reorients the moral life from honoring external normative obligations toward the quest for self-fulfillment. Bellah worried that this, in fact, leads to confusion and dislocation: "With the freedom to define oneself anew in a plethora of identities has also come an attenuation of those common understandings that enable us to recognize the virtues of the other."[33] The freedom of the inward turn in expressive individualism, defining the self by its ability to choose rather than the object of its choice, can be disorienting.

Charles Taylor provided a fascinating intellectual genealogy, both literary and philosophical, that deepened and extended Bellah's reflections. Throughout multiple books, essays, and lectures, Taylor identified a profound reconfiguration of human self-understanding beginning in the eighteenth century.[34] Born out of a reaction to what Taylor described as an austere morality, in which people were obliged to behave in ways that conformed to rigid external standards of right and wrong, a new vision of human identity and flourishing emerged that turned inward to the interior self as a source of meaning and guidance. French philosopher Jean-Jacques Rousseau developed the notion of a voice of nature within—*le sentiment de l'existence*—that is the true source of moral authority, rather than the external standards set or opinions held by others. Indeed, Rousseau worried that such dependence on the opinion of others was a primary source of confusion and error. Taylor noted that "in this first transposition of the morality of sentiment we're beginning to see emerge the modern form of individualism."[35] Taylor also drew attention to Rousseau's innovative conception of freedom, which though related is not identical to his conception of the inner voice as authoritative moral source. Rousseau's notion of "self-determining freedom," like the inner voice of sentiment, was an endogenous or internally generated quality.[36] In Taylor's words, self-determining freedom "is the idea that I'm free when

I determine the conditions of my own existence from out of myself."[37]

Rousseau's conception of an authoritative and self-defining inner voice was developed and extended further by writers and artists of the later eighteenth and nineteenth centuries such as Shelley, Byron, Wordsworth, and the other Romantic poets (including also non-Romantic literary figures such as Goethe) who rebelled against the classical emphasis on harmony, reason, and tradition as unduly confining strictures on artistic expression. But these artistic and literary developments added a new dimension, namely, the notion of "originality"—"the notion that each one of us, in listening to that voice within, is called on to lead a form of life, a way of being human, which is peculiar to himself or herself."[38]

Taylor held up German critic and writer Johann Herder (1744–1803) as a representative proponent of this new inward-turned truth-seeking, creativity, and originality. According to Herder, "each human being has his own measure, as it were an accord peculiar to him of all his feelings to each other."[39] In this way, expressivism constitutes a radical refinement to pre-Socratic philosopher Protagoras's assertion that "man is the measure of all things."[40] Here, every person constitutes *his own* measure. From the realization that one's unique truth is *inside*—that it must be discovered by searching the depths of one's inner feelings, and that the truths are original and unique to the subject—there emerges an imperative to live according to one's own originality. And living according to one's originality—following the path discovered by searching out one's own inner

depths—frequently requires actions that conflict with the accepted standards and norms of one's community. This is what Taylor called the "ethic of authenticity."[41]

This striving for one's own internally generated goals and aspirations, over and above the norms and traditions of one's peers, is readily seen in the literature to which Taylor alluded. Goethe's Faust harnessed the dark powers of Mephistopheles and black magic to pursue his passion for Gretchen, rejecting and violating the religious standards of his community. Tirso de Molina's Don Juan (and later Mozart's Don Giovanni) imposed their wills on vulnerable others in pursuit of their own desires, against the mores of the time. Tennyson's Ulysses left the comfort (and boredom) of hearth and home in Ithaca to pursue adventure and glory once again ("Made weak by time and fate, but strong in will/To strive, to seek, to find, and not to yield").[42] The Byronic hero Manfred failed to harness dark supernatural powers to alleviate his own suffering at the loss of his beloved, and boldly embraced death rather than religious redemption ("'Tis not so difficult to die!").[43] This echoed the earlier boldness and individualism of John Milton's Satan from *Paradise Lost,* who defiantly denies his creaturely status before God and asserted that he and his fellow fallen angels were made by their own hands; the power they wield is their own:

> That we were formd then sais thou? And the work Of
> secondarie hands, by task transferd
> From Father to his Son? Strange point and new! When this
> creation was? Remembers thou

> Thy making, while the Maker gave thee being? We know no time when we were not as now; Know none before us, self-begot, self-rais'd
> By our own quickening power, when fatal course
> Had circled his full Orbe, the birth mature Of this our native Heaven, Etherial Sons.
> Our puissance is our own, our own right hand Shall teach us highest deeds, by proof to try Who is our equal.[44]

Taylor noted that this ethic and imperative of authenticity—an individualism of self-fulfillment—not only requires searching exploration of one's inner sentiments for the truth unique to the subject, but also *expression* of the truths discovered in this process. To realize the truth of who we are (and to live it most fully) it is necessary to express our inner voice and make it concrete. This is a creative act of originality that makes manifest the unique truths about ourselves and our purpose. This, in turn, reveals the radical individuation of human beings: we are original and distinct, and the truth about us can only be fully known *by us* and revealed through subsequent expressive actions. The complete truth about the individual is inaccessible and opaque to others, only made available by expression. Taylor wrote, "What the voice of nature calls us to cannot be fully known outside of and prior to our articulation/definition of it. . . . If nature is an intrinsic source, then each of us has to follow what is within; and this may be without precedent."[45]

Given its singular focus on excavating the inner depths of the self to discover (through expression) the truth of who we are and what constitutes our fulfillment, Taylor worried that this

culture of expressive individualism would lead to the erosion of social and familial ties, and render unintelligible obligations to others. Even relationships of marriage and family might be measured and embraced or abandoned strictly according to whether and how much they contribute to one's self-fulfillment. Taylor was also concerned about the possibility of a thoroughgoing relativism, wherein one does not feel authorized to criticize or even fully grasp the choices of others. Yet, at the same time, he identified a new category of harm that emerges in a culture of expressive individualism, namely, the *failure to receive, accept, and appreciate* the expression of others' inner depths. Taylor wrote, "the notion that everyone has a task to become their own person—the particular, original person that they are—complementing that is the belief that in order to do this they need the recognition of others."[46] To fail to recognize the expression of other selves is a violation and a harm to them.

Taylor noted that in the second half of the twentieth century, expressive individualism moved beyond the domain of writers and artists and was embraced by a substantial segment of the American (and broader Western) population at large. Sensuality and sexual fulfillment emerged in the latter part of the twentieth century as particularly important vehicles of self-realization. He noted the American sexual revolution and the Flower Generation of the 1960s as illustrative in this regard.

In his groundbreaking work *After Virtue,* philosopher Alasdair MacIntyre famously noticed a similar turn in modern moral philosophy, in the popularity and embrace of the theory of "emotivism," a philosophical doctrine that treats statements of moral judgment as merely expressions of the speaker's *own*

particular feelings of personal approval or disapproval. For example, the expression "murder is wrong" would be read as "I personally disapprove of murder."[47]

MacIntyre likewise recognized the rise of an anthropology that closely resembles what here is termed expressive individualism more broadly, noting that proponents of this view declare that "I am what I myself choose to be."[48] MacIntyre noted that as far as moral authority is concerned, "the individual moral agent, freed from hierarchy and teleology, conceives of himself and is conceived of by moral philosophers as sovereign."[49]

THE ANTHROPOLOGY OF EXPRESSIVE INDIVIDUALISM

Aided by Bellah's, Taylor's, Sandel's, and MacIntyre's insights, the anthropology of expressive individualism comes into sharp relief. In its pristine form, expressive individualism takes the individual, atomized self to be the fundamental unit of human reality. This self is not defined by its attachments or network of relations, but rather by its capacity to choose a future pathway that is revealed by the investigation of its own inner depths of sentiment. No object of choice—whether property, a particular vocation, or even the creation of a family—is definitive and constitutive of the self. In Sandel's words, it is an "unencumbered self."[50] Because this self is defined by its capacity to choose, it is associated fundamentally with its will and not its body. The individual—the person—is thus understood to be identical with the exercise of this particular type of cognition. Therefore, expressive individualism is inevitably *dualistic*—privileging the mind while subordinating the body in defining the person.

Flourishing is achieved by turning inward to interrogate the self's own deepest sentiments to discern the wholly unique and original truths about its purpose and destiny. This inner voice is morally authoritative and defines the route forward to realizing the authentic self. The truth about the self is thus not determined externally, and sometimes must be pursued counterculturally, over and above the mores of one's community. As noted previously, in Sandel's words, the expressive individual self is a "self-originating source of valid claims."[51]

Relatedly, as Long and Taylor point out, expressive individualism does not recognize unchosen obligations. The self is bound only to those commitments freely assumed. And the expressive individual self only accepts commitments that facilitate the overarching goal of pursuing its own, original, unique, and freely chosen quest for meaning.

This is the anthropology that will emerge from an inductive analysis of several of the vital conflicts of American public bioethics. Before proceeding to that analysis, however, it is important to examine some of the general criticisms leveled against expressive individualism, as well as some of the alternative virtues, goods, and practices that can correct the errors of this anthropology.

FORGETTING THE BODY

What, then, is problematic about the anthropology of expressive individualism and why might it be an ill-suited vision of human identity and flourishing for American public bioethics? To put it most succinctly, expressive individualism fails because

it is, to borrow a phrase from Alasdair MacIntyre, "forgetful of the body."[52] Its vision of the human person does not reflect and thus cannot make sense of the full lived reality of human *embodiment,* with all that it entails. As mentioned previously, human beings experience themselves and one another *as living bodies,* not disembodied wills.

Because human beings live and negotiate the world *as bodies,* they are necessarily subject to vulnerability, dependence, and finitude common to all living embodied beings, with all of the attendant challenges and gifts that follow. Thus, the anthropology of the atomized, unencumbered, inward-directed self of expressive individualism falls short because it cannot render intelligible either the core human realities of embodiment or recognize the unchosen debts that accrue to all human beings throughout their life spans.

An inexorable reality of embodied human life is *dependence.* Most obviously, given the way human beings come into the world, from the very beginning they depend on the beneficence and support of others for their very lives. Among mammals, human beings in their infancy and youth have an unusually long period of dependence for basic survival—infants and babies require help with nutrition, hygiene, and general protection. Of course, this dependence on others for basic needs is not merely a transient feature limited to the beginnings of human life. There are, of course, those who spend their entire lives in conditions of radical dependency. But because all human beings exist as corruptible bodies, periods of serious illness, injury, and senescence create cycles of often-profound dependency throughout the life span for everyone. Consider, due to the very nature of

living *as bodies,* in MacIntyre's words, all human beings exist on a "scale of disability."[53]

Given the role of dependence intrinsic to bodily existence, if human beings are to flourish, they must "receive and have an expectation of receiving the attentive care [we] need when [we are] very young, old and ill, or injured."[54] The care that human beings need must be unconditional and noncontingent. The weakest and most afflicted among the human community will, of course, require the most intensive and sustained care.

The paradigm for such caregiving—upon which nearly everyone relies in his early life—is provided by parents. MacIntyre argued that in its fullest expression, good parental care makes the object of concern *this child;* the commitment is unconditional and does not depend on the child's circumstances (such as disability), and the needs of the child are treated as paramount, over and above those of the parents. MacIntyre pointed to parents of disabled children as the pristine model of this form of care.[55] The same need for unconditional and noncontingent care arises again, of course, as human beings move towards the end of life's spectrum, if not before.

French philosopher Bertrand de Jouvenel similarly noticed the universal experience of human dependency. He also noted parental love and care are essential to development and flourishing. In his words, parents provide a "humanized cosmos" for the growing child who is welcomed and loved unconditionally.[56]

The anthropology of expressive individualism misses this basic feature of human life because it misses its lived realty; dependence is not part of the picture. Expressive individualism's

image of the human person is one fully formed, at the height of his cognitive powers, turning inward to learn the truths that, when expressed, will form his identity and shape his life's course. Jouvenel criticized social contract theorists for similarly forgetting the dependence of life in its early stages of development: "These are the views of childless men who must have forgotten their childhood."[57] Like Milton's Satan and fallen angels, the expressive individual self "know[s] no time when [it was] not as now; Know none before [it], self-begot, self-rais'd / By [its] own quickening power."[58] A purely inward-looking and individualistic anthropology can give no intelligible or justified account of uncompensated, unconditional, and often self-sacrificial care of others. There is no warrant to give more than one could ever hope to receive. There is no imperative to give to those from whom nothing will ever be repaid in return.

The dependence of embodied human beings is not limited to relying on others for mere biological survival. The development of the capacities needed to negotiate and thrive in the world inexorably depend on the support of others. As Alasdair MacIntyre observed in his book *Dependent Rational Animals,* it requires the selfless and sustained work of countless others to build an individual's capacities for freedom and flourishing, such as the abilities to defer gratification, to imagine and choose from alternative futures, to obtain useful knowledge about the world, to cooperate with and care for others, and to come to know yourself. These are the qualities needed to become, in MacIntyre's words, an "independent practical reasoner."[59] Development toward this goal requires a family and a community of persons who are willing to make the good of others their own

good. In this way, individuals can become the kind of people who are capable of making the good of others their own. Charles Taylor noted that even the traits required for thriving under the ambit of expressive individualism depend on social structures and conditions that nurture the development of such capacities.[60] Indeed, even a theory of the "autonomous self" requires a culture and civilization in which such an idea can emerge and be transmitted.

A single-minded focus on exploring and expressing the inner depths of the atomized self does not, within its own normative framework, include robust categories of community and cooperation for the sake of others. This is the grounding insight of Sandel's critique of Rawls: "What the difference principle requires but cannot provide is some way of identifying those among whom assets I bear are properly regarded as common, some way of seeing ourselves as mutually indebted and morally engaged to begin with."[61] An unencumbered self, without *constitutive* ties to others, does not recognize an imperative to share for the sake of the least advantaged when it is not in its own interest to do so.

Even the development and knowledge of one's own personal identity—the touchstone of expressive individualism—requires sustained support from others. MacIntyre argued that without a narrative context, the individual "story telling animal" is dislocated and disoriented.[62] In *After Virtue,* MacIntyre elaborated: "I can only answer the question 'What am I to do?' if I can answer the prior question 'Of what story or stories do I find myself a part?'"[63] Who we are is rendered intelligible by the narratives that form us—even if one chooses to rebel against the

normative direction and embedded ends of the traditions and communities that have shaped this story. But the point is that one does not create his or her own narrative *ab initio*. Self-identity is in large part shaped by the inheritances, traditions, and cultures of others—family, community, civilization. Sandel puts it this way: "I move in a history I neither summon nor command, which carries consequences nonetheless for my choices and conduct."[64] And this history is the product of generations who have come before and will be sustained by those not yet born.

Moreover, human beings come to understand and refine their identities *in conversation* with others. Taylor called this the "dialogical" character of human life.[65] We understand ourselves not only by expressing ourselves, but by virtue of the reactions and responses of others—especially in genuine friendship with those whose goods we share. In collaboration with and in struggle against others, we give an account of ourselves as well as hold others to their own accounts. This results in a process of refinement and clarification that enhances and deepens self-understanding. Thus, the self-expression that is key to identity and flourishing in the anthropology of expressive individualism requires others for recognition and response. This, too, is a form of human dependence.

The anthropology of expressive individualism is monological and ahistorical. As MacIntyre wrote, "from the standpoint of individualism I am what I myself choose to be . . . a self that can have no history."[66] The unencumbered self is by definition incapable of constitutive relationships. It cannot genuinely make the good of another its own good.

Moreover, its good is not fully knowable by others; it is accessible only in full through self-interrogation and then expression. The unencumbered self is thus consigned to profound loneliness. Sandel captured this tragic circumstance in this arresting passage: "However much I might hope for the good of a friend and stand ready to advance it, only the friend himself can know what that good is. . . . Where deliberating about my good means no more than attending to wants and desires given directly to my awareness, I must do it on my own; it neither requires nor admits participation of others."[67]

It is clear that the life of embodied human beings is characterized by vulnerability and natural limits. Dependence is a central fact of human life. To live as a human is to incur debts—to our families and caregivers, our friends, our communities, and our civilization. In the words of the late British philosopher Roger Scruton:

> For us humans, who enter a world marked by the joys and sufferings of those who are making room for us, who enjoy protection in our early years and opportunities in our maturity, the field of obligation is wider than the field of choice. We are bound by ties we never chose, and our world contains values and challenges that intrude from beyond the comfortable arena of our agreements.[68]

An anthropology of expressive individualism lacks the resources to recognize, much less repay these debts. It cannot give an intelligible account of the debt owed to those who kept us alive and taught us what we needed to thrive in the world. It

cannot explain the role played by and obligations incurred to others whose friendship and mutual calling to account led to the refinement and clarification of our own self-understanding. *A fortiori,* as a solely inward-looking anthropology, expressive individualism does not supply a justification for the payment of those debts in nonreciprocal and unconditional fashion to *others* who have nothing to offer us by way of recompense. It lacks a principle of belonging or moral obligation sufficient to build a community or civilization that will not serve one's interests beyond this life.

The failure of expressive individualism to respond to the reality of embodied human lives regarding their mutual dependence, integrated constitutive goods and histories, and shared *unchosen* obligations to one another is also associated with an array of social pathologies that are concerning in themselves, but also loom large for American public bioethics, as will be seen in the chapters that follow.

First, as Charles Taylor and Robert Bellah have observed (echoing related concerns raised by Alexis de Tocqueville), a purely inward-directed atomized self becomes untethered from social ties, including the most intimate family connections. The inner depths of the self which hold the sources of meaning and normative orientation are never fully transparent to others, raising the specter of a thoroughgoing relativism. At the same time, Bellah observes, the individual experiences alienation and dislocation, as he longs for community and shared values, but is isolated and enclosed within his own sentiments.

The conception of human relationships not as a web of mutual indebtedness and shared concern but rather as merely in-

strumental and transactional exacerbates existing inequalities and compromises the networks of support for the weakest and most vulnerable. Jouvenel colorfully refers to this as a "legalitarian fiction" that "results in a chartered libertarianism for the strong."[69]

The anthropology of expressive individualism, with its singular focus on the individual self as the sole source and summit of unique meaning, creates not only loneliness and alienation, but enhances the fear of death. In an address to the International Academy of Philosophy in Lichtenstein in 1992, Nobel Laureate novelist, poet, historian, and Russian dissident Aleksandr Solzhenitsyn elaborated:

> Man has lost the sense of himself as a limited point in the universe, albeit one possessed of free will. He began to deem himself the center of his surroundings, adapting not himself to the world but the world to himself. And then, of course, the thought of death becomes unbearable: It is the extinction of the entire universe at a stroke.[70]

This death-haunted existence looms large for the vital conflicts of public bioethics, as will be seen in subsequent chapters.

A thoroughgoing and singular commitment to expressive individualism may even result in a lessened commitment to human rights. In his 2016 book, *What is a Human?,* social scientist John Evans undertook a fascinating empirical study of the relationship between one's anthropological accounts of human identity and flourishing and attitudes toward "genocide, torture, experimenting on persons against their will, buying

body organs from poor people, committing suicide to save money for families."[71] He found those who embraced a philosophical anthropology that privileges the cluster of traits and qualities most connected to expressive individualism (namely, the active cognitive capacities to invent and pursue future-directed plans) were "less supportive of human rights."[72]

Finally, the erosion of social ties noted by Bellah and Taylor (drawing again upon Tocqueville) could have deleterious consequences for self-government more generally. The so-called intermediate associations that comprise "civil society" are diminished as expressive individualism advances. People turn away from such shared enterprises, retreating into their own narrow circle of individual concerns. Without the buffer of civil society between the state and the individual, Bellah and his coauthors expressed grave worries of a resulting "mass society of mutually antagonistic individuals, easy prey to despotism."[73]

Given the failure of expressive individualism to account for fundamental realities of embodied human life, including especially its uniquely relational and interdependent features, and the potential individual and shared adverse social consequences that follow, what is to be done?

Here it is useful to turn again to the work of Alasdair MacIntyre for guidance.

AN ANTHROPOLOGY OF EMBODIMENT

Because the anthropology of expressive individualism is impoverished due to its forgetfulness—of the body, of human interdependence, of the consequent gifts received from and debts

owed to others—the development of a fuller and truer vision of human identity and human flourishing can only be forged by a kind of *remembering*. In order to develop the virtues and practices necessary to participate and thrive in what Macintyre calls the "networks of giving and receiving," we must remember who we are and how we got here.[74] First, we must remember that we entered the world profoundly weak and vulnerable, dependent upon others for our very survival. We needed others to feed us, to protect us, to keep us clean and warm, and to nurse us back to health when we were sick. We needed others to teach us how to behave, the habits of forbearance and delayed gratification, the discipline to restrain our selfish animal impulses to put ourselves first, and the moral vision to see others as objects of respect and concern, with goods that we share in common. We needed others to react to our self-understanding and expression, to help us to define ourselves both in collaboration and competition with them. We needed a family, a community, and a civilization to transmit expectations, values, and standards, which shaped us as we accepted or rejected these sources of meaning in full or in part.

We need to remember the fact that even in a normal life trajectory, we will need this care and support again, in periods of illness and senescence. As MacIntyre writes, it matters "that those who are no longer children recognize in children what they once were, and those who are not yet disabled by age recognize in the old what they are moving towards becoming and that those who are not ill or injured recognize in the ill and injured what they often have been and will be and always may be."[75]

Those who cared for us and who will care for us in our moments of profound vulnerability, especially when we could not and will not offer anything by way of recompense, did and will do so unconditionally and noncontingently. Those who cared for us knew that these efforts would likely be vastly disproportionate to any reciprocal support that might be offered back in return in the future. They gave us care even when all we could do was passively receive it. This was and will be the care required to sustain and shape us, by virtue of our lives as embodied human beings.

Remembering who we are and where we came from in this way should awaken in us a profound sense of gratitude and a sense that a fitting response to such care is to become the kind of person who makes the goods of others her own—to become one who cares for others without condition or calculation. When one remembers how he came to be who he is, through this sustaining network of unconditional care and concern, he becomes alive to the fact that it is not possible to repay those who supported us; the only response is to extend the same care and concern to others in need, not because it satisfies a balanced owed, but because this is what it means to become one who is responsive to others solely because of their needs, without calculation or self-interest. We will be able to offer such care and concern because in having received it, we *become* people capable of extending it to others.

Within this framework, one's gaze is not fixed, limited to her inner self and its depths. One's attention instead turns outward, understanding that flourishing is becoming a participant and steward of the network of giving and receiving that sustains

life as humanly lived. This outward-facing vision is augmented, strengthened, and sharpened by memory and moral imagination.

What goods, virtues, and practices are necessary, then, to participate in and contribute to the network of giving and receiving that is a response to the interdependence of embodied human life? They are what MacIntyre has called "the *virtues of acknowledged dependence*."[76] It is through the cultivation and practice of these virtues that one becomes a person capable of the relationships of "uncalculated giving and graceful receiving" that characterize human flourishing.[77] The virtues of uncalculated giving include just generosity, hospitality, and "misericordia." Just generosity is manifest by acting in the aid of another merely on the grounds of her apparent need. It is *just* in the sense that it is fitting to return what we have received, and it is *generous* in the sense that is offered in genuine regard for the particular other in need. The measure of the response owed is proportionate to that need, and not a function of self-interest or rational calculation of likely return to the caregiver. Hospitality is the duty to render aid to the stranger simply because he or she is a stranger, ungrudgingly and without condition. Misericordia is the virtue of taking on the suffering of another as your own, which can oblige one to provide care and assistance, or if this is not possible, to accompany the other in his or her suffering.

The principal virtue of graceful receiving is the practice of *gratitude*. This is the fitting recognition and response to the care of others, past, present, and future who support us in our dependence. Again, the fruits of such gratitude include the desire and disposition to extend the virtues of uncalculated giving to those in need, because they are in need.

Another good that flows from both retrospective and anticipatory gratitude for the care and concern of others, as well as the giftedness of life more generally, is *humility*. As Michael Sandel pointed out, recognition that our life and talents are not of our own making can be a powerful counterweight to prideful self-regard. Moreover, it can temper a disposition toward rational mastery and a purely extractive attitude toward ourselves, others, and the natural world. If we did not create ourselves and depend upon others throughout our lives, the world and those in it are not simply materials for us to rationally order, harness, and exploit for our own projects. This "ethic of giftedness," as Sandel called it, awakens the felt need to share with others—including especially those who were not as fortunate in the natural distribution of gifts and benefits.[78] Embracing the gifts of one's life with gratitude and humility makes one especially alive to the least advantaged who have not received the gifts they need to flourish on their own. This might provide the principle of sharing that is missing from an anthropology of isolated individual wills seeking to realize their own self-invented dreams.

Moreover, gratitude and the humility that travels with it can give rise to what Sandel (quoting theologian William F. May) calls "*openness to the unbidden*."[79] This is a disposition of welcoming and hospitality towards others in all their uniqueness and particularity, a toleration of imperfection and difference. This is the opposite of raw choice, rational mastery, and control. Sandel notes that this virtue is most clearly demonstrated (and learned) in a parent's acceptance of her child as a gift, rather than a project or vessel into which a parent pours his own

hopes and dreams. Openness to the unbidden is closely tied to MacIntyre's vision for "the paradigm of good motherhood and fatherhood" which is seen most clearly and beautifully in the parents of seriously disabled children.[80]

Gratitude for the gifts of others' support and life itself is also fertile ground for the cultivation of the sense of *solidarity*—extending one's field of concern to encompass those beyond his immediate circle of family, friends, and community, to encompass the wider circle of humanity. It grows from the recognition that dependence on the generosity and uncalculated giving of others is a universal condition of human beings, owing to their embodied existence.

Another fruit of gratitude and the acknowledgement of human interdependence is a sense of human *dignity*. While "dignity" is a famously contested concept, the sense here is one of the intrinsic equal worth of all human beings who are alike in vulnerability, neediness, and subject to natural limits. All human beings stand in the vast and particular networks of giving and receiving necessary for human flourishing. All human beings are created and embodied, unrepeatable, precious, and fundamentally equal. All are equidistant from Pascal's "two infinities" between which humankind is situated.[81] The equal dignity of all human beings in virtue of their humanity becomes clear once all of the tests and standards (mostly focused on cognition and active powers) devised by the strong to measure the ultimate worth of the weak, according to the former's interests, are stripped away and abandoned.

For these fruits to grow from gratitude and the insights that follow from it, it is necessary to cultivate and practice the virtue

of *truthfulness*. It is necessary to be honest with and about oneself and his nature as an embodied and thus interdependent being. And one must be honest with others as the dialogical nature of our shared life unfolds.

Having considered the many virtues of acknowledged dependence, it is possible to see one overarching good under which all of these goods and practices necessary to the flourishing of the individual and shared lives of embodied beings might be situated. And that is the good of genuine *friendship*. Just generosity, hospitality, misericordia, gratitude, humility, openness to the unbidden, solidarity, dignity, and truthfulness, are all virtues and goods that cohere within the concept of friendship, understood as a relationship of persons who make one another's goods their own. Friendship, in this sense, is an essential good for the flourishing of embodied beings. One is supported and sustained throughout his life by those who make his good their own without calculation or expectation of return. And by receiving such support, one develops into the kind of person who can and wants to be just this sort of friend.

What kind of education of affections and inclinations is required to sustain these goods and practices of virtues of acknowledge dependence? To remember the body and its meaning for our lives and relationships, it is necessary to cultivate the moral imagination. One must learn to *see* himself in the dependent child, the disabled, and the elderly to remember his origins and his future. And to feel gratitude to those who have in the past and will in the future sustain his life and thriving. He must learn to *see* in those who need aid the people who provide the opportunity for him to *become* a friend through the practice

of uncalculated and unconditional giving. These others become the occasion for the practice of generosity, hospitality, misericordia, humility, openness to the unbidden, solidarity, honesty, and respect for dignity.

Alongside these virtues and goods, an additional corrective to the idea of expressive individualism are practices that draw one's gaze from inside toward the outside. These are practices that take one outside of oneself, and that reveal the reality of interdependence and relationality of life as humanly lived. The paradigm for such a practice, which becomes directly relevant to the discussions that follow about public bioethics, is *parenthood*. Sandel describes parenthood as a "school of humility," in which we ideally accept children as gifts rather than products of rational control and place their needs and futures above our own.[82] The lived reality of dependence, relationality, and intersubjectivity comes into sharpest relief between parents and children. Becoming a parent makes it (sometimes painfully) clear that one's good is not entirely self-contained to the truth and goals found solely by interrogating one's inner depths.

The shift from an expressive individualist anthropology to one of embodiment owing to parenthood can occasionally be seen in popular culture. At the conclusion of his film *Close Encounters of the Third Kind*, Steven Spielberg's protagonist leaves his family to join the aliens on their spacecraft to pursue his lifelong dream and obsession. In a documentary on the making of the film, Spielberg observed that he wrote this ending before he became a parent and "would never have made *Close Encounters* the way I made it in '77, because I have a family that I would never leave."[83]

The radical reorientation of one's perspective as a parent is not limited to drawing his gaze outward only to his children, but it transforms how we view all other people, within the paradigm of parent and child. In the American sitcom "The Office," the lead character Pam Beesley captures this in her account of how she now views the creepy and villainous bondage slave known as "The Gimp" in Quentin Tarantino's dark but comic film *Pulp Fiction:* "I used to watch *Pulp Fiction* and laugh, and now I'm like, that poor gimp is somebody's child!"[84]

Other practices that can shift the inward gaze outward include participation in what Robert Bellah described as "communities of memory"—associations with their own stories and traditions that "can allow us to connect our aspirations for ourselves and those closest to us with the aspirations of a large whole and see our own efforts as being in part, contributions to the common good."[85]

When Taylor, MacIntyre, Sandel, Bellah, and others focused their critique of expressive individualism, primarily on the domains of academic philosophy and the social practices of modern Western culture, they did not focus on the institutions of the law. But as the subsequent chapters will illustrate, expressive individualism is manifest there as well. Legal icon and Dean of Harvard Law School Roscoe Pound (1916–1936) noted in his magisterial work *The Spirit of the Common Law* that American law is deeply animated by a conception of personhood akin to that identified by Sandel, Taylor, and others. Indeed, Pound described American law as "characterized by an extreme individualism," such that "the isolated individual is the center of many of its most significant legal doctrines," and features "an

uncompromising insistence upon individual interests and individual property as the focal point of jurisprudence."[86] Pound sketched out a multilayered account of how this came to be, including the influences of eighteenth century political theories, Puritanism, and other factors. Harvard law professor and former U.S. Ambassador to the Holy See Mary Ann Glendon likewise observed (and critiqued) the individualism at the heart of much of American law which embraces as paradigmatic the "free, self-determining, and self-sufficient individual."[87]

Insights from this chapter about expressive individualism and the anthropological "corrective" of recalling our embodiment and its meaning will anchor the following analysis of three "vital conflicts" of American public bioethics—the vexed legal and policy disputes over abortion, assisted reproduction, and end-of-life matters. Expressive individualism is the underwriting anthropology of all of these domains. Because this account of human identity and flourishing omits the lived reality of human embodiment, with all the consequent gifts and challenges of dependence, vulnerability, and natural limits, it is not a suitable normative foundation for the law and policy in this field. It cannot make sense of or respond justly or humanely to those lives that are characterized by radical dependence, and who are historically the victims of exploitation and abuse, such as the victims identified by Beecher, the sharecroppers of Tuskegee, or the just-aborted newborns discussed in the Kennedy hearings. What is needed is a new vision and framework. In the chapters that follow I will explore how the virtues of acknowledged dependence might be integrated into the habits of thought and even the laws and policies of American public bioethics.