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other engineers may not be able to make the necessary changes immediately because of budget or schedule, or at all because changes that they have already made bar the improvement in question. Engineers may also find an alternative way to achieve the same end. For these reasons (and perhaps others), nuclear plants, however alike at birth, tend to grow into noticeably different individuals, much as biological plants do.

Some people, especially philosophers, seem to think of those who stayed on at Fukushima—those who, for example, worked in the dark in cold waist-high radioactive water to restart the generators—as engaged in “supererogatory” conduct, that is, as engaged in conduct above and beyond what morality requires. The engineers I have discussed this with seem to view the conduct as heroic but required (supposing the “workers” in question to be engineers). An engineer who left when needed would have acted unprofessionally; he would have failed as an engineer even if he left to save his life or look after his family. Engineering sometimes requires heroism (a significantly higher standard than proposed in Alpern 1983)—or so the engineers I have talked with about this seem to think.

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References

- Alpern, Ken (1983) “Moral Responsibility for Engineers”, *Business and Professional Ethics Journal* 2 (Winter): 39-48.
- Andorno, Roberto (2004) “The Precautionary Principle: A New Legal Standard for a Technological Age”, *Journal of International Biotechnology Law* 1: 11–19.
- Davis, Michael (2012) “Imaginary Cases in Ethics: A Critique”, *International Journal of Applied Philosophy* (Spring), forthcoming.
- Davis, Michael (2007) “Perils of Katrina: Using that Current Event to Teach Engineering Ethics”, *IEEE Technology and Society Magazine* 26 (December): 16-22.
- Davis, Michael (2002) “Do the Professional Ethics of Chemists and Engineers Differ?” *HYLE* 8 (Spring): 21-34.
- Davis, Michael (1998) *Thinking like an Engineer* (Oxford University Press: New York).
- Kemeny, John G. (2012) *Report of The President’s Commission on the Accident at Three Mile Island: The Need for Change: The Legacy of TMI (Washington, D.C.: The Commission, October 1979)* <http://www.threemileisland.org/downloads/188.pdf> (accessed April 18).
- Lindsay, Robert (2011) “1% Failure Rate For Nuclear Power”, <http://robertlindsay.wordpress.com/2011/03/23/1-failure-rate-for-nuclear-power> (accessed April 19, 2012).
- Interagency Performance Evaluation Task Force (2006) *Performance Evaluation of the New Orleans and Southeast Louisiana Hurricane Protection System: Draft Final Report of the Interagency Performance Evaluation Task Force* (1 June), <http://permanent.access.gpo.gov/lps71007/> (accessed December 5, 2011).
- Perrow, Charles (1984) *Normal Accidents: Living with High-Risk Technologies* (Basic Books, NY).
- Rogovin, Mitchell (1980), *Three Mile Island: A report to the Commissioners and to the Public, Volume I. Nuclear Regulatory Commission, Special Inquiry Group*, <http://www.threemileisland.org/downloads/354.pdf> (accessed April 18, 2012).
- Wikipedia, “Chernobyl disaster” http://en.wikipedia.org/wiki/Chernobyl_disaster (accessed December 16, 2011).
- Wiki, “Banqiao Dam” http://en.wikipedia.org/wiki/Banqiao_Dam (accessed May 5, 2012).
- Wiki, “Fukushima Daiichi Nuclear Disaster” http://en.wikipedia.org/wiki/Fukushima_Daiichi_nuclear_disaster (accessed April 19, 2012).
- Wiki, “Fukushima Daiichi Nuclear Power Plant” http://en.wikipedia.org/wiki/Fukushima_I_Nuclear_Power_Plant (accessed April 19, 2012).
- Wiki, “Fukushima II Nuclear Power Plant” http://en.wikipedia.org/wiki/Fukushima_II_Nuclear_Power_Plant (accessed April 18, 2012).
- Wiki, “Johnstown Flood” http://en.wikipedia.org/wiki/Johnstown_Flood (accessed May 5, 2012).
- Wiki, “Three Mile Island Accident” http://en.wikipedia.org/wiki/Three_Mile_Island_accident (accessed April 22, 2011).

A Pluralist Ethical Decision-making Procedure

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Abstract

This paper claims that the use of *several* moral tests to assess the ethics of a new policy is unavoidable. All the efforts to make credible a methodological monism – by critical or reductionist strategies – have been unsuccessful; moreover, it must be acknowledged that even if there were a single test, when applied successively or by different people it would usually give divergent results. The main aim of the paper is to propose a pluralist procedure of ethical decision-making, using a set of proper ethical tests (such as utilitarian, Kantian, Christian, principlist and casuist) in the frame of an “ethical Delphi” procedure intended to make convergent the supposed variety of verdicts. This pluralist testing process, made by moral experts, is only a fraction of a more complex procedure intended to deliver social sanction for a new moral policy. This longer procedure also shows that the adoption of a new moral policy, rule or law is not only a question of passing a strict ethical test, but also a political (i.e. multi-criteria) decision. In general, the adoption of a new moral rule does not rely solely on an ethical test, but is essentially the outcome of a complicated social agreement. That is why in academic applications of the usual moral tests we do not *take* a moral decision on a new case, but merely *simulate* it.

Key words: ethical decision-making, ethical pluralism, ethical Delphi, pluralist model

Decisions about the moral value of an action, rule or public policy cannot be reduced to a verdict resulting from the application of traditional tests based on the major ethical theories, despite the fact that handbooks still unanimously support this view. The history of ethical test results is more one of surprises than one of predictability. You would expect, for instance, that people who adopt the same moral doctrine do this in order to approach issues in the same way, including the moral assessment of actions. We all believe that this is the main reason it is useful to embrace the same moral creed. Therefore it seems strange to find that several members of the Romanian Parliament, all active supporters of Christian morality, assessed the legalization of prostitution in opposing ways. On the other hand, it is also strange that two people who adopt different ethical theories – precisely because they offer distinct explanations of moral phenomena – can frequently

assess actions in the same manner. When a utilitarian and a Kantian – or a follower of Christian ethics and one of Muslim ethics – debate issues, it is somehow surprising to see them judging situations in the same way *in most cases*, despite the fact they declare themselves to be supporters of *opposing* ethical beliefs. Are these beliefs really opposing? In general, it appears that use of tests based on distinct or even opposing theories, such as utilitarianism and Kantianism, *can* result in different verdicts, but in most cases it results in convergent ones (Kantian and utilitarian moral duties are, ultimately, the same). On the other hand, if we dogmatically adopt a single theory and apply the *same* test repeatedly to the same action we usually get similar results, but some divergent ones also appear (see the cases of divergent utilitarian assessments of the same case given as examples in the textbooks).

The labyrinth of Ethical Decision-making

These results bring to light several lessons: 1) using a single test does not ensure the uniqueness of the ethical verdict, as commonly expected, and using several tests does not guarantee a diversity of verdicts; 2) it is possible to have (a) two distinct, even opposite, tests (such as the utilitarian and the Kantian) leading to the same verdict, but also (b) two different tests resulting in two distinct verdicts; 3) it is also possible to have (c) a single test (used at different times or by different people) that leads to different verdicts, but also (d) a single test leading to a single verdict.

How is it possible that the same test (case c), when applied by different individuals or by the same individual at different times, can lead to different verdicts? And equally, how is it possible that different tests, based on competing theories, lead to the same verdict in most cases (case a)? For instance, how is it possible to evaluate the same case using consequentialist methodology and get sometimes one result, sometimes another? Or how is it possible that a utilitarian and a Kantian, who try to convince us that morality means different things, in most cases get the same results from the assessment process? Is assessment not an intrinsic part of an ethical creed? And if we have the same ethical creed, how is it possible to have distinct verdicts? Are the ethical decision-making frameworks so weak or even simply wrong?

The Unavoidability of Ethical Pluralism

My answer is that if ethical decision-making procedures were algorithms, they would ensure a verdict's uniqueness and thus the overall internal consistency of moral assessments. However, there is no algorithmic ethical test. It is acknowledged that ethical decision-making procedures are not conclusive, in the sense that any verdict is merely probable and therefore revisable. This is because during any test procedure a number of internal factors undermine the uniqueness of the verdict or, in the event of two tests, may generate a spontaneous convergence of verdicts. Among these factors we may mention the probable character of the consequences, the unavoidably subjective selection of the relevant effects, the equally subjective selection of the decision procedure from a class of methods of the same type (for example, there are several utilitarian procedures), the *als ob* character of Kant's principles of application, the deliberative nature of the "power of judging", and so on. Ethical tests consist less in applying rigid rules than in establishing milestones to guide deliberation. They are meant to help by providing an explicit map of the

problem under scrutiny and by facilitating in this way a detailed analysis of the case, but not a final conclusion. In such a situation, since the use of a single test or test type does not ensure the uniqueness of the ethical verdict and therefore the unity of the moral judgment, I suggest that the use of several tests is preferable. Methodological monism is not the most promising solution: ethical pluralism seems to be the single viable strategy of moral evaluation.

Ethical methodological pluralism is a doctrine that claims that: there are several explanations of morality, not one, and that they may be in a state of conflict ... Each of them also gives a partial truth of the matter and each approach also provides a check on the other. We do not look at the conflicts between these branches as bad, at least not always ... Chance to discover the mistakes sooner is enhanced when each branch is critically scrutinizing the other ... Ethical pluralism has as a model a healthy government in which diversity, disagreement, compromise and consensus are signs of vitality (Hinman 1999, 93) .

Although the terminology is not identical, this approach is similar in its purpose to the so-called "integrity approach" of corporations:

The integrity approach advocates the simultaneous and balanced use of the three ethical approaches [utilitarianism, deontology and virtue theory]. Sound decisions based upon integrity preclude the denial of moral complexity or settling for a simple, narrow-minded resolution based upon less than three key ethics approaches. An understanding of ethics can be achieved only by grappling with the diversity of perspectives it offers. (Kaptein & Wempe 2002, 86)

My approach is, however, broader (not only corporations, but any kind of organization at the local, national and global levels may be the object of analysis) and it is not focused on the moral content of a company but on the systematic moral assessment of important social issues. These include, for instance, new laws with moral content, public policies, and new technologies with a global impact. The big question in both the integrity approach and my approach is: how can such a scheme be implemented and enforced? Before trying to answer this question, we must consider some additional reasons for suggesting that a kind of methodological pluralism is preferable in ethics. First, there are several evaluation frameworks and to choose only one means opening the way for allegations that the choice was arbitrary. Second, an attempt to reduce the multiplicity of tests to a single

one by unifying the background theories (as in R. M. Hare's unification project (1981)) has been proved to be a failure unless the new unified theory is only one of several attempts to theoretical unification. Third, the general strategy currently embraced nowadays – forget the great theories and create pragmatic "assessment frameworks" based on "common morality" – does not ensure the desired methodological unity because these frameworks (for example, ethical matrix, principlism or moral casuistry) have become more and more numerous; even more numerous than the ethical theories. Finally, even if by some act of magic we were left with a single ethical theory and a single test, and these were unanimously accepted, this ideal methodological monism, as we have seen, does not ensure unity of conclusion in applied ethics. We live in a society which is characterized by the pluralism not only of its moral values but also of its doctrines and assessment methods, and we must accommodate the reality of such an irreducible pluralism. Moreover, we must use this characteristic, which defines democratic societies, to find a way to ensure a maximum of objectivity, convergence and rational grounding for our ethical assessments. Methodological pluralism does not exclude convergence of results. Let us pause for a moment to consider this.

At first glance, this seems counter-intuitive. A plurality of methods is supposed to spontaneously induce a dispersion of verdicts, disqualifying pluralism as a possible method of ethical decision-making. If we look at the world through a plurality of ethical theories, we are likely to arrive at a plurality of ethical verdicts; although, of course, it is also possible to have only one. My question is: could we proceed in such a way that the alleged variety of verdicts resulting from the application of a variety of tests is *made* to converge (case b)? In other words, how can we set up a pluralist group of ethical decision-makers, in which each member uses distinct moral principles and distinct assessment procedures, but all members are made to reach a single, common verdict? Obviously, we are not interested here in explaining a spontaneous convergence of opinions, but in a method able *systematically* to generate such a convergence, which for this reason becomes part of the test.

Spontaneous Convergence of Verdicts from Proponents of Opposing Theories

In a study devoted to the analysis of the status of modern applied ethics, Alasdair MacIntyre tackles the assessment convergence problem, starting from the obvious "disagreement" that exists between moral philosophers concerning the profile of a *genuine* moral theory; this contrasts with the hope for a universal rational agreement

nurtured by all supporters of what he calls the "dominant conception of morality" (Kantianism, utilitarianism, contractarianism and their various combinations):

The "dominant conception of morality" is the view that the rules of morality are such as every rational agent would accept them. In this sense, 'applied ethics' is concerned with the application of these universal principles to concrete cases that belong to particular social spheres, the usual expectation being that the disagreements between principles automatically mirror the disagreements between the verdicts of applied ethics assessments. (MacIntyre 2008, 50)

This irreducible pluralism of moral theories, views and methods has little chance of being eliminated. However, contrary to the view that plurality of methods inevitably entails plurality of verdicts, it has been proved that people with different ethical views may easily reach the same solution when they are put together to solve a practical problem. MacIntyre gives as an example the story of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, which proved that the disagreement in principles (in the theories or ethical views adopted by members of the team), instead of generating a similar disagreement in their assessment of the case, was compatible with a practical agreement, which was quite easily reached. The *Belmont Commission* is another good example of a pluralist group of ethical decision-makers, including people with various ethical involvements who, instead of spending their time in an unending dispute around the best moral theory, rapidly arrived at a convergence of opinion and agreement in a common verdict. How can this be explained?

MacIntyre sees three possible explanations for the commissioners' straightforward agreement. The first is that adoption of conflicting or rival moral principles may, surprisingly and unexpectedly, lead to the same verdict in the field of applied ethics. There is nothing new in this statement, but the question is: how is such a thing possible? We could use this example to wonder whether the so-called gap between traditionally rival theories (and the distinct explanations they give to moral phenomena) is as great as has been assumed, since their assessment outcomes are similar rather than conflicting. The second explanation is that the members of this assessment group did not actually apply their own principles (or theories, or ethical views); in fact, they judged the matter not following the principles they claimed to adopt, but in the light of typical cases, without being aware of this. They were casuists without knowing it. This *implicit* use of the same method explains the convergence of results. Finally, the third explanation, to which MacIntyre

subscribes, is that the workings of the commission were presented in a false light, with the claim that the deliberation process was completely rational; in fact, all deliberation and decision-making inside the commission were “a social non-rational agreement”. The non-rational ingredient enters the debate in the following manner: ethical principles are indeterminate in the sense that they cannot stipulate all the circumstances in which they may be applied. On the occasion of a future application new circumstances may arise, forcing us to take a decision only after weighing the new circumstances; but “weighing” is only a metaphor, for which there are no explicit rules. Therefore, the assessment process is not a (completely) rational one. The convergent final verdict is the consequence of these reciprocal psychological influences (MacIntyre 2008, 52).

The first of MacIntyre’s points is not an explanation but a finding: we know that competing ethical principles can sometimes give rise to identical verdicts. The second explanation is not very strong: as we have seen, unity of methodology does not ensure unity of verdict. The third explanation seems more probable: ethical assessment is not an entirely rational process. The explanations and the example given suggest a situation where the assessment convergence is something that occurs spontaneously or quasi-spontaneously. The key questions for me are: what factors determine the spontaneous convergence of the verdicts of two or more opposing tests (and is it possible methodically to ensure such convergence in cases where it does not occur spontaneously)? How is it possible that the same test gives different verdicts on the same case: are ethical tests so weak?

Regarding the first question, the most plausible answer would probably be that, in order to reach a partial agreement, the ethicists have to use their “practical wisdom” (*phronesis*): their ability to discuss and negotiate, and various forms of irrational persuasion to convince their interlocutors; they have to refine the methods used and adopt new methods, use various forms of “qualitative judgment”, weigh up the reasons and use tactics of “mutual psychological influence”. And all these *after* the strictly technical ethical tests have been applied by each evaluator and a provisional verdict obtained. The testing process would, therefore, include two stages: the technical stage (involving specialists in ethical decision-making) and the *phronetic*-deliberative one mentioned above (in which lay people may participate democratically). To the second question I should answer that it is exactly this *phronetic* stage – which is not guided by specific rules – that should be introduced to try to reduce the dispersion of verdicts. It is natural to consider this *phronetic* supplementary element, I suggest, as a *part* of the pluralist test and not as a mere aid to be used occasionally.

Convergence Induced: the Ethical Delphi

What I want to propose here is to be even more systematic and to develop a tool that is able to make opinions cohere. This can be based on the “Delphi method”. From this, an “*ethical Delphi*” was obtained by a group of specialists in the frame of a European research project on “ethical tools”, and what I shall propose is a modification of this latter: a *methodological ethical Delphi*. In its original form, this test does not include any moral theory or ethical method for assessing, for example, a new biotechnology: using the standard ethical Delphi “it is not possible to directly deduce from the data analysis the ethical acceptability, or otherwise, of any proposed biotechnology” (Millar *et al.* 2006, 10). This is not a method to discover in facts the supposed ethical difficulties raised by a new biotechnology, but one focused on a pluralist and expert assessment of the moral acceptability of an already formulated public policy concerning that biotechnology.

Now, suppose we succeeded in assessing such a policy, using several ethical tests and making the evaluators’ opinions converge using an ethical Delphi. How should we proceed to socially impose the new moral policy, starting from the belief that morality is a *social* product and that a moral rule is a device required by society to protect some of its most important values? Is its social recognition and acceptance determined *only* by the rational criteria included in the ethical tests or should something more be added? My suggestion is that the social recognition (homologation) of a new moral rule as a dominant one in comparison with other types of rule is done following a further assessment process – on *multiple* criteria this time (not only moral), such as political, economic, religious and strategic. My conclusion is that the decision to adopt a complex new moral policy is never merely an ethical one; it is, in the last instance, a *political* multi-criteria one. Moreover, these extra-ethical criteria can often prevail. The moral decision is not exhausted by the application of the ethical tests developed by moral philosophers (and taught in seminars) – even if we add the *phronetic* supplement suggested above – but also needs a *political* supplement. Actual moral decisions do not take place in an ideal, purified social space, in which the common morality is independent of any political, economic or geo-strategic interests; this simplifying mentality is specific to the academic practice of teaching the applicability of an ethical theory using simplified cases. But real ethical decisions are taken *inside* society, where there is competition between various interests, major and minor – some of them local or selfish; others more basic and covering the whole of humankind. Moral rules protect certain broad *fundamental* interests – with historical

variability – and restrict our behaviour to ensure congruence with the interests of all those concerned in a neutral and impartial way. In these circumstances, it is impossible to adopt a new moral rule (such as the ethical principles of biomedical research, a new European policy or a new code of ethics) which is not dependent, more or less, on the economic, legal, political and religious interests of that social community. Moral rules exist in a social context and depend on it. My suggestion is that, beyond the technical moral decision (based on standard ethical methods) – which remains the basic decision and gives the “official” reason for the conclusion – the final verdict itself is a *political* one (i.e. a multi-criteria and only partially a rational one).

This hypothesis appears to be consistent with the facts. For example, let us remember that the *Belmont Report* was a political initiative and its elaboration was an institutionalized process that lasted four years. To apply the principle of utility (or any other traditional ethical test) you do not need four years! During that period a pluralist and interdisciplinary committee held numerous discussions on the text, attended public hearings, and made constant efforts to achieve consistency with other similar reports or existing legislation. The adoption of the final formula was based not only on ethical reasons but also on grounds of taste (“it’s too philosophical”), of practicality, and even on personal, irrational reasons (“let’s not take all these from the beginning”). All committee members remember the influence upon them of the political climate of those times (the civil rights movement, the public scandals concerning biomedical research that pressed the policy-makers to develop a system of moral rules for this professional field for the first time, and so on). For example, Tom Beauchamp remembered on the occasion of the 25th anniversary of the *Belmont Report* the influence the idea of *individualism* – central to American politics – had on the adoption of the principle of *autonomy*. The committee worked “in context”, it was “part of the American culture” with its dominant values (OHRP archive, 2004). The appointment of a Catholic as head of the committee was suspected by some other members to be a political manoeuvre to impose conservative solutions on the issues raised (such as the human status of foetuses); this is further recognition of the political and ideological pressures on the committee’s decisions. Therefore, the establishment of the new moral rule was ultimately a *political* decision, determined by rational arguments – ethical and non-ethical – and irrational factors related to personal feelings or random human reactions. These elements must be included too in the general scheme of an ethical decision-making process.

An Inspiring Case Study: UNESCO

I shall start to shape a new pluralist procedure of ethical decision-making by analysing a specific case study: the setting up by UNESCO, at the global level, of a public policy with a substantial ethical content, trying to capture the actual structure of the process of ethical decision-making (which might be adapted for use by firms or other kinds of institution). The specific example is the *International Declaration on Human Genetic Data* (UNESCO 2003) – a new *moral* regulation claiming universal (planetary) validity. The scheme synthesized from this example can also be found in the adoption of other public policies, national and international.

The background to the setting up of this new and complex moral rule was marked by a widespread feeling of insecurity and uncertainty concerning the protection of some fundamental human interests – such as the violation of human rights and freedoms, and ultimately of human dignity – from the moral misuse of human genetic data. Therefore, a new need was perceived at the level of almost all the countries in the world: to have a new rule on this issue, able to block potential abuses and protect human dignity, to avoid the possible issues arising from an immoral use of genetic technologies – i.e. from improper handling of the human genome that could endanger the identity and the physical integrity of present and future generations. Everyone accepted that this was a case of *moral* regulation, but nobody knew what form it should take in order to be able to serve the divergent interests of the citizens of all states – those of scientists and physicians, the religious organizations and the NGOs – in a manner consistent with other related regulations that had already been adopted.

The initiative to launch an international project to regulate the use of genetic data belonged to the UNESCO Director General. In May 2001 he asked the International Bioethics Committee (IBC) to draft the new regulation. The document was finalized three years later, in May 2003, at which point some voices claimed that the process was a little too fast.

The IBC set up a “drafting group” composed of experts: an interdisciplinary and pluralist group. It deserves to be noted that the organizers believed that the best place to take ethical decisions was in an ethical committee that was “independent, multidisciplinary and pluralist” (UNESCO 2003, Article 6). In this case, the panel was made up of four legal experts, three experts in genetics, three in bioethics, two in moral philosophy, one in anthropology and one in chemistry. The moderators were from France and Jamaica, respectively. All logistical support was, of course, granted. The panel first established the moral foundations of the new regulation (the principle of dignity, which is fundamental; then

the principles of equality, solidarity and responsibility; as well as some form of welfare, precautionary and vulnerability principles) (see UNESCO 2003, Preamble). The group worked in a typical *principlist* manner (see Article 1), the criterion of moral acceptability being “internal consistency” with the moral *principles* accepted and “external consistency” with other moral rules concerning human rights. It also pursued consistency with international and national law, sometimes by broadening the meaning of confidentiality and consent, so that the regulation cannot be imposed unless the legislation of the country allows it (DHGD, 2003). The expert group proposed a number of general philosophical options concerning human nature, freedom and responsibility (as opposed to biological reductionism, for example), in the light of which the document was conceived. The first draft of the document was issued in November 2002 and it was sent to the IBC to be analysed. Overall, there were seven meetings of the expert group, but they did not have the last word in the social and political approval of the *Declaration*: this belonged to a political group, representing all stakeholders.

To ensure coverage of the positions of all parties in the document, the draft was submitted to a public debate. The public character of a moral regulation and the requirement for it to be accepted by society at large (not imposed in a paternalistic way) seemed to be – in the eyes of those who organized the decision-making process – a necessary condition of its morality. This reminds us of Kant. The document stresses that: “States should endeavour to involve society at large in the decision-making process concerning broad policies for the collection, processing, use and storage of human genetic data” (UNESCO 2003, Article 6). In this way, through public debate, it was possible to evince and eventually to capture in the document the variety of interests, from the level of states to that of individual researchers or NGOs. The pluralism of this approach was also underlined: “This decision-making process, which may benefit from international experience, should ensure the free expression of various viewpoints” (Article 6). The steps of this exercise of democratic transparency were completed by international consultation through a questionnaire, plus a special meeting; a public hearing, in which a variety of organizations and individuals were free to express their views; and an assessment by the UNESCO Executive Board. During all these processes the “weight” of the document was established: it would be a “declaration”, so it had no legal force but only moral influence. Thereafter, the document was reviewed by a “working group” of the UNESCO Commission.

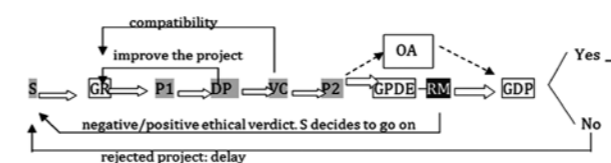
Finally, after going through all these filters in the process of social approval, adoption by the UNESCO General Conference followed, on October 16,

2003. This was essentially a political decision; i.e. one acknowledging that – in addition to the ethical requirements – the new rule must “meet the needs and interests of the states”, which are not only moral but also “economic and commercial”, bio-medical and legal (UNESCO 2003, Preamble). The conference showed a “spirit of tolerance” and received unanimous approval by applause for the *Declaration*. Being a moral rule, this has to be *sanctioned* by feelings of remorse or by the public attitudes, in the case of disobedience. These motivational feelings must be “taught” – an objective that the *Declaration* provides for in Article 24, as a further task of all Member States.

A Model for Ethical Decision-making: A Scheme for Adopting a New Law or Public Policy

What is the general scheme of the process of ethical decision-making suggested by this example? Suppose, in principle, that we are confronting not a normal situation, but an “extraordinary” one; i.e. we want to introduce a new rule in a code of conduct (one disputed by others), or to resolve a moral dilemma which raises questions for members of a corporation, or to adopt a new public policy on a controversial issue arising from several public concerns and complaints. The deployment diagram of the process of moral decision-making seems to have the following plausible form. First, because this is a sensible social issue the moral acceptability of which should be judged, there will be an applicant institution (S) – for example, the government or parliament, a university, a company, or similar – asking for the assessment. It is natural that this requirement should be set up on a contractual basis. The applicant seeks a mature and responsible answer to the question: is a particular public policy, designed to address the issue of, for example, genetic data that has caused frustration in our society, morally acceptable or not? To this end, S has first to appoint an interdisciplinary group of specialists representing the interests of S, and well aware of the issue under discussion, who can identify the *moral* problem within the facts. This drafting group (GR) will propose the first draft (P1) of the new public policy. This draft is then subjected to an extensive and lengthy process of public debate (PD). This is not just a democratic exercise but a necessary condition for the moral acceptability of the project, which has to meet two requirements: i) the requirement of *publicity* (the new moral policy must be public), and ii) the requirement of *autonomy* (the new moral regulation has to be self-imposed by the subjects, not imposed from outside). Both are conditions inspired by the Kantian theory of morality. Suggestions for improving the text collected from the general public are then selectively inserted

by GR. This group also has to check the compatibility (CV) of the new regulation with laws or public policies already adopted. This condition of *consistency* with existing moral values is another necessary requirement imposed on the project to make it morally acceptable. The outcome of this process is an improved version of the draft (P2). Once in this improved form the project text can be delivered to a pluralist group of ethical decision-makers (GPDE), a group designed to give a *moral verdict* about P2, included in a moral evaluation report (RM) which will finally be sent to the applicant. At this level, other independent assessments (OA) may be made – including economic and medical ones – by expert teams. It would be pointless to give GPDE a *raw* version of the project because this group does not make amendments to the draft but assesses the project. The evaluation report is either negative or positive; S is the only participant to decide whether the process continues or not. For instance, there might be a moral assessment rejecting the legalization of prostitution, but the applicant decides to continue the debate of the law in parliament: there – on other criteria, including economic and political ones – the adoption of the law may be decided. To “continue” the process means that P2 (together with RM) is transferred to a group of political decision-makers (GDP), a group meant to represent the whole society (or the whole organization), which is able to give a final verdict. This group, composed of politicians or other public representatives, will inevitably judge by multiple criteria (including moral, economic, religious, political and strategic ones), as well as rational and irrational factors, and will accept or reject P2 together with the RM. It will also establish the *weight* of this new regulation (is it a law or only a political directive?), what kind of penalties should be associated with it, and what educational plan should be adopted to internalize it (such as ethics training programmes). A final rejection of the project (which might also occur for extra-moral reasons) would mean *delaying* its implementation by S. Schematically, this process looks like this:



In contrast to the UNESCO procedure described above, this scheme distinguishes between GR and GPDE (groups with different functions and powers), the kernel of the pluralist decision procedure being represented by GPDE (which does not exist in the procedure used by UNESCO). But GPDE is not a provider of final moral verdicts. Its activity aims at applying moral tests to a given case. Its main objectives are to identify the

divergence and convergence of several expert moral assessments and to identify the roots of their disunity; to provide a professional basis for the final ethical decision, which is a “political” one; to provide a map of the moral problem under discussion for the use of lay people and politicians who will take the final decision; and in general to encourage systematic and professional ethical thinking in the moral assessment of the main practical issues.

It may be objected that the presence of GDP suggests that whether a rule is moral or not depends on its approval or rejection *by society* and not by an *objective* ethical test. Or that this means falling into the vulnerable doctrine of cultural relativism: that all moral rules are dependent on the social context in which they are established. In reality, both things happen: the moral character of a new rule is established by GPDE, not by GDP, and the members of GPDE may use universal principles (I find it is an error to ignore universal moral principles in building ethical codes, as usually happens). GDP does not establish the morality of the new rule, but only decides whether the society *recognizes* the morality of the regulation approved by the GPDE experts. This suggests that the new moral rule or policy acquires its authority ultimately from a kind of *social consensus* and not only from technical ethical reasons such as “maximization of utility” or “respect for human dignity”, and similar. One may ask what Richard Hare (1993) does when he applies his two-level scheme to concrete cases: does he *establish* the moral character of the case? In fact, he only *simulates* a part of the process of moral assessment, conceived as a social phenomenon.

We must consider whether this scheme contains a mix of ethical and non-ethical procedures, the latter risking an alteration of the moral substance of the project. Despite appearances, the first phases of the project (that might be considered non-ethical) have an obvious connection with ethics: identifying and formulating a moral problem, establishing the conditions of publicity and autonomy in the adoption of a new rule, providing consistency with the previously adopted moral rules. What follows is also an ethical step: the application of typical ethical tests (GPDE) and the writing of a moral report (RM) which gives a verdict on the moral acceptability of the new rule or policy. Finally, at the level of GDP a new evaluation occurs; this uses both ethical and non-ethical criteria, but the presence of the non-ethical criteria does not affect the moral nature of P2. This means that GDP should not be seen as a group involved in ethical assessment, but as one meant to socially approve and impose a new moral rule, guided by moral and non-moral criteria. The requirement for the adoption of a new ethical code or new moral public policy (but not of its moral assessment) is that it is always done on non-moral criteria too.

It may also be objected that the procedure is too

complicated. In fact, it is no more complicated than the procedure used for the adoption of any important juridical law. And I believe that the ethical decision-making procedures have to be detached from their traditional handbook simplicity if we believe in their social utility. In current circumstances, when the usefulness of applied ethics is often denied, it seems to me essential to enhance its credibility by a mature development of its procedures, such as that described above.

The Pluralist Ethical Decision-making Group

The procedure of methodological pluralism that I am proposing here requires us to recognize all the tests derived from the great theories and all the decision-making frameworks independent of theories, and to give them an equal chance in the evaluation process; i.e. to use all of them inside a pluralist ethical decision-making group (GPDE). This group should be composed of experts who know the investigated field well and who are also able to handle a moral decision method or know how to apply a general ethical doctrine or moral *gestalt* (such as the Christian one). An important step in such a process is the setting up of a panel of experts which knows the facts and is able to apply one of the following ethical decision-making methods:

- Hare's utilitarian method (or other utilitarian procedures);
- the principlist method;
- the ethical matrix;
- moral casuistry;
- Christian ethics;
- other ethical decision-making methods (such as the Kantian method, the ethics of care, virtue ethics, and so on).

How could we systematically coordinate such a heterogeneous decision-making group, characterized by divergent ethical views? Some would probably say that this process takes place spontaneously, as the case of the *Belmont Commission* shows. But none of us may be sure of that, and therefore it is preferable to control the process. We can do this, I suggest, by making the assessment team work under the procedure called the methodological ethical Delphi – a method that helps the group members to reduce the dispersion of their assessments and ultimately to propose a final (provisional) solution. As we have seen, the ethical Delphi is an “iterative participatory process between experts for exchanging views and arguments on ethical issues. The method is structured around the notion of a virtual committee where the exchange of ideas is conducted remotely through a series of opinion

exchanges” (Millar *et al.* 2006, 5). What this method can provide is a “map” of the experts' opinions on the ethical acceptability of a new policy but it cannot provide definitive judgments. More specifically, it helps to identify areas of convergence and divergence from the experts' points of view, to encourage ethical reflection and provide a rational basis for making ethical decisions. Practically, the GPDE could be structured by this procedure as a virtual group with a latent existence, which becomes functional on demand. It has to have a monitor or coordinator (M) with experience and moral insight. M's task is to coordinate the activities of the panel, allowing the monitor to reach a final synthesis of the views expressed by the experts in the form of a conclusive statistical judgment. The experts' capacity to obtain information about the preferences of all “stakeholders” and about the foreseen consequences of the policy assessed is crucial at this stage. The interaction of the panellists will also ensure clarification of their philosophical, religious or political commitments, so that all evaluators will judge the same facts, as far as possible. At this stage no methodological uniformity is desirable. Rather, methodological pluralism should be encouraged. The moral verdict (RM), even if provisional, has to be prepared by M and relies on the outcome of the panel (the statistical trend of opinions in the panel), on other moral considerations, on M's own moral wisdom and power of persuasion, and so on. Here the *phronetic* supplement in evaluation is also obvious. It explains why the members of the group can reach a common result although they remain supporters of their initial divergent moral beliefs and principles.

The various methods of ethical decision-making mentioned above provide a strictly moral evaluation of the new rule or policy, regarded from various moral perspectives. None of them is conclusive. To reach a consensus does not mean reaching the *correct* result. The ethical Delphi, which is meant to generate convergence of opinions in conjunction with the set of ethical tests, only helps us to ensure a clearer structure of the moral problem under discussion and to offer the political team a solid basis for decision-making. It identifies those topics that the group of experts considers important for the subject examined. The results of a Delphi procedure may support the policy-makers by enhancing their moral creativity and capacity for ethical decision-making when faced with complex moral issues in situations of incomplete or disputed information. This evaluation process of undertaking the same act using several methods produces a strictly ethical verdict signed by the monitor; this moral decision is finalized in a report submitted to S. This report is most often decisive for the final decision. If the result of the report is negative, it is unlikely that S will be tempted to continue the assessment process: that rule or public policy will be

rejected. But this kind of reaction is never entirely certain! It is S's prerogative to decide to continue the process even if the technical ethical verdict is negative. For example, it is known that prostitution is rejected by Kant's tests, as it is by utilitarian and Christian ones; nevertheless, prostitution is legally permitted in many countries (for economic, medical or political reasons, for example, rather than moral ones). By invoking distinct reasons and, on this basis, by furthering the evaluation process, one may arrive at a result that is the opposite of that given by a purely ethical test.

Moreover, a moral rule is a rule imposed by society (*pace* Mill); however, it is not imposed from outside, but self-imposed (*pace* Kant). To be self-imposed it must be known and publicly discussed. Public debate is an early step in the decision-making process. This can be carried out through press releases, manuals, consensus conferences, and similar. The democratic accreditation of the new rule is not a political fad, but a necessary condition of its morality. Moral rules are public rules and a necessary condition of the existence of an ethical code is to be public. Therefore, to complete an ethical decision-making process we need to set up a second group, often consisting not of experts but of politicians, representatives of public opinion, lay people, and so on; this second group is meant to take the final decision concerning the issue under assessment. It will consider first of all the ethical decision of the expert panel, but will judge the case having in mind other criteria too, including political, economic, legal and psychological ones. The strictly ethical (technical) verdict is only *one* element of the broader political decision (which we might call the “broad ethical decision”), the latter being taken as a result of multi-criteria analysis. Ultimately, responsibility for the final decision belongs to the group of policy-makers and commoners – at the limit, the whole community concerned must participate in the development of new moral rules they will obey in the future. This is part of the modern conception of morality.

In fact, it is easy to see that this broad ethical decision, or *social homologation* of the new moral rule, is not done simply by calculating the balance of consequences or the impact of the new policy on stakeholders, but requires a public debate, using various perspectives and ideological commitments regarding (for example, in the case of the new biotechnology) environmental protection, animal rights, a general ideal of life, the future of industrial agriculture, and the political and ideological choices of the evaluators. This multidimensional social homologation process occurs either spontaneously and quietly (this is the way various moral “habits” have traditionally been adopted) or it may be organized by institutions, in the form of public debates, citizen juries or consensus conferences (Beekman & Brom 2007). In any case, the whole community must feel that the new

moral rule belongs to it. From this perspective, it is increasingly held that one of the defining characteristics of moral rules is that they acquire authority ultimately by a kind of “social consensus”, with the community's agreement that they are the best means to achieve the objectives of morality; i.e. to provide for human “flourishing” and to oppose those factors which could harm us and affect the quality of our lives (Shoene-Seifert 2000, 117). To subscribe to a new moral rule or ethical code is to recognize that it is a *social* code: that it must be imposed by society at large, generally respected and culturally transmitted.

This means that after completion of the experts' RM, the political group assesses the “weight” of the new policy – and therefore the degree of its “overridingness” – bearing in mind the social importance of the values it protects (we may live in a society that considers values such as dignity, equality and justice either important or unimportant). Depending on the assessment and negotiation of the degree of “overridingness”, some sanctions will be associated with the new policy (some typically moral ones, such as educating individual moral sense and public attitudes; but also some legal ones). Finally, the group of political decision-makers checks the consistency of the new regulation with existent moral and non-moral rules, the amount of resources available (to guarantee its applicability) and the degree to which it satisfies other criteria relating to the political, economic, religious or philosophic beliefs of the members of that society. For example, an ethical decision regarding abortion or the status of human embryos will be influenced by the religious or political beliefs of the decision-maker, the pressures of public opinion, certain specific emotional episodes, and so on. Or, to consider another example, a strictly technical ethical decision requiring the isolation in hospitals of some dangerous mentally ill people, if taken during the Cold War period, might have been suspended for reasons of political and geo-strategic *expediency* considered more important than the ethical ones *in that context* (in the case of a dispute around the incarceration of anti-communist political dissidents in psychiatric hospitals, for instance). All the above factors influence the final verdict. They will probably not change the experts' *moral* assessment (politicians will not say that to free those dangerous mentally ill people and therefore to risk the security of the rest of the population is a *moral* action) but they may postpone approval of the new rule for reasons of *political expediency* (although we might accept, as rational people, that the isolation of some mentally ill people in hospitals is a *moral* act, it is not *expedient* for political and geo-strategic reasons). To facilitate these choices, the Council of Europe agreed that ethical issues in general have precedence over those of expediency or financial convenience, asking at the same time that

a new scientific research or technology be assessed with the long-term potential consequences in view, even where uncertain in the light of current science (the “precautionary principle”).

Moreover, to have moral character the process of adopting a new policy ought to be *autonomous*: that is, it should not come from outside (from “rulers” or the staff of a company), but from inside (from the will of all the members of a country or organization). A code of ethics is morally imposed not by a paternalistic procedure but by one which is assumed freely and autonomously (L’Etang 1992). This reminds us again of Kant: the typical moral sanction is the *internal* sanction. Which brings us to another important point: an ethical code should be *public*. Moral evaluation issues should be moved from the narrow circle of experts to the public arena; they must be debated in a transparent manner with those affected by them. In a successful democracy the citizens’ attitudes should be known by the rulers and the rulers’ intentions known by those governed (the principle of transparency or publicity). This process may be left in the hands of hazard or it may be managed rationally.

Regarding the moral assessment of actions, policies and similar, the most objective human point of view is not that of a *certain* moral theory or method, but the combined points of view of *several* theories or methods used for the benefit – and with the democratic participation – of a large number of people.

Concluding Remarks

The issues approached in this article do not belong to ethics in a narrow sense, nor to the practice of public policy among a group with divergent views on topics that have an ethical dimension, but to a kind of research that is intended to show how ethics could be introduced in the practice of public policy among a group with divergent moral views: they belong to *applied ethics*. Again, not to applied ethics in the classical, academic sense, but to what is now the *new* applied ethics as it is practised in specialized centres offering services to the non-academic public. Part of this *new applied ethics* – to which the main topic of my article belongs – is “ethics management” among those organizations that make policies at the global, regional or national levels. It tries to introduce ethics there where they are most lacking.

Currently, public policies at these high levels usually lack a genuine moral dimension; in many cases it is only claimed, at best: consider how laws are adopted in parliaments. Moreover, we live not only in a world with precarious means of enforcing morality, but also one with a plurality of systems of moral values, where several ethical theories and meta-theories are cultivated simultaneously by various groups of moral philosophers:

a world where several methods of ethical decision-making, several ethical tools and a variety of ethical frameworks are used at the same time. This article tries to offer an answer to the question: how can we manage this diversity? My answer is: a virtual ethical pluralist Delphi group inserted in a larger decision-making structure focused on cultivating the moral dimension of a new law or public policy.

I have stressed those moments in the decision-making process where various known ethical principles manifest themselves, such as the principle of publicity, autonomous adoption of a new policy, normative consistency or democratic participation in setting up a new moral establishment. But the kernel of the process is the GPDE. The moral content of a public policy or law should be carefully identified and treated as it deserves during the decision-making process. Finally, I propose that we should think more attentively, contrary to an academic practice which isolates the “ethical tests” in their theoretical technicality, that in the last instance, a real moral decision is a question of *social agreement*, and in some cases a political decision. Morality is a social institution, not a private choice.

As for the GPDE, I see it as an expert group functioning on the following “theoretical” background: imagine the members of the group using not simplistic ethical tests (such as the calculation of consequences, the casuistic comparison of a new case with the basic model, the categorical imperative, or similar), whether or not they are grounded on ethical theories; instead, they use as a test a kind of *Kuhnian paradigm*, including several devices (including theories, fragments of theories, principles at different levels, the usual tests, paradigmatic examples, relevant analogies, ethical explanations which are not theories, and their own *phronesis* formed by using a given paradigm) that could be used when and where needed. In short, they use a *moral paradigm*, which gives them a kind of *gestalt* for judging all concrete cases. Instead of the utilitarian test we shall have the utilitarian paradigm. In fact, this is the way we function as moral evaluators. If we are Kantians, we see the moral world in Kantian colours. The theologian in the group will, for example, firmly claim the immorality of abortion (which is obvious in his *gestalt*), while the utilitarian may support the morality of abortion (which is also obvious in his *gestalt*), and a doctor with religious sensibility will adhere to the views of the theologian, and so on. The question is: how can we make compatible these various assessments in order to obtain a coherent single verdict? Of course, the *coherentist* procedure of rational critique and rational compromise will be one of the mechanisms to obtain a “reflective equilibrium”, but it is hard to believe that we could force members of the group to make their views compatible only by rational argument. We cannot reach an “overlapping consensus”

if the members of the group are not *determined* to adhere, at least in part, to the views of the others. This supposes a “change of paradigm”, a *gestalt switch*, which is a difficult and essentially irrational process, the result of an intense and common activity of convincing partners by using both rational and irrational (persuasive) means. The moral discourse is used in this case, at least partly, as an instrument of persuasion, (in the *emotivist* meta-ethical tradition). And the result may be the adoption of one of the paradigms, or of a partly modified one. This could explain why a text as that of the Oviedo Convention on cloning was finally written in a Kantian style and not in another. In this approach, an ethical decision such as the setting up of a new moral rule is not a completely rational process. The result of this negotiation will be a verdict which is never final.

Of course, not all ethical decision-making tools are like those proposed in this article. This is a large scale one and, generally, ethical tools are relative to the context. Members of the community of applied ethicists are called to elaborate such instruments in accordance with various organizational and individual contexts, all of which fall under the form of a hierarchy of procedures. The individual methods of ethical decision-making may serve, for instance, the institutional formation of an ethical mind among all the employees.

To conclude, imagine at one extreme the moral philosopher with her ethical and meta-ethical complex problems, without a great interest in application; then a middle ground populated by applied ethicists of various kinds (among them managers of ethics, makers of methods, builders of ethical codes, specialists in ethical training and the formation of ethical thought); and at the other extreme the interested users of these new products originating in ethics – the managers and personnel of various organizations and the public at large. These all participate in specific ways in the contemporary game of applied ethics. The professional applied ethicist has to address the issues and try to help. Using what? Not the *Nicomachean Ethics* or the articles of Prichard on intuitionism, but an appropriate “ethical toolbox”. This article was intended as another tool in this ethical toolbox.

References

- Beekman, V. & Brom, F. (2007), ‘Ethical Tools to Support Systematic Public Deliberation about the Ethical Aspects of Agricultural Biotechnologies’, *Journal of Agricultural and Environmental Ethics* 20, 3–12.
- DHGD (2003), *Meeting of Government Experts Responsible for Finalizing the Draft International Declaration on Human Genetic Data*, Final Report, 21 July 2003, Paris: UNESCO.
- Kaptein M. & Wempe J. (2002), *The Balanced Company: a Theory of Corporate Integrity*, Oxford: Oxford University Press.
- Hare, R. M. (1981), *Moral Thinking*, Oxford: Clarendon Press.
- Hare, R. M. (1993), ‘The Philosophical Basis of Psychiatric Ethics’, in R. M. Hare, *Bioethics*, Oxford: Clarendon Press.
- Hinman, L. (1999), *Contemporary Moral Issues*, New Jersey: Prentice Hall.
- L’Etang, J. (1992), ‘A Kantian Approach to Codes of Ethics’, *Journal of Business Ethics* 10, 737–744.
- MacIntyre, A. (2008), ‘Does Applied Ethics Rest on a Mistake?’, in A. Cortina, D. Garcia-Marza & J. Conill (eds.), *Public Reason and Applied Ethics*, Farnham, Surrey: Ashgate Publishing, 49–62.
- Millar, K., Tomkins, S., Thorstensen, E., Mephram, B. & Kaiser, M. (2006), *Ethical Delphi Manual*, The Hague: Agricultural Economics Research Institute (LEI).
- OHRP archive (2004), 25th Anniversary of the *Belmont Report*, T. Beauchamp interview. Available at: <http://www.hhs.gov/ohrp/archive/belmontArchive.html#anniversary>
- Shoene-Seifert, B. (2006), ‘Danger and Merits of Principlism’, in C. Rehmann-Sutter, M. Düwell & D. Mieth (eds.), *Bioethics in Cultural Contexts*, Dordrecht: Springer, 109–119.
- UNESCO (2003), *International Declaration on Human Genetic Data*, Paris: UNESCO.