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## Discussion

# Don't Trust the Ethicist! Three Theses on the Function of Ethics in Contemporary Society

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Ethics as an institutional practice is a global phenomenon: corporations across the globe develop their own ethics guidelines; UNESCO made bioethics one of their priorities; and ethics committees decide on issues ranging from medical research to financial investment, as well as from the civil use of nuclear energy to the right conduct within international sports organizations. Many pharmaceutical companies, for instance, comprise ethics committees for research as well as for their business practices. Financial institutions often also have ethical guidelines as part of corporate social responsibility programs, and international sports bodies, like the Fédération Internationale de Football Association (FIFA), have set up ethics committees in order to deal with malpractice and corruption. Furthermore, in the field of medicine, ethics committees evaluate research, give recommendations on moral dilemmas arising in clinical practice, and play an increasingly important role as advisory bodies in legislation.

A wide range of different ethics disciplines has developed to provide normative reflection for different social systems: there is *business ethics* for the corporate world, *media ethics* for journalism and publishing houses, *medical ethics* for medicine, etc. This list could be extended almost indefinitely, with ethics in new areas continuously being added—from *animal ethics* to *machine ethics*, from *veterinary ethics* to *neuroethics*. On a worldwide scale, there are more and more nation-states setting up their national ethics committees to regulate the technological progress of medicine and the life sciences, and *ad hoc* institutionalized ethics plays a role in other areas as well.

For instance, in Germany, a government-appointed ethics council suggested nuclear phaseout. There are certainly many more examples that testify to the increasing social role and importance of ethics in different areas of society.

Ethics is everywhere, but it is a particular type of ethics that penetrates the functionally differentiated society. This ethics has little to do with ethical theory that can be found throughout the history of philosophy from Plato to Kant, and from Aristotle to Mill. Ethics in these councils and advisory bodies is quite distinct from the philosophical inquiry into the question of right and wrong. Quite tellingly, there are often a great variety of disciplines represented in these councils and committees—but few genuine ethicists or philosophers. The following three theses on the function of ethics is an analysis of its role played in society, rather than on the way ethics is taught in philosophy classes in the academe. The consequences we can draw for ethics in the academic context are secondary.

The polemical title of this paper, “Don’t trust the Ethicist!,” needs to be understood in light of the function of ethics in contemporary society. It cautions us against a naïve trust in ethical expertise as it is displayed in ethical committees as regulating bodies, in the different areas of a functionally differentiated society. The plea for a critical evaluation of the role of ethics in society should not be identified with a critique of ethical evaluation as such. Neither is this paper a call for a return to former models of social organization oriented at political or religious authorities. There is no doubt that ethics has an important role to play in society; yet, the role it plays in the various committees and commissions is a distorted picture of the encompassing task of ethics, which is to normatively evaluate life from a perspective beyond the institutional constraints set by contemporary society. A comprehensive notion of ethics needs to take into account society at large; otherwise it risks merely duplicating common morality. Ethics as duplicated morality—i.e. the institutionalization and reinforcement of pre-reflective norms existent in any given society—will serve, rather than critically examine, the interests of the existing power.

The thesis of this paper, which cautions against the role of ethics in contemporary society, is precisely that ethics as practice in society reinforces some of its problematic tendencies. This paper identifies three of these tendencies: First, ethics functions as a reinforcement of a technocratic age. Ethics commissions and committees play a significant role in the functionally differentiated society in terms of providing legitimacy for their respective social systems, such as research, business, or media. Ethics in these contexts sends a signal to the public that the respective social domain is functioning according to ethical standards. Furthermore, it can smoothen the processes

within the respective social system. Second, ethics is oblivious of its social context. As a practice in the different social systems, ethics is geared towards reflecting on particular problems and fails to adequately address the systemic circumstances, which shape the situation. Third, ethics committees and commissions are moving democratic decisions out of the realm of public deliberation and thus lead to a de-politicization of ethical questions. The three theses I shall forward shall explore these three claims.

As a final preliminary remark, ethics stands in need of critical self-reflection. Such self-criticism of ethics serves to develop an emancipated notion of ethics, which takes into account not only particular issues at stake but also their larger social setting. The integration of ethics into the instrumental reason prevalent in modern-day society, in the form of a flourishing “ethics business,” requires critical self-reflection. In the same way as the enlightenment needs to be enlightened about itself, as Horkheimer and Adorno write,<sup>1</sup> ethics needs to be enlightened about itself and its social function. This paper is an attempt of such an enlightenment.

### **Thesis One: Ethics as a Reinforcement of a Technocratic Age**

Ethics has a good reputation. It conjures up the notions of rational deliberation and weighing of arguments. It implies a reflective way of decision making, which might even take recourse in intellectual authorities from the history of philosophy. Yet, its prevalence in society is in fact a symptom of a technocratic age, which actually reinforces the technological mode of operation at work in large realms of society. Technocracy, briefly defined for the purpose of this paper, can be understood as a form of governance based on technological—one might say instrumental—knowledge needed for an efficient functioning of society. The way this instrumental knowledge is applied in the respective areas of society—be it medical research, business practices, or media production—only takes into account information from within the respective system and uses it for making the system more efficient. Given the need for the most efficient organization, only a few courses of action are inherently necessary for a distinct course of action. Rationalization, progress orientation, and the power of expert commission are all features of a technocratic organization of society.

It is against the background of this perspective on society that the recent proliferation of ethics needs to be interpreted. Institutionalized ethics committees and commissions are playing an increasingly important role

<sup>1</sup> See the programmatic preface of Max Horkheimer and Theodor W. Adorno, *Dialectic of Enlightenment: Philosophical Fragments* (Stanford: Stanford University Press, 2002), xiv-xix.

within the different areas of the functionally differentiated society. Their perspective, however, is never society as a whole, but as area ethics, they take the operational logic of medicine or economy, of the media or international organization, as non-negotiable preconditions. The different kinds of ethics are connected to their respective specialized systems of society. Their function in these areas is to facilitate the smooth operation of the respective divisions of society: medical ethics for medicine, media ethics for the media, financial ethics for the financial markets, etc. These different forms of area ethics are complementary to the momentum of their respective areas. Ethics' function of reinforcing technocracy can be detected in the operation of these types of ethics vis-à-vis their area of application.

Ethics in a technocratic age thus often serves as a fig leaf to convey an image of respectability to the public. For instance, the FIFA's ethics committee evidently serves the function of dispersing the continuous rumors of corruption and bribery linked with different members of its executive body. The committee is headed by a former Swiss football player, and its independence from the FIFA seems to be merely nominal.<sup>2</sup> The existence of the ethics committee tries to signal to the public that any unethical behavior is investigated. The ethics committees of pharmaceutical companies, such as Novartis, serve the purpose of sanctioning research, while at the same time communicating the companies' ethical concern to the public. As in the case of the FIFA committee, the careful choice of its members ensures that its recommendations are within a predictable range and will not inhibit the research scope of the company.

It would be unfair to judge ethics committees in general by referring to these two examples. Not all committees have such proximity to their employer. Nevertheless, there is still something to learn from them for the function of ethics in general. Ethics fulfills different roles in these examples: First, it sends a signal to the public saying that the organization takes care of maintaining and evaluating ethical standards. Second, it also communicates internally that "someone is watching you," i.e. that research and business practices are measured against an "ethical standard." Employees and members of the association need to watch out so as not to violate their code of ethics, whether this code be implicitly or explicitly stated. Third, this "ethical standard," however, is set by the organization itself, and its careful choice of ethics committee members guarantees that decisions would not conflict with the organization's interests.

<sup>2</sup> "Ethics Committee," *FIFA.com*, <http://www.fifa.com/aboutfifa/organisation/bodies/standingcommittees/committee=1882034.html> (accessed July 2, 2012).

While the ethics of these ethics committees is conservative and merely serve the function of public appeasement, the same critique might be inapplicable to other forms of ethics in society. Clinical ethics committees, for example, deal with difficult decisions in clinical practice on a case-to-case basis. Quite often, the different approaches of the different professions involved in the field (doctors, nurses, hospital management) and stakeholders (patients, relatives, hospital staff) call for a mediating platform to resolve conflicts. In this case, the role of ethics committees is to bring together these professions and stakeholders on a neutral ground, where, ideally, the clinical hierarchies do not play a role. Ethics committees thus facilitate the processing of conflicts, which are otherwise made impossible due to a lack of communication and to hierarchy conflicts.

However, it is not accidental that these clinical ethics committees are mushrooming in a time of increasing rationalization in the health sector. The growing specialization in the field and the time constraints brought about by rationalization and bureaucratization lead to a lack of inter-professional communication. Ethics, as it were, is the flip side of this development. Ethical concerns are externalized from daily practice into special forums, where this communicative space is artificially created. Although I am not rejecting the establishment of these ethics committees, I am proposing that they also have to be understood in the larger context of the rationalization and the technocratic organization of the clinic. Not only are they a symptom of technocracy; they also lead indirectly to its reinforcement.

Other ethics bodies have still another function within society. The national ethics councils, for example, process ethical questions arising from technological progress.<sup>3</sup> It is probably the most visible form of ethics in society. Normally implemented by the national government, they are given the task to develop a position on ethical questions in medicine and the life sciences related to national legislation. Embryonic stem cell research, pre-implantation genetic diagnosis, and regulation of organ donation might be such issues. These councils, however, can also determine the issues to be deliberated upon and thus inform the public about ethical issues and influence the political agenda. It is in this triangle between politics, the public, and science that National Ethics Councils (NECs) operate. Their task is partly to translate ethics into politics, and to inform the public about ethical issues.

<sup>3</sup> The task of NECs varies depending on their mandate. For a comprehensive description of their institutional setting and tasks, see Michael Fuchs, *Nationale Ethikräte: Hintergründe, Funktionen und Arbeitsweisen im Vergleich* (Nationaler Ethikrat, 2005).

The function of NECs is therefore ambivalent. On the one hand, they function as advisory bodies for government; on the other hand, they also set the political agenda in actively taking up public concerns. Just as their function is ambivalent, so, too, is their democratic credential. Usually appointed by the executive branch of government, they are not democratically elected and acquire their authority by virtue of being experts in the field. Political decision—in tune with the features of a technocratic age—are being moved to expert commissions and put out of reach of democratic legitimization. This is one side of the story. The other is that, while expertise is important, it has to be emphasized that these expert commissions have to involve and be responsive to the public in their deliberations. There is nothing wrong in having experts as advisors; but as a government advisory body appointed by the executive branch, the name “National Ethics Council” is misleading.<sup>4</sup> The externalization of ethical concerns from the realm of politics might be honest, as politics in a functionally differentiated society cannot credibly put forward ethical positions. But it also stands for yet another externalization of ethical reflection that allows the smoother operation of political institutions devoid of genuine moral positions.

The sketched picture of institutionalized ethics in society shows that while ethics can play different roles and serve different functions, quite often it nevertheless stands in the service of a technocratic age as it fosters the smooth internal operation in a particular area of society by removing disturbing questions from the political sphere and relegating these to the purview of ethics committees or councils. Ethics thus can be the way to avoid having to address the problems posed by the increasing rationalization and specialization of medicine, media, or other areas of society. It might be unfair to blame ethics for the growing influence of technocratic, instrumental reason, yet it is indeed the institutionalized ethics bodies which feed into the rationalization processes of technocratic society. Many ethical questions only arise due to rationalization and specialization processes, and yet in having to take the clinic, business, or media organization as a given, most of these ethics committees are limited in their decision by a large number of practical constraints imposed by the field in which they operate.

<sup>4</sup> This was the case with the German bioethics council, which was appointed by then chancellor Gerhard Schröder as “Nationaler Bioethikrat” (National Bioethics Council) as a government advisory body, yet its name carried quite a different promise.

### Thesis Two: Ethics' Forgetfulness of the Social Context

The relation of ethics to the social context depends to a large degree on the ethics tradition to which it belongs. While Kantian ethics fails to consider the concrete dimension of society,<sup>5</sup> other ethical traditions such as utilitarianism have an explicit reference to the concrete consequences of actions in society. When we turn to ethics as practiced by ethics committees and commissions, then we have to ask about the relation of such bodies to society as such. Their scope is always limited. Clinical ethics committees discuss the cases submitted to them, FIFA's ethics committee discusses charges of corruption, and media ethics bodies deliberate about the trespassing of limits of the freedom of the press. Yet, the framework within which they operate is accepted as a given. Ethics committees most often have only a marginal power to question their framework; they are rather constrained to accept it.

There is an access to the question from Critical Theory that sheds some light on ethics' oblivion of society. Ethics is, as Herbert Marcuse writes, the expression of the antagonism between the specific and the general interests, i.e. ethics is the codex of the demands needed for the self-preservation of the general public.<sup>6</sup> Therefore, ethics plays a part in the organization of society in terms of its self-preservation. It works in the interest of the general against the particular—the particular that might harm the public interest. Such streamlining uses considerable force on the ones dissenting from the general interest. From a Marxist perspective of an alienated society, such pressure is always one exercised by one class against another.<sup>7</sup> Thus, ethics is not the basis of society; rather it is its product. To absolutize ethics and make it the basis of a better society would misinterpret the role ethics can play in contemporary society.<sup>8</sup>

The problem with ethics committees, commissions, and councils, however, is yet a different one. The dialectic between the specific and the general, identified by Marcuse for society as a whole, plays out in the different areas of a functionally differentiated society. Medical ethics, media ethics, and business ethics ensure in their respective areas that the

<sup>5</sup> See Max Horkheimer's programmatic inaugural lecture when he took over the Institut für Sozialforschung in Frankfurt in 1931, printed in Max Horkheimer, *Sozialphilosophische Studien: Aufsätze, Reden und Vorträge 1930-1972*, 2nd ed. (Frankfurt: Fischer, 1981).

<sup>6</sup> Quoted in Gerhard Schweppenhäuser, "Die 'kommunikativ verflüssigte Moral': Zur Diskursethik bei Habermas," in Gerhard Bolte, *Unkritische Theorie: Gegen Habermas* (Lüneburg: zu Klampen, 1989), 128.

<sup>7</sup> The question whether the ruling ideas are indeed the ideas of the ruler is yet a different one. There are good arguments that the ruling ideas are only indirectly connected to the ideas of the ruling class.

<sup>8</sup> For a critique of the Habermasian ethics, which falls into the trap of absolutizing ethics, see Schweppenhäuser.



specific interest does not violate the general interest. The general interest of these fields is the self-preservation of the respective organizations; ethical deviance is sanctioned in so far as it threatens the existence of the particular organization, be it a research institution or a sports organization, a hospital or a pharmaceutical company. Critical questions about the specific value for society at large are not in the picture. Only NECs might be able to raise genuine political questions; however, they often fail to address social concern as well.

In the framework of a functionally differentiated society, ethics thus plays the role of sanctioning the dissonances within a particular social system. As area ethics, they need to be closely connected to the concrete practice; otherwise, ethics runs the risk of becoming irrelevant in the respective social field, as Onora O'Neill has convincingly pointed out for bioethics.<sup>9</sup> This, however, implies that the normative potential and the critical distance are often missing. The concrete practice and systemic organization has to be accepted as a condition not to be questioned in ethical deliberation.

The forgetfulness of ethics of the social context thus results from the way ethics is organized, be it in a hospital, in a corporate business, or a sport organization. Its function is precisely to solve the systemic problems quite often resulting from the communicative shortcomings produced by rationalization and specialization. Some of the *results* of these developments might be addressed in ethics committees, but many of the *causes* are off-limits to their deliberation.

### **Thesis Three: Ethics Instead of Democracy?**

The two theses on ethics as reinforcement of a technocratic age and its oblivion of the social context already set the stage for the last thesis, i.e., the problematic democratic standing of ethics committees.

Ethics committees are expert bodies appointed by either the company management or the government through mostly non-transparent procedures. The use of non-transparent appointment procedures already points to the democratically ambivalent nature of ethics bodies.

Ethics committees often originate as advisory bodies. However, they increasingly gain the power of decision about research projects or about clinical questions. Medical research papers and projects require the approval of an ethics committee. In some cases, ethics committees, instead of the democratically elected political body, might make the actual decision. This shifts the power structure from the legislative to the executive branch of

<sup>9</sup> Onora O'Neill, *Autonomy and Trust in Bioethics* (Cambridge: Cambridge University Press, 2002).

government. At the very least, elected officials would require a considerable amount of political will to act against the explicit recommendations of ethical advisory bodies. Transparency in appointments and engaging the public in discussions might offer one way of making such ethical bodies more responsive to democratic demands.

Ethical bodies being responsible for legislation might sound for some like the Platonic ideal of the philosopher king come true—at least in a miniature scale regarding particular matters. However, regardless of how we judge this Platonic ideal, there are important reservations to be made: We are dealing here with expert commissions carrying the label “ethics,” which does not match ethical expertise in any philosophical sense. These experts are proponents of a particular profession (e.g., clinical ethics councils) or segment of society (NECs) and pursue the interests of their clientele. Things get even more problematic if particular economic interests are asserted through the work of ethics councils.

## Conclusion

This paper started with the injunction not to trust the ethicist. Not trusting the ethicists means to understand their function in, and at times even support of, a technocratic organization of society; it also means to acknowledge the practical constraints of ethics in present-day society; and, finally, it calls for an awareness of the issues that are excluded from ethical deliberation. Ethics fulfills a particular function in society, and it is important to be conscious of the technocratic framework responsible for the proliferation of ethics committees and councils.

What can be done on the practical level is to enlighten ethics about its critical social function. An ethics true to its proper meaning would extend its normative potential to questions of the right structure of the different social areas and of society at large, and would question the preconditions which determine many of the ethical dilemmas. It should be acknowledged, rather than obscured, that technological progress creates a variety of ethical questions regardless of the social conditions. At the same time, since changing social conditions are putting the questions arising from technology in a different light, it would be the true task of ethics to also shed light on the social dimensions and institutional framing of questions that are labeled as “ethics” in contemporary society.

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