

cher Wahrheit tritt die Frage nach der Gerechtigkeit. Dem Widerstreit gerecht zu werden besteht dann darin, ihn in Sätze zu fassen und das Unrecht zu bezeugen. In neuer Loyalität entsteht Konsens, Dissens zu ermutigen.

c. Die Anerkennung des Widerstreits ändert die Entscheidungslage. Es geht nicht mehr um das Streben nach Konsens über eine Kontroverse, sondern nur noch um die Klarheit darüber, dass keine Entscheidung zwischen den Diskursen möglich ist, die allen Seiten gerecht werden könnte. Beim „therapeutischen Klonen“ handelt es sich um widerstreitende Interessen zwischen der „Freiheit der Forschung“ zum Wohl der Menschheit und dem Schutz der „Würde der Person“, deren Beginn mit wissenschaftlichen Mitteln nicht datierbar ist.

d. Wissenschaft und Ethik können der Politik die Entscheidung nicht abnehmen. Umgekehrt dürfen Medizin- und Bioethik nicht zur Fortsetzung der Politik mit anderen Mitteln degenerieren. Die Klärung von Widerstreit hilft, den Dissens zudeckende scheinbare (sog. faule) Kompromisse zu vermeiden, und es kommt in jedem Fall zu einer besser geklärten Entscheidung. Sie bleibt zunächst offen, aber man weiß besser, was man tut, wenn man sich entscheidet und welches Unrecht in welchem Fall zugefügt wird. In der Politik wird in unserer Demokratie dann die Entscheidung zu einer Frage der Mehrheitsfähigkeit, und es wird entschieden, der Argumentation in einem der differierenden Diskurse zu folgen.

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The Role of Moral Philosophers in Ethics Committees

Dieter Schönecker

((1)) Matthias Kettner bases his philosophically challenging and empirically interesting paper on ethics committees on the theoretical assumptions of so-called Discourse Ethics.¹ In some sense there is nothing wrong with this, of course, since we all have to argue on the grounds of one (moral) theory or other. If one holds Discourse Ethics to be an untenable position, however, it makes it difficult to discuss his paper without first addressing Discourse Ethics itself. I do indeed believe that

Discourse Ethics is highly questionable, both in its theoretical groundings (especially in Apel's search for something like an ultimate justification or *Letztbegründung*) as well as in its ethical claims proper.² But I do not want to pursue this issue here. What I am interested in is the undeniable fact that professional ethicists advocate very different and incompatible moral theories (paralleled by the equally brute fact that different people within one society and certainly people and peoples in different societies have a variety of ethical beliefs and moral values). This plethora of philosophical ethics becomes particularly clear with regard to issues of bioethics or medical ethics: Abortion, embryonic stem cell research, brain death, euthanasia, organ donation, prenatal diagnostics and intervention, genetic therapies, and other hot buttons have sparked fierce debates for years and continue to do so; and it is in particular the debate between moral realism and moral anti-realism as well as the debate between consequentialism and non-consequentialism that not only involves apparently insurmountable problems on the foundational level, but that also has far-reaching and very different implications for very concrete problems. A moral realist will look differently at the issue of abortion than an anti-realist, and by the same token will a consequentialist have a different take on the question of euthanasia than a deontologist. I am not saying that there is no truth of the matter; maybe there is (as a matter of fact I believe there is.) All I am saying is that there is absolutely no agreement among professional moral philosophers about the most basic ethical questions and, consequentially, no agreement whatsoever about problems of applied ethics. I wonder what this implies for ethics committees.

((2)) It is one of Kettner's main points that "moral uncertainty" (5) is what makes people and institutions (politicians, hospitals, individuals in medical professions, society in general) ask for advice by ethical committees (or at least this is what ought to make them ask this question rather than incentives like corporate identity, etc.); ethical committees ought to help us to "better" (6) deal with moral uncertainty, wherein "better" is taken to be a moral category itself.³ Roughly speaking and using the common distinction (i) between nationally or internationally operating ethics committees such as the *President's Council on Bioethics* or the *Nationale Ethikrat*, (ii) research ethics committees and (iii) locally operating clinical or hospital ethics committees, Kettner's empirical analysis of actual (German) committees and their mission statements (as well as other documents) reveals that what these committees in their own self-understanding are supposed to do is this: (1) Political consulting and orientation, (2) cultivation of public debates, (3) practicing and teaching moral judgment for members of the professions, (4) discussing individual cases within and for institutions (it appears that clinical ethical committees are mostly concerned with questions of how and when to limit therapies), (5) developing ethical guidelines for institutions, and (6) controlling medical research on humans.⁴

((3)) Let us assume that these aims are, and indeed ought to be, the aims of ethical committees, and that they can be subsumed under the idea of how to "morally better deal with moral uncertainty." Then it seems to me that there is quite an obvious question: If it is true that both ordinary people as well as professional ethicists heavily disagree not only about the fun-

damentals of morals, but also, and in particular, about questions of so-called applied ethics, how could ethics committees possibly enable us to “morally better deal with moral uncertainty?” How could this uncertainty possibly be overcome if the debate is mostly characterized by utter disagreement? On what grounds can it be said that one way to go is “better” than another?

((4)) To be more precise, two questions need to be distinguished: First, what can ethics committees as a whole actually achieve, given that both modern societies and moral philosophy are characterized by highly contrary and even contradictory moral beliefs? Second, what is the job of each profession represented in these committees, and what can they achieve? Typically, physicians, health care professionals, social workers, legal experts, patients, and bioethicists work in these committees (at least in clinical committees).⁵ For my present purposes, I will take it for granted that legal and medical advice as well as the representation of knowledge, perspectives and interests (of patients, physicians, staff, etc.) is and ought to be a very important part of ethical committees, especially on the rather local level; for moral uncertainty can always, at least in part, stem from a lack of information and representation. Being a philosopher, however, I am interested in the question of what moral philosophers in particular can do when it comes to making suggestions on how to act in cases of “moral uncertainty.” What can moral philosophers do in ethical committees, given that different moral philosophers have quite different moral beliefs?⁶

((5)) Here I am not concerned with the aspects of informing the public. It should go without saying that at least in nationally or internationally operating committees, moral philosophers and philosophies of different provenance must be represented, and I also take it for granted (although it does not really go without saying) that philosophers should inform the other committee members and eventually the public about the different philosophical problems and theories available. If plurality is not guaranteed, then these kinds of ethics committees can easily be dismissed as partisan.⁷ To the untrained ear, a recommendation by a national committee to pursue stem cell research might look like the unanimous statement of experts beyond reasonable doubt; however, when it comes to ethics and ethical questions there clearly is no such thing as a group of experts that can with great certainty give advice.

((6)) So what can moral philosophers do besides organizing and informing the debate about possible ways to go? Kettner’s answer, it appears, is that they should apply the tools of Discourse Ethics; this, however, is question-begging, because Discourse Ethics itself is just one, and a highly disputed, position within the wide range of ethical theories. But at the end of the day, a recommendation needs to be made. Again, if philosophers (*and* ethics committees) ought to strive for more than just representing a range of arguments, if they really shall offer a way how to “morally better deal with moral uncertainty,” then, given the variety of theories available, it seems to me, there are two things they can do: They can check possible solutions for consistency (which also involves figuring out what theoretical implications a certain position or specific solution would have); and once certain norms and values, based

on consistency, are established, they can help with subsumption (which also involves applying power of moral judgment which, one would hope, trained moral philosophers possess). Let me dwell on the first point a bit more.

((7)) As I said, when it comes to moral philosophy as a theoretical enterprise, there is really no ethical certainty anywhere. There is, however, moral certainty in common moral thinking (in which I take “certainty” to be a subjective category). I submit that moral philosophers, as they work in ethics committees and look for recommendations, have to start with the assumptions of common moral thinking even if they might hold some of them not to be true.⁸ They have to do so, because they are under time constraints (there is no time to endlessly discuss meta-ethical problems, decisions have to be made now), and since there is no agreement on ethical theories, all there is left to begin with is (provided a juridical framework) common moral sense beliefs. Hardly anyone in Germany, say, will disagree with moral claims such as killing human beings is wrong, infanticide is wrong, stealing is wrong, torture is wrong, and so on (well, maybe not so forth). If a moral philosopher believes, for instance, that human beings come into existence only with birth, then this is certainly a position worth discussing within philosophy, and it should also be part of the discussion in the context of task 2 (s.a.). However, since almost no one actually believes that a human embryo just days away from delivery is not a human being yet, this thesis can not be a foundation for the other tasks; no consulting or guideline on any level can be based on a moral theory that ordinary members of the society find utterly absurd – if only for the reason that norms (laws) resulting from them would not be enforceable. As I said, for the moral debate and for moral progress,⁹ it will be important that philosophers stick to their position, even if it contradicts the overwhelming moral majority, and it will be even more important when people are split in two or more camps (as is often the case in biomedical issues). But if a solution needs to be found, then the best one can do is to look for a solution that is based on moral certainties *plus* consistency. Moral consistency is indispensable and undisputed (again, to avoid inconsistency is a normative claim itself in need of justification, but let us put this aside). If A has a right not to be killed, then if B shares the properties because of which we grant A the right not to be killed, then B also has a right not to be killed; it would be inconsistent not to grant B this right. What philosophers can do is to look for inconsistencies and implications of this kind. As a result of their training, they have learned to develop sound or at least valid arguments, which involves avoiding inconsistencies. This should be their primary concern. They should be concerned with the form of arguments, less with their content.

((8)) In conclusion, let me give some concrete examples. In the recent debate about the moral status of human embryos it has repeatedly been said that, given the enormous potential to find remedies against deadly diseases such as Parkinson’s, Alzheimer’s, etc., we should go ahead with embryonic stem cell research and use cryopreserved embryos; to many people, it will at first sight make a great deal of sense that we should make use of the many thousands of frozen embryos because they will never be developed anyway. This thought, however, in and of itself may not be consistent with what com-

mon sense morality holds to be true, to wit, that human beings must not be used for medical research even if doing so would result in great benefit for many. For if the human embryo is indeed a human being (or significantly similar to it), then it must not be killed for medical research, period. Whether it is a human being is, of course, another question; but it will be helpful and enlightening to many to understand this point. This other question (whether human embryos have a right not to be killed for medical research) might also be answered indirectly. It will be worth while to point out to non-philosophical members of an ethics committees that a human embryo is in one respect similar to someone in a reversible coma: Both of them will only in the future demonstrate all those qualities that we value about normal human beings; hence it might be inconsistent to grant one being a right because of this potential, but not to the other one.¹⁰ Another point worthy to be stressed is that if it is really our concern to save lives, then we could easily invest funds in research to find remedies against diseases such as malaria, diarrhea, etc., rather than in embryonic stem cell research. To give a final example of what clarity and consistency can mean: In the general public, the most popular argument used against abortion is that an embryo belongs to a woman's body, and, since each woman has a right to rule over her own body, each woman is free to have an abortion. However, since almost all of us agree that a woman would not have a right to abort her baby two days short of delivery just because she feels she has a right to do it, it cannot be true that the fact *alone* that an embryo is within a woman's body gives her the right to control the embryo.

((9)) As philosophers, we will stick to our convictions and try to defend them as best as we can. We may do so as philosophers in ethics committees as well. Our main concern in these committees, however, must be to detect inconsistencies in solutions offered and to look for solutions based on the moral beliefs of common moral sense. In many cases (especially in clinical committees) no final proposal can be made, but the implications of different strategies can be laid out.¹¹

Endnotes

- 1 Matthias Kettner: "Ethik-Komitees. Ihre Organisationsformen und ihr moralischer Anspruch", in: *Erwägen – Wissen – Ethik*, 2005, Heft 1.
- 2 Cf. Miriam Ossa / Dieter Schönecker: "Ist keine Aussage sicher? Eine Rekonstruktion und Kritik der deutschen Fallibilismusdebatte", in: *Zeitschrift für philosophische Forschung*, 2004, Heft 1, 54-79.
- 3 All translations by DS.
- 4 Cf. Kettner, (7 ff.).
- 5 In national committees there will be natural and social scientists as well as representatives of all kinds of institutions.
- 6 Kettner notes that only about 10% or so of all members of clinical ethics committees in Germany are professional bioethicists (19).
- 7 Thus Maria Böhmer (deputy chairman of the German CDU/CSU parliamentary party) recently called the *Nationale Ethikrat* a "biopolitischer Weichmacher des Bundeskanzlers".
- 8 Actually, even moral philosophy cannot do without moral intuitions. But that's another issue; cf. D. Schönecker: "Warum moralisch sein? Eine Landkarte für ethische Realisten", in: Heiner F. Klemme / Manfred Kühn / Dieter Schönecker (Hrsg.): *Moralische Motivation. Kants Ethik und ihre Alternativen*. Felix Meiner Verlag, Hamburg, 2005.
- 9 Of course, the very idea of moral progress already presupposes a certain ethical theory; to non-cognitivists or relativists, this idea makes no sense.
- 10 For the last two arguments, cf. Damschen, G. / Schönecker, D.: "In dubio pro embryo. Neue Argumente zum moralischen Status menschlicher Em-

bryonen", in: Gregor Damschen / Dieter Schönecker (eds.): *Der moralische Status menschlicher Embryonen. Argumente pro und contra Spezies-, Kontinuums-, Identitäts- und Potentialitätsargument*, Walter de Gruyter, Berlin, 2003, pp. 187-267.

11 Thanks to Andreas Vieth for an interesting discussion and to Douglas Ciarfella for checking my English.

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Konsens, Pluralismus und Gewissen

Ludwig Siep

((1)) Ad ((4, 34, 35, 36, 37)): Matthias Kettners Sicht der Geschichte, Verbreitung und inneren „Logik“ der Ethik-Kommissionen ist sehr informativ und sachlich für mich weitgehend überzeugend. Zuzustimmen ist dem Autor auch in der Diagnose, dass die bioethische Diskussion weitgehend „institutionenabstraktiv“ ist und es ihr gut tun würde, die tatsächliche bioethische Konsensbildung in den Kommissionen stärker zu berücksichtigen. Dass diese Verfahren eine Art Bestätigung für die Diskursethik darstellen, wird man allerdings nur hinsichtlich der doch sehr abgeschwächten Form zugeben, in der Kettner deren Ansprüche vertritt: Der *faktische* Konsens in den Kommissionen ist keineswegs eine Garantie für die normative Richtigkeit bzw. moralische Gültigkeit der Entscheidungen. Der *ideale* Konsens als Resultat gleichberechtigten diskursiven Argumentierens ist nur eine „regulative Idee“, die „über die in einem bestimmten normativen Sinne richtige Richtung“ orientiert.

((2)) Ad ((35)): Kettner ist sich offenbar bewusst, dass dem Diskursverfahren Normen und Werte zugrunde liegen, die es weder als faktisches noch als ideales selber generiert: Zum einen besteht das „Gut“ des Konsenses darin, dass er „die Reproduktion vernünftiger Autonomie ermöglicht“. Diskurs und Konsens spiegeln also den Wert der Autonomie, eine Erzungenschaft zumindest der europäischen moralischen und rechtlichen Tradition. Zum anderen bringt der Diskurs die „Vielfalt von aufeinander nicht reduzierbaren moralischen Gesichtspunkten“ zum Ausdruck. Er reflektiert also einerseits die Autonomie des Individuums, die darin besteht, sich nach selbst angeeigneten Argumenten von einer der Positionen zur anderen zu bewegen – nicht im Sinne der souveränen grundlosen Wahl, sondern der befreienden Einsicht. Andererseits auch das Gut einer Kultur der Mannigfaltigkeit, in der Konsens und Einheitlichkeit nicht um jeden Preis, sondern nur zur Bewältigung bestimmter Aufgaben anzustreben ist. Wie die derzeitige Klon-Debatte zeigt, sind beide Güter noch keineswegs „europäisches Gemeingut“: Die Pluralität der Positionen etwa hinsichtlich des sog. therapeutischen Klonens wird nicht als Wert, nicht einmal als zu respektieren angesehen. Zumindest gilt in Deutschland die Position Großbritanniens fast ausschließlich als Tabubruch und Beschädigung eines vorgeblich eindeutig einschlägigen Höchstwertes, der Menschenwürde.

((3)) Ad ((6)): Ergänzend zu Kettners Theorie des pluralisti-

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Erwägen Wissen Ethik

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