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(Unedited Transcript)

Thanks very much, Ram, it's always a pleasure to hear and read his work. And thanks to Alan, and to this foundation, for the wonderful opportunity to learn more about Geno Baroni, and to learn more about the foundation's work. 0117 At the risk of getting trapped into a death spiral of infinite regression, I want to use my time to talk about something that I think is going to do honor to the life and the memory of Geno Baroni and that's the claim that there is a public morality of publicly moralizing. And I'll try to describe what I mean, and then I'll do it in the context of the faith-based and community initiatives.

By publicly moralizing, what I mean is what a lot of us go about doing on a daily basis. That's making claims about the just distribution of goods, about the good life for people and communities, the common good, the rights that each person should be accorded and the duties that each should observe. These claims of course can be regarded as nothing more than just preferences, tastes, like, "I prefer Ben & Jerry's ice cream, Bob likes the poor and due process of law."

(Laughter.)

These claims can be masks, whether crudely drawn ones or elaborate Mardi Gras masks, covering greed, racism, or tyranny.

But I think most of us mean something more 0118than that. We mean something that is intended to make a claim on somebody, a claim that deserves -- matter of fact, something that demands respect. So many listen, they recognize it, they assent to it, they join us in the claim. They say, "Yeah, you're right. I also agree that's true about the world, about who we are."

So what does it mean to give an account of moralizing, that is in that sense moral? I think the first step in that is to recognize that it is a dialogic account, itself. We're talking with other people. We are accountable to them. We justify ourselves to others in this community. And to do that, we have to start by avoiding demonizing them. It is I think appropriate, as a member of a faith community, to demonize -- to recognize the demons out there at times, but not as often -- Spirit doesn't call us to that as often as the members of many faith communities seem to think that the Spirit calls us to it.

We need to master the details, and avoid generalities. There are a lot of reasons for that, but I think most importantly, I think 0119it's because it's very hard to be held accountable and to hold others accountable if you don't focus on the details. You have to have sufficient information at your command about how specific systems and programs and institutions work.

The problem with having a lot of detail is that it is very difficult to avoid getting trapped into the rationalization of the institutions that give you the detail. One of the wonderful things about becoming a lawyer in having command of the knowledge about the institutions of the law is that in the process of learning that, you start to tell yourself all these rationalizations about why the law is good: "Isn't it good that we have rules that work this way, and that the law as a system is good?"

Robert Rhodes, who is a wonderful legal philosopher, is a liberation theologian at heart, and he talks about the "ascesis," the asceticism of learning to remember to think every

time you tell yourself why the system has to be the way it is, ask: "Does it really have to be true that we must accept the risk of putting innocent people to death, just because that's the cost of having a society that punishes the truly guilty?" Any time you run up against a rationalization, ask whether the system really requires that, or whether that's a cover for your own unwillingness to accept risks that you willingly imposed upon others. So learn the institutions, but attend yourselves, attend to your own rationalizations.

And then finally, be prepared to learn from others. Openness to the possibility that in learning the details, the other has a compelling response; you demanded their account, well maybe their account will be persuasive. This is part of also learning the details of institutions that seem themselves from the outside to be unfathomable, unjust. You may come to learn that they are perhaps good, or as we seem to have learned in Iraq, that we really need to have a good story about what happens if this bad institution is gone.

There is a mutuality in this claim of account that is core to the moral quality of moralizing in public. So let me walk you through the faith-based and community initiatives with this in mind, what a public moral critique of that set of practices may look like. And first, I want to start by suspending the demonizing. It is too easy to do. Because there are obvious political motivations behind it. Surprise, surprise, "African-American ministers in the inner-city, let's get them for the Republican Party," of course it has political motivations. Nothing comes out of Washington that doesn't have political motivations. You want to pay soldiers who die in Iraq more money? That has political motivations.

Søren Kierkegaard said that the only acts of charity that are truly deserving of Christian charity are prayers for the dead. Why? Because they don't give you anything in return. So, if we're looking at purity of intentions, we've got a pretty limited slice. Will drop the demonizing.

Second, clarity about what the faith-based initiative, as a set of legal propositions is. There is a great deal of confusion, not least among those who are its proponents. The FBI, the faith-based initiative, is a response to the era of strict separationism, and the law of the establishment clause. The exclusion of a set of faith-based organizations who, for a variety of reasons, were not able to set up secular not-for-profit entities that had an entirely separate existence from the faith community. And there are a number of reasons why organizations were not able or willing to do that. And we can certainly talk about why they may or may not have been willing to do it, but that was the practical reason for their exclusion. Didn't set up separate entities, and so were ineligible to participate.

The faith-based initiative ends that ineligibility. It allows them to apply on equal terms while retaining their identity, in the sense of being a recognizably religious organization, having board membership requirements that have a religious quality to them. But award decisions for grants and contracts still must be made on criteria that are religion-neutral -- In other words, the track record of the organization, promise or innovation of the organization, criteria that are not focused on the religious quality or lack thereof.

So what the faith-based initiative is not, it is not a program designed to create special grants for faith-based organizations. The department of labor got a rude awakening when they tried to do that in its early days. You can't create set-asides. You can't set aside a portion of a general contract program for faith-based organizations. Part of the

Compassion Capital fund was intended apparently to grant some money to parish nursing programs in the state of Montana. They learned you can't do that. It's a violation of the establishment clause. You can't single out religious organizations for a special benefit, period, full stop.

The faith-based initiative is not a program that promotes the efficacy of faith-intensive treatment or service modalities over secular services. It may be the political rhetoric that's behind it, but it is not the legal basis for the initiative. Why? At 0124least in programs that receive direct aid -- and those programs make up the vast majority of federal, and a significant majority of state funding -- it is a violation of the establishment clause to give government funds for services that intermingle faith and secular service. The government may only pay directly for services that are secular in content, period, full stop.

Which means, you can't fund services that are faith-transformative -- life-transforming because of faith. Which means, if they are more effective the government can't pay for them, period.

Trial started yesterday in the state of Iowa involving prison fellowship ministries, one of the primary emphases, program emphases. And it will, I have little doubt, hold that a grant -- series of contracts, actually, between the state of Iowa and interchange, which is a ministry of prison fellowship, has been run unconstitutionally for the past several years.

Iowa turned over a wing of one of its state penitentiaries to interchange and, so 0125that they would run it as a evangelical Christian ministry, 24 hours a day, seven days a week, designed to decrease recidivism, improve life skills outcomes for these prisoners, on their release.

Was not competitively bid, wasn't a program of choice that inmates could choose this or some other program; it was the only program of that sort offered by the state of Iowa. It's in trial before the judge, should be over by the end of next week. I think by the end of the year it will be held unconstitutional.

So that's what it is, what it isn't. How do we then come to critique it? Well, I think we start by scrutinizing ourselves. What is it that we're not comfortable with? Is it our -- I'm not speaking for you, I'm speaking for me, the "royal we." Or actually the "Bobs" perhaps -- and the candidate for "Bobs."

(Laughter.)

Is it our opposition to the president? Anything the president likes, we don't like? That may run for my wife, but not for me.

Or how about unease with strident 0126evangelicalism? It seems to be flourishing in this new atmosphere of public attention, and perhaps, public financing. If it's so, we should be ashamed, and "shame" is the right word here. Shame is the response to public immorality. Genesis has the wonderful language of us being caught out in our immorality: we sense our nakedness.

For whom do we exercise this office of public moralizing? We do so as Ram said, on behalf of the poor, the sick, the homeless, the prisoners, the immigrants. Those are the ones for whom we exercise the trust given to us in the positions we hold. Our critique, that has to be about whether this institution serves them and their needs, period. Not

whether it serves our religious preferences, not whether it serves our political bent, but whether it serves them.

And are we up to the task? Well, what might we think of? First, does it take advantage of them? A real concern. There's some ways that the rules promulgated by the initiative could do a better job of informing beneficiaries of the rights they have not to be proselytized in the services, of the rights they get to receive alternative services, of limits on the religious activities by providers. And, if you go to the web site that my colleague, "Chip" Lupu and I maintain, on legal commentary on virtually every piece of paper the administration puts out -- it's www.religionandsocialpolicy.org, sponsored by Pew Charitable Trusts on their Roundtable for Religion and Social Welfare. You can read more than you ever wanted to know about the regulations.

And you know, by and large they've done a decent job of protecting beneficiaries. Not great, could be better, could be a lot worse.

Is it good stewardship? Well, there could always be more money, there could always be a lot more money. And that's the big problem. Is this an excuse to divert people's attention for not devoting more resources to the poor? Absolutely. Should we let them get away with that? No. Should faith communities be bought off by outlawing this to stand-in for the whole of a domestic policy? Absolutely not. Take the money and protest, great. Don't fight among ourselves for the money that's available, perfect.

But then, ask whether the money that's there is being used wisely. Are we building better institutions, institutions in places that are not serving people? I love Ram's work and Bob's work on this. What they focus on is not global answers. The answers have to come not about social services as a whole, but who's providing job training in this neighborhood of Cleveland? Who has the competence to do it? Who has the contacts to do it?

Part of what's gone on with the initiative, at least in its better model, is the opportunity to have more dynamic interchanges between government officials and the range of providers. If it really is about equal eligibility, then that's good. If it's about favoritism, if it's about people being blind to who is actually providing quality services, that's bad.

But since the claim is, "leveling the playing field," being in the language of accountability, we can hold them -- us -- accountable.

Many more things to talk about, and I want to turn this over to Bob. Bob wants me to turn over to him, so I'm going to do it.

MS. WINEBURG: Bob, I'm enjoying this.

MR. TUTTLE: But I do want to conclude with two things that I think are crucial to this. The first is that in any process of accountability, everybody must demand transparency. And that has been one of the huge defects so far. Transparency in the process by which grants are awarded, and efficacy is monitored. We cannot hold each other accountable for the delivery of services, either in the quality or quantity and effectiveness, if we don't know what's going on. Obviously there are confidentiality concerns about who, individually, is getting what services. But to use that as an excuse for overall measures is wrong.

The second is a sense of contingency, the idea that we would get locked in any place permanently to any one model of doing things is it something that the faith-based 0130initiative, at its best, has an opportunity to help us out of. But you can already see it getting locked into its own patterns, even in the short three years that some of these programs have been running. To the extent that we can help, it's to press toward capacity building that will let experiments develop on their own, help people develop the capacity to continue their own experiments, without getting into the patterns of providing services for the sake of the services, rather than for the sake of those who need to be served.