Bioethics and Public Reason: A Report on Ethics and Public Discourse in Spain

ADELA CORTINA

Why "Bioethics and Public Reason"?

One of the essential tasks of bioethics in morally pluralistic societies consists of fostering a public use of reason in its field of competence. This is the fundamental thesis of the present work. To deal with it I will try to answer two crucial questions: (a) What is moral pluralism and why does it demand fostering the use of public reason in moral issues in the sphere of bioethics and (b) What are the *laboratories of bioethics* in a pluralistic society?

On this second point, I propose two spaces as privileged environments for *building moral judgment*: public opinion and bioethics commissions at various levels. I also state that bioethics commissions must shoulder the biggest responsibility, because public opinion is not a space to make decisions but rather to shape one's own judgments by listening to different proposals and by advancing one's own.

How can those who work in bioethics foster such a use of public reason and why is it so urgent to do so?

Dimensions of Moral Pluralism

It is inevitable for diverse societies to make collective decisions about moral issues that involve all or part of their members, or nature. Some of those issues fall in the sphere of bioethics, such as stem cell research, transgenic crops, allocation of healthcare resources, advance directives, euthanasia, or the patentability of drugs. These are questions that affect human good or the sustainability of nature, giving them a moral dimension that cannot be overlooked when making legal decisions about them.

Whereas passing a law must follow a constitutionally determined process for each country, there are no well-defined procedures to make moral decisions and recommendations. When societies are morally *monist*, that is, when their members share—even if only nominally—a single moral code, moral decisions are made according to the criteria of this shared code. In morally pluralistic societies this is much more difficult. In that context it is important to analyze the different dimensions of moral pluralism.

This study belongs to *Proyecto de Investigación Científica y Desarrollo Tecnológico HUM2004-06633-CO2-01/FISO*, funded by the Ministry of Education and Science of Spain, and by the European Regional Development Fund—ERDF.
Translated from the Spanish original by Pablo Rodríguez del Pozo and Joseph J. Fins.

Cambridge Quarterly of Healthcare Ethics (2009), **18**, 241–250. Printed in the USA.
Copyright © 2009 Cambridge University Press 0963-1801/09 $20.00
doi:10.1017/S0963180109090392

https://doi.org/10.1017/S0963180109090392 Published online by Cambridge University Press

Ethics of Maximal versus Minimal Civil Ethics

First—and this is the most studied aspect, not necessarily because it is best understood—in morally pluralistic societies, different maximal ethics coexist. These are distinct conceptions of a good life, rooted in different valuations of the issues at stake, which emerge as distinct solutions.

Disagreements are, in principle, inevitable. But because it is necessary to make joint moral decisions, we need to find a path to do so. In morally polytheistic societies, where different moral positions do not even share a basic minimum, it is impossible to approach moral problems from common ground. In pluralistic societies it is necessary to keep trying to find shared minimal common ground, dynamically, actively respecting the different maxims and drawing upon them so long as they agree on some minimums and move them forward.[1]

To find these minimums and to be able to obtain widely agreed upon solutions, liberal democracies such as Spain have gradually adopted the following procedure: Governments appoint commissions of experts and empower them to draft ethical reports on the aforementioned topics that, in reality, would be understood within a proportionate civic ethic, at a minimum, as an ethics of justice in conjunction with other distinct ethical maxims. This does not imply that these reports have to be supported by every member. They can be approved by a majority, with dissenting individual opinions. In the final analysis, the presence of individual votes is a manifestation of a pluralistic society making moral choices. After all, *what* is decided by these commissions is determined by the people making the appointments and deeming who is eligible for service.

Nevertheless, it is also true that the process of dialogue and deliberation undertaken is essential to align moral perspectives. Members can modify their points of view in the course of dialogue, either because they do not have a fixed position or because new elements are unearthed during the deliberations. It might happen—and occasionally it does—that governments appoint commissions that end up deciding the opposite of what was intended.

The conclusions of a bioethics commission do not need to be convincing to the society at large. Disagreement may persist, which is perfectly valid. Different ethics traditions concur on the value of human life and that nature should not be exploited, though discrepancies emerge when trying to define, for example, when human life begins or what kind of practices violate nature. In Spain, this question will likely become more acute in the near future, because the Constitution of 1978 could lead one to understand moral pluralism as what is now being converted into *multiculturalism*.

Moral Pluralism and Multiculturalism

The Spanish constitution of 1978 establishes—in article 16.3—that ''no confession will have a State character,'' thus closing the era of *nacionalcatolicismo (national-Catholicism)* of General Francisco Franco's regime. National-Catholicism can be defined as ''the response of a political society that tries to resolve the disintegration brought on by modernity, which chose the Catholic tradition as part of a national project to foster social cohesion and reduce ideological and social conflict. Alternative moral and religious orientations are excluded as being unpatriotic.''[2]

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The authoritarian Francoist dictatorship lacked its own ideology. Over time, it borrowed its creed from conservative Catholicism for support and cohesion. The 1978 constitution came to declare openly that Spain no longer relied upon any religion or singular worldview ideology. The Spanish state became secular: Neither confessional nor lay. The state should neither seek religious backing nor squelch religious expression.

The constitution consecrated Spain's moral pluralism, which at that time was reflected by the pacific coexistence of distinct ethical traditions, both religious and secular. Nonetheless, all these ethics belonged to the Christian–liberal tradition. The only genuinely different worldview and ethic was that of the *Gitanos*, or Gypsies, an ethnic minority traditionally not engaged in public life.

More recently, growing immigration, particularly from Northern Africa, is increasingly producing the coexistence of cultures that belong to different religious traditions—Christianity and Islam—which might reveal profound disagreements, not only related to ethical maxims, but also regarding fair minimums.

Moral pluralism is becoming multiculturalism in Spain, as building intercultural societies is, without a doubt, one of the greatest challenges in bioethics. In this case, as in others, cultural diversity can provide an opportunity to generate richer philosophical questions or, conversely, become a communication problem.[3]

Intersubjectivity: Convincing through Arguments

In any case, in societies that have transitioned from a single moral vision to pluralism the question of how to create an *ethical intersubjectivity* is actually a new problem. In periods of religious hegemony, the hierarchy decrees what is correct and what is not. And despite many claims against such pronouncements, it seems as if there were only one objective proposal. As the ultimate forces are authoritative religious declarations, those ethical proposals have an aura of infallibility. But in pluralistic societies, the process is very different. Religious traditions offer their points of view to public opinion, but there are competing perspectives. Bioethics commissions, in consequence, have to be pluralistic. However, they are composed of fallible people, no matter how well intentioned they may be.

The question is then the following: How can commissions reach moral decisions that can be *intersubjectively* valid, even as their members have the capability for error or conflicts of interest? *What kind of legitimacy can the proposals, rules, recommendations, or guidelines of these commissions have for the society at large?* How can their statements be morally obligatory if they cannot convince through argument, even if those arguments are wrong?

My thesis is that the commissions' conclusions cannot morally obligate citizens if they are not *convincing* with their arguments, even if those are fallible. This makes dialogue, the open exchange and consideration of arguments, absolutely necessary. This is the weightiest reason that I lay out in the following paragraphs to highlight the notion that experts in bioethics have the moral duty to bring their proposals and arguments to those privileged spaces where ethical and moral judgments are made, namely, in public opinion and bioethics commissions at

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different levels. The vigorous exchange of arguments in those spheres is necessary for the moral and deliberative health of any society.

In addition, there are two other dimensions of pluralism that are rarely taken into account. One is the *internal pluralism* within each maxim-based ethics, whether it is religious or not. The other is the *pluralism of interests*.

Internal Pluralism of Ethics of Maxima

In *Political Liberalism*,[4] John Rawls offers the doctrines of Kant and Mill as comprehensive philosophical doctrines of the good. Nonetheless, it should be pointed out that there are moral disagreements within each of them. The same can be said of religion-based maximal ethics. In fact, believers share the essential religious message—the proposal of what a life in full is—but they know that in concrete cases the core message can be understood in different ways. Sacred texts are interpreted by different traditions such that it is easy to distinguish very different currents within every religious tradition. At the same time, different scientific and philosophical positions, and also different contexts, drive toward multiple variations within each maximal ethics, or each *comprehensive doctrine of the good*, to use Rawls's language.

Applying ethical principles to a concrete context is indispensable in understanding the meaning of such principles. Principles are universally valid not in an absolute way, but by interpreting them and generalizing them to a fair application in a social context. This is not a matter of relativism but of pluralism.

Pluralism of Interests

There is a third form of pluralism, in my opinion the most effective in daily life: the plurality of interests that can be political, economic, or professional.

Political interests are clear in bioethics. Because ultimately it is necessary to legislate on most bioethical questions, political parties defend one or another position, making it not only moral and political but also *partisan*. In Spain, each political party takes a position on every problem, adopting it as *the* party plan, even if it is obvious that there will be disagreements among its members. It is incredible to believe that all members of the Socialist Party (PSOE) are in favor of euthanasia or that all members of the conservative Popular Party (PP) oppose it. Just as incredible is to believe there is partywide accord on positions related to the war on Iraq, regional autonomy, or negotiation with Basque separatists. And we can mention each and every problem, including those of bioethics.

Issues thus become not only politicized, but also *partisan*. Even moral issues. Any position a citizen may defend has already been monopolized by a political party, and that citizen is accused of using the discourse of that party. It is as if citizens did not have the ability to think and decide for themselves. Their positions may occasionally agree with those defended by one or another political party, which is desirable in a mature society. People have to think for themselves, and not just adopt official—or partisan—positions. It is lethal for a society when moral disagreements to end up as confrontations among partisan political parties. It is lethal that each party capitalizes on a moral position and turns it into part of its heritage, *when it is the civil society that has to discuss moral issues and try to determine how far agreements will take them and where differences are actually*

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rooted. It is evident that positions taken by political parties have moral implications, but it is the members of civil society who have to take moral positions. Moral life should not be partisan, because then it turns into an arsenal of votes disputed among those who want to gain power and allocate it among their supporters.

Pluralism of interests is on many occasions *economic.* In questions of bioethics, economic interests are immense. Any bioethical issue has economic implications, some of enormous breadth. It is not difficult to mask economic interests with references to general welfare. Pharmaceutical and healthcare companies, as well as hospitals, try to influence decisions that mobilize large sums of money. There is also a pluralism of *professional interests*, sometimes motivated by sincere scientific conviction, sometimes by a very human thirst for celebrity, prestige, and mass-media attention. Hobbes already understood that there are three passions that rule the world: the desire for property, for power, and for glory.[5]

It is an inescapable reality that there are moral and political, economic, and professional pluralisms within maximal ethics. But it is also an unavoidable reality that decisions affecting society at large have to be made. With which ethics should those decisions be made? Who is legitimized to make them?

Moral Decisionmaking: Dialogical Bioethics

Moral decisions that affect pluralist societies at large have been made from a nascent civic transnational ethics, whose guiding principles are not to turn people into instruments but to empower them, in order to take them dialogically into account as the object of these decisions, to distribute benefits and burdens fairly, and to be responsible for the most vulnerable. This transnational civic ethics is comprised of a set of shared minimum principles and values of different maximal ethics and must, over time, consider new innovative proposals. No ethics of maxims fully corresponds to civic ethics, but none differs radically from it, either.[6]

The meaning of these principles is understood more accurately when they are applied to concrete contexts of action. This is, when they have to be interpreted to make decisions. As has been remarked on by hermeneutical critical ethics, applying principles is an indispensable dimension of understanding principles. Those interpretations can be more or less adequate, according to critical principles that are immanent to the actions under consideration.[7] The enormous relevance of applied ethics is that, without them, it is impossible to understand the meaning those principles discovered by speculating about the foundations of a given ethics.[8] But, who carries out the task of interpreting the principles in the concrete decisionmaking process? Who is legitimated to do it in such a way that his or her decisions are morally binding?

This point shows in all its crudeness the difficulties faced by an ethics that has aspirations of being intersubjective and that is identified neither with the law nor with religion. There are neither moral parliaments nor churches (nor mosques, nor synagogues), which raises the question of when it is legitimate to be morally binding.

There are *no moral parliaments.* Political parliaments pass laws that are legally binding upon all members of a given political community. There is no doubt that

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parliaments must intend to pass laws that are morally adequate. But in morally pluralistic societies, it might well occur that not all groups agree that a law is morally adequate. However, the passed law will be legally valid as long as the process was constitutional. The law then judicially obligates, but not what might be permitted with respect to conscientious objection. What is the source of legitimacy of legislation? Why is it obligatory?

What legally obligates citizens is the fact that members of a political community have sealed a hypothetical pact by which they put the capacity to legislate into their parliamentary representatives' hands and the faculty to enforce the laws into the hands of the executive branch. The will of the citizens is then the ultimate source of legitimacy, at least on paper.

Nevertheless, in the world of ethics there is no representation. Electing representatives to promulgate moral laws would be a *contradictio in terminis*: If a person does not personally affiliate or recognize a certain precept as morally obligatory, that person is not subjectively obligated to abide by it.

It is not simply that a person who acts morally does so out of respect for the law, as Kant put it; the point is, instead, that I am only morally obliged by what I recognize as a moral obligation. No one can decide for me. I cannot appoint legislators to constitute a moral parliament. The law can appeal to external coercion, but morality cannot. The law can have privileged interpretations from the highest courts, but ethics cannot.

The very nature of civil ethics and applied ethics is delicate, because they cannot be imposed coercively the way a law can, but at the same time they cannot be left to chance or personal whim. The only way they can be morally binding is when their recipients know and feel that they are obligated by that ethic. This can only be achieved by convincing through dialogue. Dialogue is thus necessary not only to reach agreements about the contents of ethics, but also—and fundamentally—to engage those who may perceive or refuse an obligation.

On the other hand, there are no *moral churches* either. In a pluralist society, no institution can ascribe to itself the legitimacy to promulgate what is morally right for all citizens. The Church's strength is rooted in its claim to speak in the name of God. The legitimacy of the Church comes not from its own wisdom, but from interpreting God's will. In a pluralist society, there are many citizens who do not believe in God or feel that God is presented by the Church.

There are no ethical parliaments or ethical churches or ethically privileged tribunals. But we still are considering that there is a moral obligation that is not displaced by the legal obligation. What are the privileged spheres to form moral judgments? Which entity is legitimated to make moral judgments?

A Reasoning Public Opinion

Regarding the first of the those questions, public opinion is one of the possible laboratories of moral judgment. Its history is long, but I will mention here just three historical benchmarks.

Enlightenment Method

The sphere of public opinion (*Öffentlichkeit*, *Publizität*) was born in the 18th century as a dimension of civil society linked to the legitimation of power.[9] If this

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legitimation is no longer religious, there cannot be but a public legitimation founded in the general will, or *what everybody would want*. This is expressed in the social contract, by which the government cannot produce laws except those everyone would desire.

On the other hand, to determine what everybody might want, it is absolutely necessary to carry out a process of deliberation across the public sphere, which has to be led by those who are enlightened and wise.[10] Reasoning public opinion has thus two meanings. It is a principle for legitimacy of the political power, and it is a method that fosters enlightenment.

Nowadays, the role of public opinion has increased considerably, as has been shown by—among others— John Rawls's political liberalism and Jürgen Habermas's deliberative politics.

Political Liberalism

Political liberalism is centered in pluralist societies and the difficulty of sustaining the stability of the political organization when different comprehensive doctrines of the good coexist.[11] To foster stability it is necessary to find some principles of justice that can be propagated and attract consensus from diverse doctrines. These principles should be applied by institutions, because they are shared by the society at large. But public reasoning is also indispensable for all citizens, and not just the wise and enlightened few.

It takes a mature citizenry to maintain a constitutional democracy within a morally pluralistic society, a citizenry that exercises its duty of reciprocity, that is, that raises arguments that all fellow citizens can understand and accept. Public deliberation is necessary as the single way to discover those things that can be shared regarding constitutional tenets in principles of justice. Deliberation, in other words, relates to questions of *political ethics*.

Deliberative Politics

Jürgen Habermas, for his part, understands that a democracy cannot actually be such without a deliberative politics that counts on a critical public opinion. This public critique is made up of citizens endowed with special political and economic *antennas*, who can translate their fellow citizens' needs into proposals that arrive at political power. Those sensitive citizens comprise the civil society capable of public critique. Without it, it is impossible to move forward the work of democratically forming the general will through a deliberative process crystallized in general elections and parliamentary bills.[12]

Beyond a classical liberalism that only pursues securing individual rights and beyond a communitarianism convinced that society at large shares a determined conception of a good life, deliberative politics tries to bring to light and reinforce the intersubjectivity expressed through the networks of language. The sphere of public opinion is, thus, not simply descriptive here but normative.

Following the Kantian tradition, both Rawls and Habermas, therefore, concur in conceiving the sphere of public opinion as the space where citizens can forge their moral judgment on issues that must be translated politically. A political democracy demands a participatory public sphere, where citizens openly deliberate, as maintained today by those who advocate a deliberative democracy.

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The Dialoguing Civil Society: A Space Where Moral Judgment Is Shaped and Discovered

The above-mentioned concepts can be realized, I believe, by recognizing at least three points: (1) It is not only political powers that require public legitimation, but also any institution whose activities have public consequences, for instance, healthcare centers, pharmaceutical companies, biomedical research agencies, and international health organizations; (2) It is not convenient to idealize, the way Habermas does, the world of public opinion and civil society. Public opinion is a place where those who have power and political, economic, or intellectual reasons throw out all sort of opinions. And undoubtedly it is a space that can be manipulated by economically and politically powerful mass media; (3) Although public opinion should not be idealized, it does not mean that it is not a productive place for the shaping of moral judgments, because it is where voices are actually heard. It is thus important to combat press monopolies, to let all voices be heard, to present all argumentative proposals.

It is about strengthening a dialoguing civil society, in the descriptive sense of the term, to deal with every moral issue that has public repercussions. Citizens, in effect, enter a process of public dialogue not only to introduce themes into the public agenda, but also to forge their own moral conscience and to make moral judgments. The moral density of a society does not depend on what Guttmann and Thompson call "middle democracy,"[13] but rather on a strong civil society, an active and participatory citizenry ready to dialogue about all issues that have public consequences.

One of the privileged places to do this is the public sphere, and for that reason it is important that all participate. Notwithstanding, there have been numerous long-lasting criticisms of the deliberative process. Among the sharpest are the following[14]: (1) that deliberation requires a rational, moderate, unselfish discussion, of which ordinary people are not capable; (2) that discussions are inevitably asymmetric, which, in fact, favors the most powerful; (3) that deliberation will be passionate, which is openly at odds with the notion of rationality; (4) that deliberation only starts when the issue in question arrives into the political agenda; and (5) that deliberation demands a number of virtues, such as civic integrity and magnanimity, which are not available to the ordinary citizen.

Trying to confront these criticisms is of the highest importance, but we will not do that in this work, because we understand here that *no decisions are made in the sphere of public opinion*, where just positions and arguments are expressed to let the citizens form moral judgments. Civil ethics decisions are made in more constrained environments, where an unselfish rational and symmetrical deliberation is possible, where the practice of virtues such as mutual respect, civic integrity, and magnanimity remains possible. Where are those decisions made, and where are the ethical orientations elaborated?

Moral Decisionmaking Laboratories

As we have come to say, the role of applied ethics is crucial in discerning the ethical context. This is particularly important in bioethics. Without application there is no interpretation or understanding. If the public sphere is the indispensable space to shape moral judgments, it is because that is where a wide range of

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voices can be heard. For that reason, ethics committees and commissions are the privileged laboratories to craft ethical lines.

Local, national, and international committees and commissions of bioethics, clinical ethics committees, institutional review boards (IRBs), and quality assessment committees, together with conferences of citizens, belong to that privileged category. Fostering these kinds of deliberative bodies is of considerable interest.

To become authentic laboratories of bioethics, these bodies must fulfill the following requirements:

1) The purpose of debates should be to reach a *dialogical decision*, not a negotiated decision. It should not be about *splitting differences*, as happens in widely debated pacts, but about exchanging arguments for mutual understanding and trying to arrive at the best possible answer or recommendation.
2) Decisions should be *revisable, open, and reasonable*, based on argumentation. If there is no unanimity, individual votes should be expressed.
3) Commissions should be formed by experts and lay people.
4) Commission members should commit to interpreting the values of civil ethics in concrete application; in good faith they should set aside their political, economic, and personal interests, even if this implies a big effort. Members should try to argue the issues with a determination to do what is right.

This point reminds me of a personal anecdote to which in its day I did not give much importance but that may help illustrate these points. The Spanish Advisory Committee on Ethics of Scientific and Technical Research, to which I belonged, was invited to prepare a report on stem cell research. The report saw the light one day in 2003. The then *presidente del gobierno* (prime minister) invited us to the *Palacio de la Moncloa*, the seat of the Spanish Government, to officially receive it on behalf of the government. I remember that after a brief exchange of courteous phrases, the prime minister said to the committee members: ''You have done your work; now we have to do ours.'' Those words sounded like a disrespectful remark to me that day. But years later I have concluded that the prime minister had a point. Our task was not to calculate parliamentary support for the report; we did not have to think how the report was going to be received by different political parties or by the media; we didn't have to seek the approval of research firms and institutions. Bioethics commission members should not be instrumentalized by a cause, but dialogically empowered. Electoral calculations are exclusively the politician's business.

However, politics is not just about ballots. Politics is a deliberative exercise, as in the Aristotelian dream that many supporters of democracy try to enact: ''But language serves to declare what is advantageous and what is the reverse, and it is the peculiarity of man, in comparison with other animals, that he alone possesses a perception of good and evil, of the just and unjust, and other similar qualities; and it is association in these things which makes a family and a city.''[15]

Deliberating about the just and the unjust should be the nucleus of political life. But it is not that way, at least in contemporary Spain. Here, politics has been reduced to attracting votes and has forgotten that communicative power is authentic power. Even if it resembles it, the truth is that procedures that legitimize legal decisions are different from ones that legitimize moral recommendations.

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Legal procedures are not the ethical ones, although politics has to be ethical, and ethics should be committed to public affairs.

5) In bioethics commissions, it is indispensable to state arguments that others can understand and accept, even if such arguments are highly innovative. It is essential to make an effort to convince and to be convinced, to avoid manipulating others and to be manipulated by others, among other reasons because the only way a civil ethics can aspire to morally bind people is by convincing them that a norm or proposal is more just for the people's good and for the sustainability of nature. A moral proposal only obliges those who perceive its obligatory character.

This supports the need for experts in bioethics to bring to the public sphere the duly founded conclusions of their debate. In the end this will lead to proportionate reflection, convincing us of the moral value of deliberation, thus strengthening the moral fabric of pluralistic societies.

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