

Mapping a Method for Dialogue: Exploring the Tensions between Razian Autonomy and Catholic Solidarity as Applied to Euthanasia

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IN THE MIDST OF polarizing culture wars, many long not only for a peaceful truce, but also for a glimpse of the way forward—some indication of a path to help us communicate across our deep differences and articulate a common commitment to building a more humane and just society. It is in this spirit that theologian, bioethicist and law professor Cathleen Kaveny endeavors to construct a “bridge” between secular liberal legal theory and the Catholic intellectual tradition.¹

In *Law's Virtues: Fostering Autonomy and Solidarity in American Society*, Kaveny chooses the work of Joseph Raz as her primary conversation partner as he sets out a theory of “liberal perfectionism” in *The Morality of Freedom* (1986).² Those who appreciate the broad framework of Catholic social thought might find much that is attractive in Raz’s 1986 analysis. Raz’s rhetoric of simultaneous respect for human freedom and a shared concern for social good resonates deeply with Catholic perspectives on human fulfillment and social life.

But for the project of constructing a bridge between profoundly different systems of thought, it can be problematic to work with a text that remains at an extremely high level of abstraction. As legal theorist Jeremy Waldron critiqued, when it comes to understanding exactly “what makes an option or an individual’s conception of the good repugnant or immoral,” *The Morality of Freedom* says “almost nothing.”³ To make the conversation even more complex, recent scholarship in which Raz articulates a vigorous defense of a broad

¹ Cathleen Kaveny, *Law's Virtues: Fostering Autonomy and Solidarity in American Society* (Washington, DC: Georgetown University, 2012), 27.

² Joseph Raz, *The Morality of Freedom* (New York: Oxford University, 1986).

³ Jeremy Waldron, “Autonomy and Perfectionism in Raz’s *Morality of Freedom*,” *Southern California Law Review* 62 (1988-1989): 1130.

right to voluntary euthanasia reveals striking disjunctions between his theory and the Catholic intellectual tradition.⁴

This article takes the complexity implicit in Kaveny's efforts as a springboard for reflection on methods of dialogue when conversation partners seek to understand each other across profound cultural and intellectual differences. The first part of the analysis sketches a description of Kaveny's project with an appreciative eye for the aspects of Razian autonomy that may be attractive to those who locate themselves within the Catholic intellectual tradition. The second part tests the strength of the project by probing the disjunction between the theoretical descriptions of autonomy in Raz's abstract analysis as compared with his recent argument in favor of the legal right to voluntary euthanasia. The third part opens out some of the methodological questions that emerge from observations about these disjunctions. The fourth part explores some of the methodological implications of what I see as the powerful driver for Kaveny's chapters on euthanasia—a personal narrative in which a bishop of the Catholic Church describes his spiritual journey with cancer—and considers against this backdrop the role of narrative in the larger project of bridging deep differences.

KAVENY'S BRIDGE BETWEEN RAZIAN AUTONOMY AND CATHOLIC SOLIDARITY

In the opening chapter of *Law's Virtues*, Cathleen Kaveny is critical of the extent to which liberal theory has perpetuated individualistic interpretations of the role of liberty which have resulted in what she perceives to be distorted perspectives on communal responsibility. She rejects as too negative and individualistic Joel Feinberg's subjectivist account of value in which goods are "valuable because they are sought after and valued."⁵ Such theories, she notes, fail "to acknowledge a social component to both the exercise and protection of autonomy," and suffer the limitation of construing autonomy "only in a way that places it in opposition to tradition, community and culture."⁶

Hoping to identify a more promising conversation partner within the liberal tradition, Kaveny gravitates toward "liberal perfectionism," which she considers to be a corrective internal to liberalism.⁷

⁴ See Joseph Raz, "Death in Our Life," *Journal of Applied Philosophy* 30 (February 2013): 1-11. A draft version of this lecture was posted to the Social Science Research Network on May 29, 2012.

⁵ Kaveny, *Law's Virtues*, 22.

⁶ Kaveny, *Law's Virtues*, 25.

⁷ Kaveny, *Law's Virtues*, 23. Compare Loren E. Lomasky, "But Is It Liberalism?" *Critical Review* 4, nos. 1-2 (1990): 86-105, esp. 86-7. Lomasky argues that Raz's rejection of standard liberal linchpins such as neutrality, rights, equality, anti-perfectionism,

As bioethicist Craig Peterson explains, in contrast to “anti-perfectionists” who argue that it is not the role of the state “to enforce deep or substantive conceptions of what constitutes the ‘good life’ upon its citizens,”⁸ perfectionist liberals “argue that it is necessary to focus on a substantive theory of the good—the key values that are truly constitutive of human well-being. Those values are perfectionist, for it is the very pursuit of them that truly makes life fulfilling and rewarding.”⁹

Further, as Denise Meyerson defines, state perfectionists hold that the state is “legitimately concerned with the moral character of its citizens.”¹⁰ Raz, for example, “believes that there is nothing wrong in principle with the state encouraging citizens to lead good lives, provided that the state’s judgments are sound.”¹¹ Thus for Raz the moral ends of choices and actions are not indifferent. Raz explains: “The morally good person is he whose prosperity is so intertwined with the pursuit of goals which advance intrinsic values and the well-being of others that it is impossible to separate his personal well-being from his moral concerns.”¹²

As Kaveny highlights, much in Raz’s theory of liberal perfectionism seems to track principles and projects that are also of concern to Catholic social thought. For Raz “human freedom is not value-free but is oriented toward enabling and supporting human beings in living morally valuable ways of life.”¹³ Kaveny explains how in contrast to subjectivist liberal theories, for Raz:

The ultimate point of negative freedom is positive freedom; the agent’s freedom from the restrictions and requirements of others only bears fruit when the agents grab hold of that opportunity in a positive way to help shape their own identities and place their imprints upon the circumstances under which they will live.¹⁴

Further, Raz also appreciates the extent to which commitments are socially embedded: “Our projects and relationships depend on

subjective preference and individualism, in favor of an effort to enshrine autonomy as the core value of a justifiable liberalism, ultimately founders as a liberal structure.

⁸ Craig Paterson, *Assisted Suicide and Euthanasia: A Natural Law Ethics Approach* (Burlington: Ashgate, 2008), 155. Paterson notes as examples the work of Ronald Dworkin and John Rawls.

⁹ Paterson, *Assisted Suicide and Euthanasia*, 165. See also Peter de Marneffe, “Liberalism and Perfectionism,” *American Journal of Jurisprudence*, 43 (1998): 99-116. Paterson discusses the relation between liberalism and perfectionism according to varying understandings of both terms.

¹⁰ Denise Meyerson, “Three Versions of Liberal Tolerance: Dworkin, Rawls and Raz,” *Jurisprudence* 3 (2012): 38.

¹¹ Meyerson, “Three Versions,” 38.

¹² Raz, *Morality of Freedom*, 320. See also Kaveny, *Law’s Virtues*, 27.

¹³ Kaveny, *Law’s Virtues*, 23.

¹⁴ Kaveny, *Law’s Virtues*, 23.

the form they acquire through social conventions.”¹⁵ As Kaveny summarizes, in contrast to other liberal theories, Razian autonomy points to “a richer vision of the person situated in and interacting with a community in order to develop an identity that draws equally upon his internal, unique talents and motivations as well as those opportunities provided by the broader society.”¹⁶

Against this backdrop, Kaveny traces the parallels between Raz’s articulation of the value of personal autonomy and the concerns of Catholic social thought. For Raz, individual autonomy has three fundamental requirements: “1) the raw mental capacity to make and carry out choices; 2) freedom from attempts at manipulation as well as from coercion on the part of other people; and finally, 3) a range of morally worthwhile choices from which to choose. Options cannot exist outside the creative and constructive social context of a group.”¹⁷

As Kaveny explains, the components of the virtue of solidarity as articulated in the Catholic intellectual tradition “correspond to and supplement Raz’s conditions for true human autonomy in ways that are very illuminating.”¹⁸ Like Razian autonomy, solidarity also rests on the premise of 1) meeting basic needs; 2) recognizing the nature of each person as essentially social; and 3) providing vehicles through which all persons can contribute to the community.¹⁹

In light of these parallels, the heart of Kaveny’s thesis is that in cultures such as that of the contemporary United States,

the law needs to teach and support two virtues particularly appropriate to our time and place: autonomy (understood in Joseph Raz’s terms) and solidarity (understood in terms of Catholic social teaching). Without denying the existence of significant tensions between these two realms of thought, I nonetheless believe that bringing Catholic social thought into conversation with the work of perfectionist liberal legal theorists such as Joseph Raz highlights ways in which both are mutually necessary.²⁰

¹⁵ Raz, *Morality of Freedom*, 383. See also Kaveny, *Law’s Virtues*, 24.

¹⁶ Kaveny, *Law’s Virtues*, 27.

¹⁷ Kaveny, *Law’s Virtues*, 25.

¹⁸ Kaveny, *Law’s Virtues*, 28.

¹⁹ Kaveny, *Law’s Virtues*, 28.

²⁰ Kaveny, *Law’s Virtues*, 33. It would be interesting to further explore Kaveny’s characterization of autonomy as a *virtue*, and the potential disjunction with Raz’s own descriptions. See Joseph Raz, “Facing Up: A Reply,” *Southern California Law Review* 62 (1988-1989): 1153-1236, at 1228. Raz is discussing Jeremy Waldron’s critique of Raz’s argument that an autonomous, demeaning, bad, or worthless life is worse than a non-autonomous life which is bad, demeaning, or worthless in similar ways. Raz responds: “Waldron’s objection is based on an analogy with virtue. But autonomy is not a virtue but a property of a life. The question is, does that property contribute to the value of the life. The answer, to which we both agree, is that it does

Kaveny is not the first to recognize the potential affinity between liberal perfectionism and the Catholic intellectual tradition. For Paterson, a natural law theorist, “[w]hat is refreshing in perfectionist accounts of liberalism is the need to embrace and found state concerns on what is necessary for the promotion of human well-being. Only by embracing and promoting values can we begin to legitimize the exercise of state power in a way that credibly respects the nature of persons.”²¹

Especially for pluralistic democratic societies, Raz’s version of perfectionist liberalism seems to support the kind of social harmony that fosters commitment to the good despite profound difference. As Kaveny highlights, Raz “holds that the rationale for protecting freedom stems from the recognition that there are a number of mutually incompatible but objectively morally worthwhile ways of living one’s life, all of which deserve protection precisely because they are objectively morally worthwhile.”²²

Given these profound conceptual parallels with the Catholic intellectual tradition, it does not seem to be too much of a stretch to explore how Raz’s version of secular liberal theory might be an important conversation partner.²³ As Kaveny’s analysis in *Law’s Virtues* moves through various applications, from abortion to the use of genetic information, from euthanasia to voting, her nuanced and tightly woven arguments seem to present a convincing case for a fruitful dialogue between Razian autonomy and Catholic solidarity.

EUTHANASIA: RAZIAN AUTONOMY BETWEEN THEORY AND APPLICATION

Raz is a good conversation partner for Catholic social thought so long as his part of the analysis remains abstract and conceptual. But when Raz gets down into the weeds of a specific application, significant disjunctions between his system of thought and the Catholic intellectual tradition emerge. This section explores Raz’s concept of autonomy in light of his May 2012 lecture, “Death in Our Life.” It argues that his analysis in favor of a strong “respect-based right” to

so only if the life is spent in valuable pursuits.” See also Waldron, “Autonomy and Perfectionism,” 1127.

²¹ Paterson, *Assisted Suicide and Euthanasia*, 165. Kaveny’s project also runs parallel to progressive efforts to move beyond the spent sterility of an exclusive focus on procedural justice toward a more robust conversation in legal theory to develop categories of “normative jurisprudence.” For example, see Robin West, *Normative Jurisprudence: An Introduction* (New York: Cambridge University, 2011), 10. West argues for a “rejuvenated normative jurisprudence that centralizes, rather than marginalizes, the concept of individual, common, social and legal good and the varying accounts of human nature that might inform such understandings.”

²² Kaveny, *Law’s Virtues*, 23. See Raz, *Morality of Freedom*, 396.

²³ Kaveny, *Law’s Virtues*, 27.

voluntary euthanasia makes it difficult to imagine a sustainable bridge between his system of thought and the Catholic intellectual tradition.

Raz summarizes his perspective on the right to euthanasia as a function of personal autonomy. He states his focus clearly: "We are concerned with a right to euthanasia because the ability to choose how and when one's life will end is valuable in itself."²⁴ For Raz, the capacity for rational agency is the basis of a duty to respect those who have it, and in particular to respect the choices that people make about how to lead their lives. Rational agents should be able to exercise their autonomy in order "to determine when and how to end one's life."²⁵ He explains: "Having that option is valuable, and therefore it is protected by the right to euthanasia. The right to life protects people from the time and manner of their death being determined by others, and the right to euthanasia grants each person the power to choose themselves that time and manner."²⁶

This concrete application clarifies exactly what Raz means by his definition of autonomy as "the capacity to be 'part-author' of one's own life by making a successive series of choices that form a more or less coherent narrative."²⁷ For Raz, "the ideal of personal autonomy is the vision of people controlling, to some degree, their own destiny, fashioning it through successive decisions throughout their lives."²⁸ Control over one's life is a pervasive and expansive core value in his work. As he explained in a 1997 essay:

My life is mine to the extent that I am in charge of it. It is not mine if I lose control, if urges and emotions invade me which are out of my control. When they are under my control they are intelligible to me. I understand them, and why I have them.... Reason makes us intelligible to ourselves. Through it we direct our lives, we are in control.²⁹

For Raz, when control is not present, it is as if we are held hostage by an intruder. He explains: "Some thoughts we have, emotions we feel, some of our beliefs, desires and actions are experienced as not really ours. It is as if we lost control, as if we were taken over, possessed by a force which is not us."³⁰

In light of this feature of his thought, it is not surprising that in making an argument for the normative power to choose the time and

²⁴ Raz, "Death in Our Life," 8.

²⁵ Raz, "Death in Our Life," 8.

²⁶ Raz, "Death in Our Life," 8.

²⁷ Kaveny, *Law's Virtues*, 53.

²⁸ Raz, *Morality of Freedom*, 369. See also Kaveny, *Law's Virtues*, 153.

²⁹ Joseph Raz, "The Active and the Passive," *Aristotelian Society Supplementary Volume* 71 (June 1997): 226-7.

³⁰ Raz, "The Active and the Passive," 227.

manner of one's death,³¹ Raz considers the capacity to control the time and manner of one's death to be an enrichment to one's life. He argues: "Inevitably shaping one's dying contributes to giving shape, contributes to the form and meaning one's life has. Those who reflect, plan, and decide on the manner of their dying make their dying part of their life. And if they do so well then by integrating their dying into their life they enrich their life."³² This sense of control, according to Raz, could be the door to alleviate the fear of death that pervades our life:

The main way in which making death a part of our life by giving us greater control over its time and manner changes our life is not, however, by its impact on specific attachments or pursuits. The main impact is likely to be more pervasive and diffuse. Consciousness of death and fear of dying—a separate factor, to be sure, but one which in our life is hard to separate from knowledge of our mortality—have a way of colouring much of our life, and the changing attitude I am envisaging will likewise affect our life, real and imaginative, in multifarious and diffuse ways.³³

Thus the value of a "broad right to euthanasia," he argues, is "not only the option to escape certain undesirable conditions at the end of one's life, but also and primarily to protect an option to shape the way one's life ends, by deciding on its time and manner."³⁴

For Raz, seizing power over this aspect of one's life is a door to freedom from helplessness, terror and alienation. He argues:

So, while the power to decide the time and manner of one's death, when wisely used, will contribute to the value of various episodes in one's life, the main positive effect I have in mind is the full, guiltless acceptance of the power itself. It can transform one's perspective on one's life, reduce the aspects of it from which one is alienated, or those that inspire a sense of helplessness and terror. It is a change that makes one whole in generating a perspective, a way of conceiving oneself and one's life free from some of those negative aspects.³⁵

The Meaning of Razian Autonomy in Light of his Analysis of the Right to Euthanasia

In *Law's Virtues*, Kaveny admits that there are "significant tensions" between the aspects of Razian autonomy she discusses and Catholic social thought.³⁶ These tensions are even more evident in

³¹ Raz, "Death in Our Life," 1.

³² Raz, "Death in Our Life," 9.

³³ Raz, "Death in Our Life," 10.

³⁴ Raz, "Death in Our Life," 9.

³⁵ Raz, "Death in Our Life," 10.

³⁶ Kaveny, *Law's Virtues*, 33.

light of his analysis in “Death in Our Life.” Raz’s lecture was available online a few months prior to the publication of *Law’s Virtues*, but I appreciate that it appeared too late on the scene to be integrated into Kaveny’s analysis. The discussion that follows intends not to critique Kaveny’s work, but to ask a forward looking question: In light of “Death in Our Life,” how should theorists of Catholic social thought evaluate Kaveny’s argument that Razian autonomy is an important complement to Catholic solidarity?

When it comes to this specific application, it would certainly be an understatement to describe Raz’s views as in “significant tension” with the net prohibition of euthanasia as articulated by Catholic moral theology. As Kaveny notes, in the Catholic theological tradition, “It is wrong to perform any action with the aim of taking innocent life, whether one’s own or that of another.”³⁷ As John Paul II explained in *Evangelium vitae*: “Euthanasia is a grave violation of the law of God, since it is a deliberate and morally unacceptable killing of a human person.”³⁸ While this teaching does not mean that one is obligated to try to prolong one’s life with any means, it does lead to a clear rejection of euthanasia and physician assisted suicide.³⁹ Beyond this disjunction in the normative analysis, it is also interesting to note how Raz’s concrete application dramatically undercuts the seeming parallels between his version of perfectionist liberalism and the Catholic intellectual tradition.

First, recall Kaveny’s rejection of Feinberg’s subjectivist account of value in which goods are “valuable because they are sought after and valued.”⁴⁰ Raz’s concrete analysis of the exercise of autonomy at the end of one’s life is fraught with similar tensions. Objective considerations about “quality of life” all but disappear, because such matters should be assessed according to the subjective perspective of each rational agent. Raz explains: “When it comes to rational agents, the duty to respect their rational powers, and protect their ability to use them, modifies the implications of quality of life considerations: they become matters to be considered by each person regarding their own lives.”⁴¹ In fact, in this application to euthanasia, the exercise of autonomy looms so large that it seems to overshadow all other considerations. Raz submits:

Contemporary claims for a right to euthanasia are claims to this rights-based approach. They recognise that there are quality of life reasons for ending life, but take them to be matters over which each

³⁷ Kaveny, *Law’s Virtues*, 146.

³⁸ John Paul II, *Evangelium vitae*, 65 (1995). See *Catechism of the Catholic Church* (Vatican: Libreria Editrice Vaticana, 1994), nos. 2276-7.

³⁹ Kaveny, *Law’s Virtues*, 146; *Catechism*, nos. 2278-9.

⁴⁰ Kaveny, *Law’s Virtues*, 22.

⁴¹ Raz, “Death in Our Life,” 9.

person has sovereign power to decide his or her course. And if nothing else then that sovereignty means that the right can be exercised for a variety of reasons, and also for presumed reasons that are either no reasons at all, or not adequate to justify ending one's life.⁴²

Second, recall that Raz seemed to be an attractive conversation partner for Catholic social thought because at least in theory he acknowledges "a social component to both the exercise and protection of autonomy," in contrast to a construal of autonomy "only in a way that places it in opposition to tradition, community and culture."⁴³ In theory, Razian autonomy "is also social in both its inception and its goals."⁴⁴

On the surface, one might say that Raz's "respect-based right" to euthanasia does include "other regarding" concerns. Probing deeper, the application of this theory to the question of end-of-life decision-making reveals a vision of human experience which is strikingly isolated and atomistic. Factors include:

- 1) Sparing the effort and distress that looking after ailing people causes those who are personally involved in looking after them;
- 2) Preventing one's savings from being used up on medical and other forms of care in order to have more to leave by one's will;
- 3) Saving the public the expense of providing medical, nursing, and other publicly provided care;
- 4) Preventing the memory of a person one cares about as being one of someone in decline.⁴⁵

In light of these factors, Raz's definition of "social" might be summarized as the right to maintain an image of isolated individual control, posing neither a bother nor an expense to family, friends and the public.

Finally, in theory, Raz seems to point the way forward for the complexities of pluralistic democratic societies in which we may encounter deep disagreement on the definition of the good. Perfectionist liberalism seems to offer a path for negotiating some of the "mutually incompatible but objectively morally worthwhile ways of living one's life, all of which deserve protection precisely because they are objectively morally worthwhile."⁴⁶ In theory, Razian autonomy poses

⁴² Raz, "Death in Our Life," 9.

⁴³ Kaveny, *Law's Virtues*, 25.

⁴⁴ Kaveny, *Law's Virtues*, 129.

⁴⁵ Raz, "Death in Our Life," 10-11.

⁴⁶ Kaveny, *Law's Virtues*, 23. See Raz, *Morality of Freedom*, 396.

limits based on moral and social ends: “No society is required to make morally objectionable options available to individuals; his observation can be extended to assert that no society has to make available morally objectionable means to achieve those options.”⁴⁷

When Raz argues for legalizing voluntary euthanasia, he leaves precious little room for debate about what is “morally objectionable.” As indicated by a “small point, illustrating the direction of travel,”⁴⁸ if voluntary euthanasia were to be legalized, then in Raz’s view there should be “widespread consequences for professional and occupational opportunities,” which “cannot be objected to.”⁴⁹ Because “no one has an unconditional right to be a medical practitioner,” and such right is conditioned on being “able and willing to perform the duties that go with jobs for which medical skills are needed,”⁵⁰ the duty to assist a patient in this regard should be considered part of the job if voluntary euthanasia were legalized. Period.

In theory, Raz seems to champion the social harmony that could be the result of “moral pluralism,” which “claims not merely that incompatible forms of life are morally acceptable but that they display distinct virtues, each capable of being pursued for its own sake.”⁵¹ In his application to euthanasia, Raz argues that space for doctors who are conscientious objectors to exercise their distinct visions of the good should be shut down completely. If voluntary euthanasia were to be legalized, it would generate “a conflict of reasons in which the conscientious objectors lose.”⁵²

The Elusive Harm Principle

Are there other principles of liberal theory that might pose limits to the expansive role that autonomy plays in Raz’s system of thought? For example, the “harm principle” allows the exercise of state power over individuals for the purpose of preventing harm to others. This could help to flesh out the definition of what is “morally objectionable.”⁵³ In *The Morality of Freedom*, Raz explains how the harm principle connects with his account of perfectionist liberalism. It is “derivable from a morality which regards personal autonomy as an essential ingredient of the good life, and regards the principle of auton-

⁴⁷ Kaveny, *Law’s Virtues*, 129.

⁴⁸ Raz, “Death in Our Life,” 2.

⁴⁹ Raz, “Death in Our Life,” 3.

⁵⁰ Raz, “Death in Our Life,” 3.

⁵¹ Raz, *Morality of Freedom*, 396.

⁵² Raz, “Death in Our Life,” 3.

⁵³ John Stuart Mill, *On Liberty*, ed. E. Rappaport (Indianapolis: Hackett, 1978), 9. See Neil M. Gorsuch, “The Right to Assisted Suicide and Euthanasia,” *Harvard Journal of Law & Public Policy* 23 (2000): 666.

omy, which imposes duties on people to secure for all the conditions of autonomy, as one of the most important moral principles.”⁵⁴

For Raz, disregard for the harm principle can lead to a violation of autonomy:

First, it violates the condition of independence and expresses a relation of domination and an attitude of disrespect for the coerced individual. Second... there is no practical way of ensuring that the coercion will restrict the victims' choice of repugnant options but will not interfere with their other choices.⁵⁵

Thus, “[a]utonomy based duties never justify coercion when there is no harm.”⁵⁶

But how does one define “harm”? In *The Morality of Freedom*, Raz admits that the concept of “causing harm” is a “normative concept acquiring its specific meaning from the moral theory within which it is embedded. Without such connection to a moral theory the harm principle is a formal principle lacking specific concrete content and leading to no policy conclusions.”⁵⁷ John Safranek draws out the implications of this link:

Even if ascriptive autonomy does not require an individualistic view of human beings, it entails a profound dilemma. The principle of autonomy or liberty requires a “harm” principle to justify prohibiting certain types of autonomous acts, but whether an act is specified as harmful or harmless will depend on the preferred theory of the good. Therefore the normative use of the principle of autonomy is performatively self-refuting: when scholars proscribe certain autonomous acts in the name of harm, or defend other autonomous acts judged harmless, they impose an axiology and subvert autonomy.⁵⁸

Considering the specific problem of assisted suicide, Safranek concludes: “The debate over assisted suicide is a conflict between competing theories of the good, and not a dispute between proponents of autonomy and the sanctity or dignity of life.”⁵⁹

In light of such different ways of defining what is “objectively morally worthwhile,” what is “social,” and what is “harm,” can Razian autonomy be in dialogue with Catholic solidarity? When such terms were considered in the abstract it was hard to tell whether potential differences would be innocuous or devastating. In light of

⁵⁴ Raz, *Morality of Freedom*, 415.

⁵⁵ Raz, *Morality of Freedom*, 418-19.

⁵⁶ Raz, *Morality of Freedom*, 415.

⁵⁷ Raz, *Morality of Freedom*, 414.

⁵⁸ John P. Safranek, “Autonomy and Assisted Suicide: The Execution of Freedom,” *Hastings Center Report* 28 (July-August 1998): 33.

⁵⁹ Safranek, “Autonomy and Assisted Suicide,” 35.

Raz's specific application to the law and policy of euthanasia, it turns out that the disjunctions are indeed devastating.

MAPPING A METHOD FOR DIALOGUE

When analyzing the relationship between *The Morality of Freedom* (1986) and "Death in Our Life" (2013), one could argue that Raz left the normative questions open when he wrote the earlier analysis. On that basis, it would be fair to take his abstract analysis of the functions of autonomy to places where, at least in light of his more recent work, Raz himself would not go. This leads to an approach in which one attempts to bring the particular abstract concepts from different systems into dialogue in order to illuminate a practical application. This raises a number of methodological questions.

First, one might consider the extent to which we need to account for a linguistic mismatch. The problem is not only finding a way to communicate when the same words have different meanings within different systems of thought. The deeper problem is that the meaning of those words may remain so opaque that we cannot engage the differences or similarities in a substantive way. Even if we are using the same words to describe concepts within differing thought systems—e.g., "good" and "harm"—the substantive content given to those words within one's own thought system may differ to such a degree that it is difficult to draw working comparisons. In W.B. Gallie's turn of the phrase, we face the interpretive problems inherent in "essentially contested concepts."⁶⁰

A second and related risk is that when one draws on abstract principles from a thought system that is not one's own, the meaning one gives to those principles may be distorted by projections of one's own thought system, and thus become disconnected from the meaning that the author may have originally intended. For example, the concept of "perfectionist liberalism" holds a certain attraction for Catholic social thought theorists because of a shared concern about social ends and the good, and a seemingly shared readiness to put the brakes on the whims of subjective personal choice. So long as definitions of "good" or "harm" remain undefined and without context, we can imagine that we are on the same page. But as evident from the discussion above, when we enter into the complexity of comparisons between normative analyses of concrete applications, it is often there that we see more clearly what we mean by the words we say, and realize how far apart we are in what we mean.

A third risk in bringing abstract concepts from different systems into dialogue regarding practical applications is that severe distortions can emerge due to the failure to account for the role that a giv-

⁶⁰ See generally W.B. Gallie, "Essentially Contested Concepts," *Procedures of the Aristotelian Society* 56 (1955-56): 167-98.

en concept plays within the distinct thought system as a whole. Within any system of thought, concepts function as part of a larger weave, and are often balanced and tempered by their interaction with other concepts or principles. For example, within the Catholic social thought system, it is difficult to understand the full texture of solidarity without an appreciation for how it interacts with subsidiarity, participation, dignity, and other principles, depending on the context.⁶¹

A particular challenge of the dialogue between Razian autonomy and Catholic solidarity is that within his own system Razian autonomy looms so large that it seems to swallow up other concepts that would hold an important parallel function within the Catholic social thought system. Is Razian autonomy simply too big to share the stage with any other balancing factor? Would Razian autonomy still be Razian if it were not allowed the space to overpower other more “objective” considerations? If one does not account for the role and weight that a particular concept carries within a thought system and how it interacts with other elements of the system, is the comparison doomed to distortion?⁶²

For those familiar with debates within Catholic social thought, questions about how to apply the abstract concepts from Raz’s *Morality of Freedom* in light of his practical analysis of euthanasia in “Death in Our Life,” might bring on an odd sense of *déjà vu*. Catholic social thought debates are often fraught with the tensions that arise when conversation partners of different political stripes agree on broad abstract principles but are unable to resolve their discord over how those principles should be applied in practical circumstances.⁶³ Consider, for example, Raz’s description of self-authorship: “The autonomous person is a (part) author of his own life. The ideal of personal autonomy is the vision of people controlling, to some degree, their own destiny, fashioning it through successive decisions throughout their lives.”⁶⁴ When read through a certain lens, one may

⁶¹ See, e.g., Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church* (Vatican: Libreria Editrice Vaticana, 2004), no. 162. The *Compendium* explains the importance of analyzing the principles of the Church’s social doctrine “in their unity, interrelatedness and articulation.”

⁶² See, for example, Paterson, *Assisted Suicide and Euthanasia*, 165-6. Paterson notes that liberal perfectionists and natural law theorists disagree not on the elements at stake but on the extent to which autonomy should be recognized as “a master good,” potentially at the expense of recognizing other goods.

⁶³ See, for example, Amelia J. Uelmen, “*Caritas in veritate* and Chiara Lubich: Human Development from the Vantage Point of Unity,” *Theological Studies* 71 (March 2010): 29-30. I discuss the heated debates about the interpretation of *Caritas in veritate*.

⁶⁴ Raz, *Morality of Freedom*, 369 (see also 201). See generally Jeremy Waldron, “Moral Autonomy and Personal Autonomy,” in *Autonomy and the Challenges to Liberalism*, ed. John Christman and Joel Anderson (New York: Cambridge University, 2005), 307.

find, as Kaveny described, deep parallels with Catholic notions of personal responsibility, and the consequent commitments to support social structures that facilitate personal responsibility in the ordinary lives of citizens. But as discussed above, when one probes the overarching structure of Raz's thought system as applied to euthanasia, it becomes clear that "part author" suggests, at least to Raz, the "full, guiltless acceptance"—or seizure—of power and control over one's own life and death.⁶⁵ Personal autonomy means assertion of control over boundaries which many religious traditions, including the Catholic intellectual tradition, maintain belong to a creator God.

Similarly, aspects of solidarity as defined within Catholic social thought may sound attractive to people from a variety of backgrounds, as they resonate with aspects of liberal theory. But when one probes the theological roots of this concept, questions emerge about the process for translating the ideas into secular terms. For example, Pope John Paul II locates the roots of solidarity in a profoundly Christian vision of humanity under the common fatherhood of God, as brothers and sisters in Christ, illuminated by the life of the Holy Spirit.⁶⁶ But how far would a vision of solidarity—as understood within Catholic social thought—go without this transcendent root? Can the notion be framed in secular terms without losing the characteristic "thickness" that it has in the context of Catholic social thought?

More broadly, can a framework which is rooted in and bound to a transcendent point of reference be in meaningful conversation with a secular framework? For example, as discussed below, the concept of Catholic solidarity is firmly embedded within the weave of a transcendent point of reference in which the ultimate relinquishment of autonomy and control can even be perceived and experienced as an ultimate good, part of the divine order, in full harmony with a positive notion of freedom. In what ways might this transcendent point of reference make the concept of solidarity in some sense inaccessible to secular understanding and discourse?

In light of current cultural tensions and political polarization, I appreciate the attraction of finding some common conceptual ground, even and especially across profound differences in perspective. I also appreciate that, as Kaveny herself noted, the development of a comprehensive jurisprudence centered on Razian autonomy and solidarity was beyond the scope and audience of the *Law's Virtues*

⁶⁵ Raz, "Death in Our Life," 10.

⁶⁶ John Paul II, *Sollicitudo rei socialis* (1987), no. 40. John Paul II discusses the theological lens which provides a "new criterion" for discerning "in the light of faith a new model of the unity of the human race, which must ultimately inspire our solidarity. This supreme model of unity, which is a reflection of the intimate life of God, one God in three Persons, is what we Christians mean by the word 'communion'."

project.⁶⁷ Nonetheless, I think it is important to acknowledge that the method of choosing abstract principles as prime material for building a bridge across different systems of thought poses some serious and perhaps insurmountable obstacles—including the risk that the points of seeming agreement will be at best opaque, and at worst, manipulative of one or both systems.

The scholarship of legal theorist Robert Cover illuminates this point. Asked to reflect upon the relationship between Judaism and human rights, he confessed: “The first thought that comes to mind is that the categories are wrong. I do not mean, of course, that basic ideas of human dignity and worth are not powerfully expressed in the Jewish legal and literary traditions. Rather, I mean that because it is a legal tradition Judaism has its own categories for expressing through the law the worth and dignity of each human being. And the categories are not closely analogous to ‘human rights.’”⁶⁸

Cover proceeds to explain the “myths,” or “fundamental stories” that give force to the key words within the different systems—for rights, the story of social contract; and for obligation or “mitzvah,” the myth of Sinai.⁶⁹ Each is grounded in a particular history and social context. Each allows for interpretive variation. As revealed by a discussion of particular applications, each has a differing “loaded evocative edge”—for mitzvah the rhetorical advantage is in assignment of responsibility and the definition of communal entitlements;⁷⁰ for rights the rhetorical advantage is in the area of political participation.⁷¹ The different systems solve certain problems “rather naturally,” and encounter in others “conceptual difficulties of the first order.”⁷² Cover emphasizes that it is not “that particular problems cannot be solved, in one system or the other—only that the solution entails a sort of rhetorical or philosophical strain.”⁷³

Cover does not suggest that we need to choose. As he puts it, in the struggle for universal human dignity and equality “we can use as many good myths in that struggle as we can find. Sinai and social contract both have their place.”⁷⁴ But he does conclude his analysis

⁶⁷ See, for instance, Kaveny, *Law's Virtues*, 82.

⁶⁸ Robert Cover, “Obligation: A Jewish Jurisprudence of the Social Order,” *Journal of Law & Religion* 5 (1987-1988): 65.

⁶⁹ Cover, “Obligation,” 66.

⁷⁰ Cover, “Obligation,” 72.

⁷¹ Cover, “Obligation,” 73.

⁷² Cover, “Obligation,” 70.

⁷³ Cover, “Obligation,” 71. For an interesting analysis of similar tensions between human rights discourse and currents of Christian Orthodox thought, see Aristotle Papanikolaou, *The Mystical as Political: Democracy and Non-Radical Orthodoxy* (Notre Dame: University of Notre Dame, 2012), 87-130.

⁷⁴ Cover, “Obligation,” 73. See John Courtney Murray, *We Hold These Truths* (New York: Sheed & Ward, 2005), 39. Murray notes that a civilized structure of “dialogue”

on a personal note, with a personal question: What speaks to me? He confesses “the rhetoric of obligation speaks more sharply to me than that of rights.”⁷⁵

What I find attractive about Cover’s method is that it maintains a strong connection between the words that we use and the “fundamental stories” which give these words their thickest meaning. The “loaded evocative edge” of the differing rhetorical systems is determined by an analysis of concrete applications, which then helps to further flesh out the meaning of abstract principles within a given system. And one does not exclude the other—potentially illuminating comparisons and contrasts unfold from the depth and breadth of this context.⁷⁶

Lessons from the Methods of Interreligious Dialogue

Cover’s method also brings to mind some important lessons learned in the course of the Roman Catholic Church’s encounter with people of different religious traditions. Especially since the Second Vatican Council’s declaration of the relation of the Church to non-Christian religions, *Nostra aetate*,⁷⁷ the Catholic intellectual tradition has been greatly enriched by reflection on this interaction. Speaking specifically about Jewish-Christian relations, Cardinal Walter Kasper distinguished the practices of “dialogue” from “syncretism” and “relativism:”

Dialogue lives from mutual respect for the otherness of the other. Dialogue takes differences seriously and withstands their difficulties.... [Dialogue], when it is serious and honest, cannot be always harmonious and easy.... To bear with [misunderstandings and tensions] is not a setback to the Second Vatican Council or a betrayal of the dialogue; they are—when confronted with mutual respect—the reality of dialogue. Only when we take seriously the other in his/her otherness can we learn from each other and can we be what we should be: a blessing for each other.⁷⁸

would be “no less sharply pluralistic, but rather more so, since the real pluralisms would be clarified out of their present confusion.”

⁷⁵ Cover, “Obligation,” 73.

⁷⁶ See Gallie, “Essentially Contested,” 193. Gallie recognizes that “essentially contested concepts” may be of “permanent potential critical value” and raise the level of quality of arguments in a dispute.

⁷⁷ See, for example, *Nostra aetate*, no. 2. “The Catholic Church rejects nothing which is true and holy in these religions. She looks with sincere respect upon those ways of conduct and of life, those rules and teachings which, though differing in many particulars from what she holds forth, nevertheless often reflects a ray of that Truth which enlightens all men.”

⁷⁸ Quoted in Robert Bonfil, “Jewish Memory, History and Vision,” in *Nostra Aetate: Origins, Promulgation, Impact on Jewish-Catholic Relations*, ed. Nelville Lamdan, Alberto Melloni (Munster: LIT Verlag, 2007), 106.

Especially in initial stages, interreligious gatherings often include time for a shared meal, reflection, and exchange. The opportunities to encounter one another as human beings, to hear one another's stories and to enter, in some way, the world of the other's perspective is essential to building authentic relationships of trust and to opening channels of communication.⁷⁹ Working together on concrete social projects that serve local or international communities provides another vehicle to experience the transformative power of shared goals and commitments. Much of this exchange and work proceeds regardless of the systematic development of shared concepts or shared language, at least initially. Proceeding in this manner, conversations that otherwise would not have occurred due to disagreement over abstract tenets of belief can gradually build the kind of trust and understanding that eventually allows for a mutually illuminating exchange even across marked difference in conceptual beliefs and modes of expression.⁸⁰

How might this analogy inform conversation between Catholic social thought and liberal theory, such that the method for dialogue respects profound differences while at the same time builds mutual understanding even across profound divergence in normative assessments? One possibility is to explore the place and the role of narrative, and the extent to which this genre may help to generate a space in which those with differing perspectives might illustrate for their conversation partners the reasons and experiences which have led to their approach to contested issues, and open themselves to the reasons and experiences that have led the other to adopt a different position.

In law as in interreligious encounters, narratives or "stories" can function as a kind of connective tissue between people with different worldviews. As Robin West describes, stories "expand our knowledge not only of objective history, but also of what is unaccessible, the subjective life of the other. We learn what it is to walk in another's shoes, to experience another's pain, to anticipate another's pleasures, and by so learning we enlarge our individual humanity and our society's sense of inclusion."⁸¹

⁷⁹ See, for example, Amelia J. Uelmen, "Reconciling Evangelization and Dialogue through Love of Neighbor," *Villanova Law Review* 52 (2007): 317. This essay discusses Chiara Lubich's description of the process of listening which allows people of different religious traditions to "open up, reveal themselves to us, express and explain themselves."

⁸⁰ See generally, Chiara Lubich, *Essential Writings: Spirituality, Dialogue, Culture* (Hyde Park: New City, 2007), 337ff. Lubich describes a method for interreligious dialogue and its initial results.

⁸¹ Robin West, *Narrative, Authority and Law* (Ann Arbor: University of Michigan, 1993), 425.

Robert Cover's scholarship is helpful on this point as well. In his essay "Nomos and Narrative," like Kaveny, he uses the image of a bridge, but in his case, also to describe law itself: "Law may be viewed as a system of tension or a bridge linking a concept of reality to an imagined alternative—that is, as a connective between two states of affairs, both of which can be represented in their normative significance only through the devices of narrative."⁸² Thus he defines a "nomos" as "a present world constituted by our system of tension between reality and vision."⁸³

For Cover, what is the role of narrative in the creation of legal meaning? "Because the *nomos* is but the process of human action stretched between vision and reality, a legal interpretation cannot be valid if no one is prepared to live by it.... The transformation of interpretation into legal meaning begins when someone accepts the demands of interpretation and, through the personal act of commitment, affirms the position taken."⁸⁴ For example, in discussing civil disobedience, personal commitment is what builds a bridge between current law and the hope for change: "Our lives constitute the bridges between the reality of present official declarations of the law and the vision of our law triumphant (a vision that may, of course, never come to fruition)."⁸⁵

Of course, narrative cannot be the only or the last word in the political process of developing law and policy—but it is an important complement. Robin West explains the dynamic interplay:

A regime of rights that is unsupported and uncomplemented by narratives that explain the source of those rights does indeed give rise to an excessively legalistic and alienating community, while a society bound by stories and unresponsive to claims of individual right does risk excessive authoritarianism in the name of communitarian necessity or harmony.⁸⁶

An additional feature of narrative, both West and Cover observe, is that it often surfaces when we want to assign or deny responsibility for some event.⁸⁷ Cover explains: "Creation of legal meaning entails, then, subjective commitment to an objectified understanding of a demand. This objectification of the norms to which one is committed frequently, perhaps always, entails a narrative—a story of how the law, now object, came to be, and more importantly, how it came to

⁸² Cover, "Nomos and Narrative," 9.

⁸³ Cover, "Nomos and Narrative," 9.

⁸⁴ Cover, "Nomos and Narrative," 45.

⁸⁵ Cover, "Nomos and Narrative," 47.

⁸⁶ West, *Narrative, Authority and Law*, 426.

⁸⁷ West, *Narrative, Authority and Law*, 426.

be seen as one's own. Narrative is the literary genre for the objectification of value."⁸⁸

I believe that all of these features of narrative can serve as a methodological starting point that may help dialogue partners to render the meaning of their "essentially contested concepts" more transparent to each other. Disagreements may remain, but it may be more likely that they can be worked out on the basis of a deeper appreciation and understanding of the sources and driving motivations of those values. As West describes the argument for narrative: "Stories, not rights talk, enable us to break down barriers between persons from radically different backgrounds, to reclaim and honor the traditions of our past, to empathize with others, and to actually build upon, rather than simply rest upon, the bonds of community."⁸⁹

NARRATIVE IN THE ANALYSIS OF END-OF-LIFE CARE

As may be evident from the earlier discussions, I am not sanguine about the extent to which the concept of Razian autonomy may be helpful for our discussions about an approach to law and legal systems that accord with my hopes for justice and the common good. Interestingly, when it comes to the law and policy of euthanasia, I do not think Kaveny herself is all that sanguine either.

The two chapters that Kaveny devotes to discussion of euthanasia in *Law's Virtues* actually engage Raz's work very little other than to admit that when it comes to facing suffering in the process of dying, Razian autonomy seems to have met its match. As she explains, for Raz "suffering is a wrenching experience because it disintegrates previously autonomous persons, cleaving them from the plans and purposes with which they have defined themselves as part-authors of their own lives."⁹⁰ In Kaveny's two chapters, a Christian narrative of solidarity takes center stage, and it seems expansive enough on its own to speak to important concerns regarding patient autonomy as defined through a Christian lens. As Kaveny explains, one of the arguments against legalizing euthanasia is the concern that it will substantially increase the risk that "patients will be coerced or manipulated into making that fateful choice for the benefit of third parties."⁹¹

From a methodological perspective, how does Kaveny illustrate what Cover might describe as the "loaded evocative edge" of Catholic solidarity? For me, the driver of this part of the book is the personal narrative of the spirit in which Cardinal Joseph Bernardin, the Arch-

⁸⁸ Cover, "Nomos and Narrative," 45.

⁸⁹ West, *Narrative, Authority and Law*, 425.

⁹⁰ Kaveny, *Law's Virtues*, 153.

⁹¹ Kaveny, *Law's Virtues*, 165. Kaveny notes, "There is reason to worry that legalization would in fact pose certain threats to autonomy by increasing the danger of coercion of the risk of manipulating vulnerable patients to 'choose' death prematurely" (180).

bishop of Chicago, lived his own illness and death, and his relationships with those who were caring for him. Just two weeks before he died, he finished *The Gift of Peace*, a book of reflections on his personal experience of illness and suffering. It is above all through the power of this narrative that Kaveny demonstrates the substance of Catholic solidarity and the layers of what the Catholic intellectual tradition means by the “socially conditioned” nature of autonomy.⁹²

In sharp contrast with Raz’s emphasis on the importance of control, Bernardin felt that the events of his later life had called him “to let go of his own views of the proper course of his life and to grow ever more radical in his trust in Jesus Christ.”⁹³ As Kaveny explains, for a Christian facing the reality of death, “the appropriate model is not one of dominion but of stewardship.”⁹⁴ When Bernardin placed his own life into the context of the grand narrative and participation in the life, death, and resurrection of Jesus, he discovered “the freedom to let go, to surrender ourselves to the living God, to place ourselves completely in his hands, knowing that ultimately he will win out!”⁹⁵ Aiming to eradicate oneself would be “to fail to appreciate life’s goodness and to fail to trust in God’s goodness and mercy.”⁹⁶ An attempt at “dominion” or control would be a net-negative because it would transgress the limits set by a loving creator-God.⁹⁷

Thus Cardinal Bernardin’s spiritual journey at the end of his life could be summed up as “learning to subordinate his own will to God’s will”—an act of submission rather than self-assertion.⁹⁸ In this context, Bernardin was able to overcome the human urge to “fix” the situation.⁹⁹ As he explained: “It is precisely in letting go, in entering into complete union with the Lord, in letting him take over, that we discover our true selves. It’s in the act of abandonment that we experience redemption, that we find life, peace and joy, in the midst of physical, emotional, and spiritual suffering.”¹⁰⁰

How he lived his terminal illness became an extension of his priesthood and an opportunity to model the discovery of a coherent narrative in the process of letting go. In dying, he perceived a “task to accomplish,” not only for himself but for the people of his Archdiocese.¹⁰¹ Walking among other terminally ill patients, he saw himself as “priest first, a patient second,” with a capacity to offer “words and

⁹² Kaveny, *Law’s Virtues*, 165.

⁹³ Kaveny, *Law’s Virtues*, 141.

⁹⁴ Kaveny, *Law’s Virtues*, 145.

⁹⁵ Kaveny, *Law’s Virtues*, 146.

⁹⁶ Kaveny, *Law’s Virtues*, 147.

⁹⁷ Kaveny, *Law’s Virtues*, 148.

⁹⁸ Kaveny, *Law’s Virtues*, 149.

⁹⁹ Kaveny, *Law’s Virtues*, 156.

¹⁰⁰ Kaveny, *Law’s Virtues*, 156.

¹⁰¹ Kaveny, *Law’s Virtues*, 146.

deeds with a special credibility and power to comfort.”¹⁰² In fact, within this dynamic of giving and receiving love, to have cut short the process of dying would have denied others the “gift” of being able to give and minister to him.¹⁰³ Most strikingly, Kaveny reflects:

Cardinal Bernardin writes simply and movingly of how he was sustained in difficult times by the support of his friends, family, and fellow priests. He cannot but have known how much that opportunity to care for him meant to them.¹⁰⁴

The narrative quality of Bernardin’s experience helps to reveal a logic which is strikingly different from Raz’s analysis in support of legalizing euthanasia and assisted suicide. More than any conceptual analysis, Bernardin’s narrative provides a substantive definition of Christian solidarity. Bernardin’s sense that if he had not allowed others to care for him, he would have denied them a “gift” was not a euphemism. It was an expression of the witness at the heart of the Christian experience—to love and be loved, and to experience how suffering itself is transformed within the supportive relationship of mutual love.¹⁰⁵ Bernardin’s concern that he may have denied others the “gift” of being able to care for him may sound strange to some liberal ears, but it brings to life what has deep roots in the tradition of Catholic social thought.

As Pope John Paul II explained in the 1980 document on the nature of mercy:

In reciprocal relationships between persons merciful love is never a unilateral act or process. Even in the cases in which everything would seem to indicate that only one party is giving and offering, and the other only receiving and taking (for example, in the case of a physician giving treatment, a teacher teaching, parents supporting and bringing up their children, a benefactor helping the needy), in reality the one who gives is always also a beneficiary. In any case, he too can easily find himself in the position of the one who receives, who obtains a benefit, who experiences merciful love; he too can find himself the object of mercy.¹⁰⁶

Narrative is also a primary figure in Kaveny’s description of the role of those who are accompanying another person in the process of

¹⁰² Kaveny, *Law’s Virtues*, 149.

¹⁰³ Kaveny, *Law’s Virtues*, 149.

¹⁰⁴ Kaveny, *Law’s Virtues*, 149.

¹⁰⁵ See John Paul II, *Dives in misericordia* (1980), no. 14. “An act of merciful love is only really such when we are deeply convinced at the moment that we perform it that we are at the same time receiving mercy from the people who are accepting it from us.”

¹⁰⁶ John Paul II, *Dives in misericordia*, no. 14.

dying. Kaveny suggests that such relationships can be the key to helping one who is dying in the effort to reinterpret and reframe the narrative of one's purposes and commitments: "If suffering involves disintegration of one's self-identity, then overcoming suffering involves finding a way forward toward reintegration, toward a new life that somehow also incorporates a narrative about the old."¹⁰⁷

The effort to truly understand those who are suffering, why they are suffering, and what their values and life projects are, can "offer those who are suffering ways of reinterpreting their past purposes that will allow them some continuity, even in circumstances—such as chronic illness or disability—that have significantly changed for the worse."¹⁰⁸ In the current legal landscape, Kaveny discerns a clear and imperative task to all who endorse the Catholic tradition's rejection of assisted suicide and euthanasia: "By standing with those who suffer, we can potentially help them reconstruct their identities, find a new wholeness in their lives, and ultimately transcend the loss of their previous integrity."¹⁰⁹

In Cover's terms, Bernardin's *life* was the bridge between "vision and reality," and his narrative a sign of the possibility of a personal commitment that illustrates how the virtue of solidarity might inform society's approach to law in this area.¹¹⁰ More than any conceptual sparring, Bernardin's example is what calls into deep question Raz's list of the concerns that would substantiate a robust right to voluntary euthanasia.¹¹¹ Further, the lives and examples of those who accompanied Bernardin in his illness are a bridge to envision the social commitment required to weave the virtue of solidarity into law and policy regarding end of life care.

But if we take narrative as a methodological starting point for conversation across different thought systems, it would also be important to probe some of the particularistic limitations of Bernardin's story. For example, it might have been a little bit easier for a beloved bishop to live out the process of dying in the context of a reciprocal experience of giving and receiving love—both as part of his ministry and as part of his community leadership role.

Narrative can also serve a critical function—for example, helping to flesh out what might have been Raz's fears and concerns when he generated his list of factors.¹¹² As a methodological starting point, narrative could help to illuminate the complex situations of patients whose families or caretakers do experience care as a burden, whose

¹⁰⁷ Kaveny, *Law's Virtues*, 155.

¹⁰⁸ Kaveny, *Law's Virtues*, 156.

¹⁰⁹ Kaveny, *Law's Virtues*, 172-3.

¹¹⁰ Cover, "Nomos and Narrative," 45-7.

¹¹¹ Raz, "Death in Our Life," 10-11.

¹¹² Raz, "Death in Our Life," 10-11, and discussion *supra* at note 45.

economic resources are stretched to the breaking point by an illness in the family, and who are already mourning the loss of the person that they once knew because this person is no longer present to them due to the course of disease or degeneration.

Many of these elements are illustrated in *Bouvia v. Superior Court*, a case in which the California Court of Appeals analyzed a 28-year-old disabled woman's request for removal of a nasogastric tube. The factual background of the case describes Elizabeth Bouvia's state of dependence due to severe cerebral palsy from birth and to other factors:

She is intelligent, very mentally competent. She earned a college degree. She was married but her husband has left her. She suffered a miscarriage. She lived with her parents until her father told her that they could no longer care for her. She has stayed intermittently with friends and at public facilities. A search for a permanent place to live where she might receive the constant care she needs has been unsuccessful. She is without financial means to support herself and, therefore, must accept public assistance for medical care.¹¹³

In concluding that the state's interest in preserving life did not outweigh Bouvia's right to refuse treatment, the court reasoned:

Her condition is irreversible. There is no cure for her palsy or arthritis. Petitioner would have to be fed, cleaned, turned, bedded, toileted by others for 15-20 years! Although alert, bright, sensitive, perhaps even brave and feisty, she must lie immobile, unable to exist except through physical acts of others. Her mind and spirit may be free to take great flights but she herself is imprisoned and must lie physically helpless subject to the ignominy, embarrassment, humiliation and dehumanizing aspects created by her helplessness. We do not believe it is the policy of this state that all and every life must be preserved against the will of the sufferer.¹¹⁴

From a methodological perspective, what I find especially interesting about the use of narrative for probing these kinds of concerns is that it leaves the space to open out beyond itself. For example, Paul Longmore's contextual study of the case fleshes out some of the details, including abuses on the part of agencies administering funds for in-home supportive services, refusal on the part of a local hospital to make a reasonable accommodation which would have allowed Bouvia to complete her field work for a Master's in Social Work, and how she had been caught in a bureaucratic Catch-22 in which disability

¹¹³ *Bouvia v. Superior Court*, 179 Cal. App. 3d 1127, 1136 (1986).

¹¹⁴ *Bouvia*, 1144.

benefits were contingent on not working.¹¹⁵ These additional layers show how at various junctures in Bouvia's story, social prejudice may have fostered an extreme experience of isolation and depression, leading Longmore to query to what extent Bouvia's expression of the desire to die was an expression of her "autonomous choice" and to what extent a result of the kind of isolation due to society's short-sighted prejudices.

In light of these examples, what are the benefits of narrative as a methodological starting point in the dialogue between profoundly different thought systems? As the Bernardin and Bouvia stories indicate, narrative can help to render more transparent the values at stake and the meaning of those values within a given thought system. Bernardin's experience pushes the envelope on what solidarity and autonomy mean when reciprocal love is the defining quality of one's relationships, and when the categories of a broader religious narrative function as a lens through which to interpret one's personal story. For some, Bernardin's "personal act of commitment" in a Coverian sense will be an inspirational literary key for interpreting the law and policy of end of life care.¹¹⁶

The *Bouvia* narratives foster transparency in a different yet also crucially important sense: They help to flesh out the extent to which interpretation of the law and a person's encounter with the legal system and social structures may be infected with social prejudice and economic injustice. Here the Coverian "personal act of commitment" that might inform legal interpretation and law formation is essentially critical—provoking the kind of reflection that helps us to consider all of the ways in which the *Bouvia* narrative signals significant failures in the ideals of solidarity and respect which should have informed her social experience and that of many others.


Both narratives help to flesh out for legal discourse important elements of social context, the presence or lack of community and sustaining relationships, the impact of social prejudice, as well as important concerns about economic resources and economic justice. Both narratives help us to access the fears, needs and hopes of people in vulnerable circumstances. If, as Cover submits, "Creation of legal meaning entails, then, subjective commitment to an objectified understanding of a demand,"¹¹⁷ narrative—both inspirational and critical—might help to sustain the initial steps on the path to common commitments.

¹¹⁵ Paul K. Longmore, "Elizabeth Bouvia, Assisted Suicide and Social Prejudice," *Issues in Law & Medicine* 3 (1987): 153-4.

¹¹⁶ Cover, "Nomos and Narrative," 45.

¹¹⁷ Cover, "Nomos and Narrative," 45.

CONCLUSION

Scholarly work at the intersection of Catholic social thought and legal theory poses formidable challenges, especially if one hopes to move beyond critique toward constructive proposals and models. This article has explored only a narrow slice of Cathleen Kaveny's path breaking contributions to this field. It is largely thanks to the groundwork of her scholarship that we can begin to sort through the methodological questions about the dialogue. While I have significant doubts that a dialogue between Catholic solidarity and Razian autonomy can be sustained on the topic of euthanasia, I nonetheless very much agree with Kaveny's core insight—that we can reach across the profound differences in our systems of thought in order to appreciate the questions and the concerns that give shape to a different way of looking at the world and that this empathetic exchange is the best foundation for a constructive dialogue about how to build a more humane and just society.¹¹⁸ 

¹¹⁸ I am grateful to Robin West, Gregory M. Klass, and participants in the Georgetown Law School Fellows Collaborative for a workshop discussion of a draft which transformed my approach to the article; and also for helpful comments, suggestions and critique from John Borelli, Lisa Cahill, William Gould, John Haughey, S.J., Gregory A. Kalscheur, S.J., Patricia A. King, Howard Lesnick, Thomas Masters, Michael P. Moreland, and Aristotle Papanikolaou.