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Bioethics in a Small World

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The Europäische Akademie

The Europäische Akademie zur Erforschung von Folgen wissenschaftlich-technischer Entwicklungen GmbH is concerned with the scientific study of consequences of scientific and technological advance for the individual and social life and for the natural environment. The Europäische Akademie intends to contribute to a rational way of society of dealing with the consequences of scientific and technological developments. This aim is mainly realised in the development of recommendations for options to act, from the point of view of long-term societal acceptance. The work of the Europäische Akademie mostly takes place in temporary interdisciplinary project groups, whose members are recognised scientists from European universities. Overarching issues, e. g. from the fields of Technology Assessment or Ethic of Science, are dealt with by the staff of the Europäische Akademie.

The Series

The series “Wissenschaftsethik und Technikfolgenbeurteilung” (Ethics of Science and Technology Assessment) serves to publish the results of the work of the Europäische Akademie. It is published by the academy’s director. Besides the final results of the project groups the series includes volumes on general questions of ethics of science and technology assessment as well as other monographic studies.

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Preface

The Europäische Akademie zur Erforschung von Folgen wissenschaftlich-technischer Entwicklungen Bad Neuenahr-Ahrweiler GmbH is concerned with the scientific study of the consequences of scientific and technological advance for individual and societal life and for the natural environment. The main focus is the examination of mid- and long-term processes that are especially influenced by natural- and engineering sciences and the medical disciplines. As an independent scientific institution, the Europäische Akademie pursues a dialogue with politics and society.

The work of the Europäische Akademie is mainly conducted by temporary interdisciplinary project teams that develop recommendations for a long-term reliable science and technology policy. Above that, the Europäische Akademie organises international conferences on timely issues that are connected to its research programme. The present volume aims at attracting attention to moral problems caused by the globalisation of medicine and the life-sciences. Finding acceptable and reliable solutions for these bioethical problems will to a large extent determine the quality of our living together in an increasingly small world.

Bad Neuenahr-Ahrweiler, August 2004

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Introduction

Felix Thiele, Richard Ashcroft

In the epoch of globalisation, where well established cultural, political and economic boundaries erode, bioethics should serve as central discourse for making sense of changes facing the world's peoples. The problems created by globalisation may not all be entirely qualitatively new, but their scale and urgency are more intense than ever before. The old philosophical idea of a "world republic" that may serve as forum for solving these issues and of "perpetual peace" as long-term goal make the cynics laugh, but are of enormous significance as ideals. Yet even their status as ideals has been challenged by the force of international "Realpolitik", the complexity of intercultural relationships, the vast disparities in wealth and other resources, and the corruption of the language of morals in political discourse. In this context, bioethics has been seen both as a solution to problems of intercultural incomprehension, poverty, inequality, and technical change, and as part of those problems itself.

We convened the conference "Bioethics in a Small World" as part of the Europäische Akademie's programme for international interdisciplinary exchange. The conference took place on April 10–12 2003 with participants from Europe, Africa, Asia and North America. Our intention in organising the conference was to draw out some of the main themes and controversies of bioethics's confrontation with globalisation. Until recently bioethics has been considered mainly a development of traditional medical ethics (with its concerns with abortion, euthanasia, and the doctor-patient relationship) or as a discourse for arguing about the implications of new biomedical technologies (such as organ transplantation, cloning, clinical research, and biotechnology). Although bioethics also considers the ethical dimension of animal experimentation and plant and animal biotechnology, and has a considerable overlap with environmental ethics, the predominant concern of bioethics remains the fate of humans in economically advanced nation states. Yet in recent years, some of this emphasis has begun to shift toward issues of justice between people and nations, our global home, and the international political economy of biotechnology and the pharmaceutical industry. Aside from the intellectual interest of these issues, many bioethicists still hold to the ideas that bioethics is a liberatory discourse, to be developed in the service of the worst off and the most vulnerable, and hence to ignore global poverty, racism, and violence against and exploitation of women and children is a kind of betrayal of that mission. At the same time, bioethicists of a less politicised, or perhaps simply more pragmatic, bent insist on the role of bioethics as a policy-relevant discipline which should assist governments and law-makers to regulate new technologies and health care practices in a way which promotes and protects liberties, capabilities and opportunities for all, regardless of where any one comes from or the cultural context they live and work within.

Our first two chapters address the question of the relationship between bioethics, as a universalist discourse of reason and universal value, and culture, as a supposedly local factor which disrupts universalising arguments and practices. Oswald Schwemmer sets out a theoretical basis for understanding the relationship between bioethics as a combination of theoretical reason and “application” to specific circumstances, and culture, as a system of symbolic meaning. Godfrey Tangwa then addresses the ways in which culturally specific ways of thinking about moral problems can be illuminating on the global plane, and in so doing challenges both the idea that culture is the opposite of reason, and the idea that reason is the specific property of Western philosophers alone.

The next two chapters examine a key instance of the cultural variability of response to a new technology, and of international political dispute over the nature of rights and ownership of intellectual property, the case of Genetically Modified Organisms in agriculture. Michiel Korthals sets the debate in European context, and examines the diverse types of argument put forward by critics and supporters of GM agriculture, while making a more general argument about the way reason works with and on social contexts. Abdallah Daar and colleagues set out the case for considering GM agriculture as a technology of liberation from starvation and economic dependence in the developing world, in contrast to the common perception that this technology ties the developing world into a subaltern role under the dominance of the economic powers of the Northern hemisphere.

One of the key elements in the debate on GMOs concerns the use of intellectual property law at national and international level to control exploitation of traditional knowledge and practices and make them into globally marketable products. The chapter by Joseph Straus sets out the international intellectual property law basis for patenting “biomaterials”. Based on a discussion of the continuities between the practices of collecting human and non-human genetic materials for use as raw-materials in the life sciences, Bronwyn Parry considers, in her chapter, why the benefit-sharing agreements that are currently employed to compensate for use of non-human biological materials should not also be applied to the collection and use of human biological materials. Drawing on an analysis of the scope of intellectual property protection available for the “authors” of genetic sequence databases under copyright law, she also questions why, in the interest of justice and equity, benefit sharing agreements should not also extend to cover uses made, not only of collected genetic materials, but also of the genetic information embodied within them.

Consideration of intellectual property law and its effects on global health and welfare has been extensive in the context of debates over the practices of Western governments and the research-based pharmaceutical industry. Carmel Shalev sets out a human rights based approach to the control of intellectual property rights in situations of health emergency, while Georg Marckmann gives a broadly Rawlsian account: in effect both authors argue for limiting intellectual property rights holders powers to exploit those rights “whatever the consequences” and against an interpretation of World Trade Organisation regulations which prioritizes property rights over human rights and fundamental needs. These chapters can be seen as a continuation of the debate between Straus and Parry. At the conference itself, Nathan Ford presented empirical information and an argument from *Medécins sans Frontières* about the need to collaborate with the pharmaceutical industry to develop “orphan”

drugs into useable treatments for diseases endemic in the developing world, while insisting that the pharmaceutical industry does have moral obligations to aid even populations unable to make large scale purchases of its products. Unfortunately Ford was unable to contribute to this volume through pressure of work.¹ Also at the conference, Richard Ashcroft presented a Hobbesian argument for compulsory licensing on the basis of the fundamental obligations of states to protect their citizens from social collapse into the “state of nature” in disaster conditions. This chapter was already accepted for publication in *Developing World Bioethics* and unfortunately cannot be reproduced here.²

The intensely political nature of the interventions made at this conference will already be clear to the reader. Notwithstanding this, and the frequent disagreements expressed by conference participants, the meeting was productive and convivial, suggesting that bioethics, and bioethicists, can do better than “raw” politics. Our final papers address this issue. Edgar Morscher’s chapter considers the illumination careful philosophical analysis can shed on a politically contentious issue in bioethics, that of reproductive cloning. Udo Schüklenk’s chapter, by contrast, argues that bioethics itself risks being “captured” by the very social forces it tries to stand apart from as a critical voice. His chapter shows us that the bioethicist must be as aware of the political compromises he or she strikes as of the intellectual coherence of his or her arguments.

We hope the reader enjoys this collection of papers as much as we and the participants enjoyed the conference which gave rise to them. We believe that bioethics as a global phenomenon has the power to do much good: and that it can do this only if it realises the necessity of addressing global issues.

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¹ MSF’s position papers can be found at <http://www.accessmed-msf.org>.

² Ashcroft RE. Access to Essential Medicines: A Hobbesian Social Contract Approach. *Developing World Bioethics* (in press).

Cultural Rationality and Moral Principles

Oswald Schwemmer

1

The Paradox of Cultural Articulation

The cultural discontent which Sigmund Freud spoke of in 1929,¹ has been deeply lodged in the concept of culture ever since it became a topic of discussion. Even the view that culture inevitably leads to a tragedy, the “tragedy of culture” which Georg Simmel in 1911 felt it necessary to lament,² reflects a consciousness that derives from culture itself and which has been expressed over and over since its earliest beginnings.

It is this discontent and the inescapable character of culture that will accompany my investigations on this topic like a fundamental chord. How does this character arise and what does it consist of? Generally speaking, every cultural phenomenon has been imprinted by a burning desire for expression and articulation, a fact which gives this figurative expression an almost literal sense. Culture is – prior to everything else that it may also be – expression. Expression demands articulation. Every articulation contains a paradox.

Let me summarize these theses. First: the need for expression is a basic element of human existence, present everywhere, no matter where we go or stand.

Second: expression demands articulation, the “immanent organization”³ of an expressive form. Without this organization it would remain a blind event, mere noise or movement without any further relationship to the world of relationships – of turning to or turning away from others, of exchange with others or of adherence to whatever is one’s own. Expression without articulation would be meaningless. Expression contributes to this world of meaning only by means of its articulation, and only by means of this articulation does it become part of culture.

Third: in this articulation the event becomes form, and therein lies its paradox. For in an event the form of an expression also stands in opposition to it. A form

¹ Sigmund Freud, *Civilization and its Discontents*. New York [W. W. Norton] 1989.

² Georg Simmel, *Der Begriff und die Tragödie der Kultur*. In: Georg Simmel, *Gesamtausgabe* Band 12. Aufsätze und Abhandlungen 1909–1918, Band 1, Krammer R, Rammstedt A (eds) (2001), p. 194–223.

³ For Ernst Cassirer the immanent organisation of perception brings about symbolic pregnance and thereby also meaning: “By ‘symbolic pregnance’ we mean the way in which a perception, as a ‘sensory’ experience contains at the same time a certain nonintuitive meaning which it immediately and concretely represents,” and it does this because “it is the perception itself, which by virtue of its own immanent organisation, takes on a kind of spiritual organisation – which, being ordered in itself, also belongs to a determinate order of meaning.” (Ernst Cassirer, *The Philosophy of Symbolic Forms*. Vol. 3: *The Phenomenology of Knowledge*. New Haven/London [Yale University Press] 1957, p. 202. Cf. Oswald Schwemmer, Ernst Cassirer. *Ein Philosoph der europäischen Moderne*. Berlin [Akademie Verlag] 1997, p. 69–125.