

From commitment to committees

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IN the last few decades ethics has become a source of legitimization in implementing science and technology policies in so-called knowledgebased societies and economies.¹ In western countries, ethics has become a political instrument to normalize innovation by supposedly neutralizing social choices on science and technology, and by making them accepted by citizens without any direct citizen involvement in the decision-making process. In this sense, ethics has been framed as a soft legal tool aimed at facilitating the implementation of technoscience.

The major assumptions of this construction are the following: values involved in technoscientific policies may be rationally clarified by experts' ethical judgments; and, equally, experts' ethical opinions may represent citizens' values. Thus, not only are citizens alienated from political choices about science and technology, but they are also told that this correctly happens because rational, ordered, and unbiased committee procedures may efficiently replace their personal concerns about the directions taken by innovative technologies.

During the series of meetings about 'The Knowledge Society Debates' that took place in January

1. S. Jasanoff, *Designs on Nature*, Princeton University Press, Princeton NJ, 2005; B. Wynne, U. Felt et al., 'Taking European Knowledge Society Seriously', European Commission DG Research Science, Economy and Society, Brussels, 2007.

2009 in India, it was observed that the rhetoric of ethical discourse as a formal strategy to legitimize science and technology does not really belong to Indian institutions and society. India certainly has its own tradition of institutional medical ethics. The Indian Committee for Medical Research (ICMR) is one of the oldest medical research bodies in the world.² But what emerged from the discussions was that discourses about societal values and value-laden questions concerning scientific and technological development are still strongly perceived and conceived of as political problems raising direct civil society concern and commitment, primarily through the spontaneous participation and engagement of a variety of non-governmental organizations.

However, in the process of globalization of which India is a part, the extensive use of ethics – or 'ethics' in quotes, to refer to the bureaucratic use of values in the domain of science, technology, and the market – is likely

2. The formation of ICMR dates back to 1911 when the Government of India set up the Indian Research Fund Association (IRFA) to coordinate medical research in the country. In 1949, it was redesignated as ICMR with considerably expanded scope of functions. ICMR has a bioethics cell which coordinates all activities related to ethical issues pertaining to medical research on humans and animals in India. See N.J. Denta and A. Krishan, 'Ethics Committees in India', *Quality Assurance Journal* 11, 2007, pp. 143-150; N.R. Madhava Menon, 'Medicine, Ethics and the Law', *Indian Journal of Medical Ethics*, January-March 2008, pp. 31-32.

to become very common and affect Indian institutions and the society to some extent.³

In this process, the hope is that certain specific features of Indian civil society and institutional cultures⁴ – such as the Gandhian legacy of civic commitment, the long-standing tradition of numerous diversities coexisting in society, and the large number of civil society organizations – will help to maintain a more critical and less passive approach towards the risks that ‘ethics’ may involve: the disembedding of values from citizens’ and communities’ real lives, and their reframing through de-vitalized expert opinions. In this sense, citizens’ commitment is officially replaced by experts’ committees.

In what follows I will analyze some steps in this process of constructing EU ethics, sketching out how the constant call for objectivity in ethics has gone along with citizens’ (and their representatives’) moral disempowerment and with the colonization of morality by governmental powers.

The renewed interest in applied ethics and the official birth of bioethics in the late sixties have been explained in various ways.⁵ However, the different narratives seem to share at least one explanatory factor, namely the need for a more intense and open dialogue between science and society; and the need to ground the self-refer-

3. The recent decision of the Indian IT industry body, National Association of Software and Services Companies (Nasscom), to form a corporate governance and ethics committee to strengthen corporate governance practices in India in the wake of the Satyam Computer controversy, is an example of ethics as a legitimizing regulatory tool. See NewKerala.com, <http://www.newkerala.com/topstory-fullnews-91146.html>, 11 February 2009.

4. S. Visvanathan, *A Carnival for Science: Essays on Science, Technology and Development*, Oxford University Press, Delhi, 1997.

ential ethics of science in a socially agreed vision of values and choices.

The institutionalization of ethics produced a strong distortion of these original needs. The creation of ethics committees and commissions, as a valid method of decision-making to find out the ‘right’ values, transformed the ongoing pluralist and interdisciplinary dialogue that was at the core of so-called ‘public ethics’ into the bureaucratized mechanisms of expert advice derived from scientific committees’ procedures.

Institutionalized ethics was started in the European Communities in the field of biotechnology and in connection with the development of the biotechnological industry. Here the idea of ethics as a derivative of social issues has been accompanied by the identification and isolation of ‘what an ethical issue is’, namely by the construction of a well-defined instrument to govern on and through values.⁶

In April 1991, a few months before the first European ethics advisory body was appointed, the European Commission addressed the issue of ethics in a communication to the Parliament and the Council. The title of the document was clear in indicating why and in which context ethics was needed: ‘Promoting the Competitive Environment for the Industrial

5. N.S. Jecker, A.R. Jonsen, R.A. Pearlman, *Bioethics: An Introduction to the History, Methods, and Practice*, Jones and Bartlett Publishers, Sudbury Ma., 1997; M.L. Tina Stevens, *Bioethics in America: Origins and Cultural Politics*, Johns Hopkins University Press, Baltimore, 2000.

6. In a quite similar way, in the US the need for a dedicated permanent bioethical body was explored in two main documents by OTA in 1993 and IOM in 1995, which identified what an ‘ethical issue’ is (US Congress, Office of Technology Assessment, ‘Biomedical Ethics in US Public Policy – Background Paper’, OTA-BP-BBS-105., US Government Printing Office, Washington, DC, 1993; R.E. Bulger, E. Meyer Bobby, and H.V. Fineberg

Activities Based on Biotechnology within the Community.’⁷

In discussing what could be done in order to successfully implement biotechnology in Europe, the commission analyzed and discarded the proposals supporting the introduction of a broad social assessment of new biotechnology, which would add the question about social benefits to the already existing criteria of safety, quality and efficacy. The main reason against a wide public discussion of biotechnology was envisaged by the commission in the ‘imperative’ to ‘avoid a situation creating uncertainty’, which ‘could result in a diversion of investment and could act as a disincentive for innovation and technological development by industry.’⁸

The rule stating that decisions have to be based upon ‘objective assessments using clearly identified criteria’ was the preamble to introducing the new dedicated ethics body.

More importantly, the commission directly associated this necessity with the importance of avoiding the uncertainty of a confused public debate, with the risk of adversely influencing industrial development: ‘The questions arising in public debate belong to distinct categories and debate will continue to be ill-defined (and for public policy purposes, ineffectual) so long as a clear differentiation is not made between these issues.’⁹ The issues waiting for differ-

(eds), *Society’s Choices: Social and Ethical Decision Making in Biomedicine*, Committee on the Social and Ethical Impacts of Developments in Biomedicine, Institute of Medicine, National Academy Press, Washington DC, 1995.

7. Commission Communication to Parliament and the Council, ‘Promoting the Competitive Environment for the Industrial Activities Based on Biotechnology Within the Community’, SEC (91) 629 final, Brussels, 1991.

8. *Ibid.*, p. 8.

entiation were identified as the ethical considerations relating to human life and ‘other values’, namely animal welfare, environmental issues, health and safety related issues, transparency, and socio-economic impacts.

In November 1991, the Group of Advisers on the Ethical Implications of Biotechnology (GAEIB) was established. This was the ‘official’ beginning of the European politics of ethics – the decision to incorporate ethics in the decision-making process concerning biotechnology (and later all applications of science and technology).¹⁰

The rise of ethics represented a fundamental political factor in the shift from the ECSC Treaty of 1953 and the Single Market of 1991, to the Treaty of Maastricht in 1993.¹¹ Though ethics and cultural values are predominantly regulated at the national level, the GAEIB was appointed to integrate science in society. ‘European integration must mean more than establishing a single market; progress in science and technology must be given a human, social and ethical dimension, otherwise European citizenship cannot be established.’¹²

Ethics has thus become an important legitimizing factor in the construction of a political European Community – the shift from a prima-

rily economic to a political organization. The roles of ethics included the need ‘...to identify and define the ethical issues raised by biotechnology; to assess, from the ethical viewpoint, the impact of the Community’s activities in the field of biotechnology; to advise the Commission, in the exercise of its powers, on the ethical aspects of biotechnology and to ensure that the general public is kept properly informed.’¹³

The willingness to use ethics as a manifestation of indirect involvement of the public in the decision-making process and as a symbolic move toward a qualitatively different vision of the European Community seems to put an emphasis on the role of civil society in building a broader political community. Values are a metaphoric reference to the civil society, to historical heritage, to rooted communities, to a non-bureaucratic but spontaneous level of organization. Talking of ethics and allowing ethical values to be part of the decision-making process, European institutions suggest they represent society as a whole and present themselves as a political community, or even a polity.

But ethics has only symbolically been evoked for democratic involvement and has not been implemented accordingly. In 1997, the new group replacing GAEIB, the European Group on Ethics in Science and New Technologies (EGE), was appointed, and its mandate renewed in 2001 and 2005. EGE was given a broader mandate to cover all areas of the application of science and technology, but its characteristics were increasingly shaped like those of an expert committee. Citizens are no longer evoked and the only public round table still men-

tioned in the mandate is only open to other experts.

The identification of ‘the ethical values of all Europeans’ never included EU citizens, but remained the task of appointed expert committees to facilitate the functioning of the market.

Since its institutional start, EU ‘ethics’ has acquired some distinct features that have been consolidated over time. Some of these characterize several existing ‘ethics’ regulatory tools, but others are specific to EU ‘ethics’, revealing the structural institutional elements they depend on and the functions played by ‘ethics’ in the EU context.

The development and shaping of ethical discourse in the EU may be seen as a constant attempt to endow ‘ethics’ with features generally referring to objectivity as the main value standing for rationality and unbiased judgment.¹⁴ The law and the legal process have represented both the terms of reference and the differential elements to consolidate ‘ethics’. On the one hand, ‘ethics’ imitates the procedural elements of the law, which are part of its structural public reliability. On the other hand it keeps the distance from the legal process, being advertised as a rational decision-making tool and a way to speed up the law. In this way ‘ethics’ has become a formal requirement specifically mentioned in many directives as a procedural step with the role of providing a broad sense of societal legitimacy.

Some specific elements are shown as indicators of objectivity: ethics as a committee procedure, as expert and outsourced knowledge, and as depending on subsidiarity.

In the EU ‘knowledge society’ science and technology do not simply

9. Ibid., p. 11.

10. ‘Commission decision on the renewal of the mandate of the European Group on Ethics in Science and New Technologies’, 11 May 2005, (2005/383/EC), Official Journal of the European Union L 127/19, 20/5/2005.

11. This page, as others listed below, no longer exists and has been retrieved through the Internet Archive Wayback Machine: http://web.archive.org/web/20030418165425/http://europa.eu.int/comm/research/science-society/ethics/research-e-legislation_en.html. Accessed 24 March 2009.

12. http://ec.europa.eu/european_group_ethics/archive/1991_1997/bilan_en.htm. Accessed 24 March 2009.

13. http://ec.europa.eu/european_group_ethics/archive/1991_1997/organisation_en.htm. Accessed 24 March 2009.

14. Y. Ezrahi, *The Descent of Icarus*, Harvard University Press, Cambridge, MA, 1990.

represent one among other tasks for policy and regulation, but a founding political principle providing both ends and means, as they are the source for effective methods and efficiency values. The transfer of some procedures from the scientific community to ethics has been a strategy to make the ethical discourse seem to be founded on knowledge, and hence more 'objective'.

Committees are part of the rhetoric of expert knowledge; they may refer to plurality and multidisciplinary as to their composition; they may be played to perform neutrally, as their procedures tend to create generally agreed and de-personalized opinions.

Scientific expertise procedures and committee procedures have converged in providing ethics both with theoretical validation – in the EU language: 'the science of ethics' –¹⁵ and bureaucratic legitimization.¹⁶ In fact, focusing solely on the 'ethical' dimension of scientific and technological issues as opposed to the broad socio-political and economic ones was a way to emphasize and rely on 'the presuppositions of rationality upon which the debate is conducted.'¹⁷

The 'outsourcing of values' also contributes to the institutional fram-

15. See <http://ec.europa.eu/research/science-society/index.cfm?fuseaction=public.topic&id=74> Accessed 24 March 2009.

16. T. Larsson, 'Precooking in the European Union – the World of Expert Groups', Finansdepartementet ESO Studies, <http://www.regeringen.se/sb/d/4997/a/36305>, 2003, Accessed 24 March 2009; B. Salter and M. Jones, 'Biobanks and Bioethics: The Politics of Legitimation', *Journal of European Public Policy* 12, 2006, pp. 710-732.

17. J-C. Galloux, A. Thing Mortensen, S. de Cheveigné, A. Allansdottir, A. Chatjouli and G. Sakellaris, 'The Institutions of Bioethics', in M.W. Bauer and G.Gaskell (eds.), *Biotechnology: The Making of a Global Controversy*, Cambridge University Press, London, 2002, pp. 135-136.

ing of moral and social choices as a matter of neutral expertise and technical knowledge. Values are not perceived as an integral part of European legislation but are supplied through specialized knowledge; this is analogous to other fields of expertise. In this way, the substantive content of directives and regulations touching on values does not really involve any value judgment. Instead, it consists of incorporating ethical knowledge into laws as an external expertise, sometimes consisting of the mere awareness that no general agreements can be reached on the subject.

Inherently political decisions may thus be neutralized and depoliticized through deference to expert opinions, although the *ad personam* experts' appointment procedure shows, on the contrary, that ethics performed by committees may be considered as 'commissioned ethics' and a 'commissioning of ethics'; namely, it is ethics on demand. Whereas this does not necessarily imply a direct choice of the relevant values, the extraction of the ethical dimensions from an issue to be regulated always involves a pre-framing of the issue itself and of what is important, and the inevitable reduction of value-laden issues to their mere 'ethical implications'.

Subsidiarity, nevertheless, remains the major feature of EU 'ethical method'. Subsidiarity is the principle – established by Article 5(2) of the European Convention –¹⁸ whereby the Union does not take action (except in the areas which fall within its exclusive competence) unless it is more effective than action taken at national, regional or local level, in order 'to ensure that decisions are taken as closely as possible to the

18. Protocol (No 30) on the Application of the Principle of Subsidiarity and Proportionality, Amsterdam, 2 October 1997.

citizens of the Union.' Ethics is a matter of subsidiarity.

'Ethics' belonging to member states means that harmonization cannot be reached in this field and that a multiplicity of moral visions have to coexist (as both the GAEIB and the EGE had to recognize on several occasions). Subsidiarity allows different ethical choices to coexist and be compatible within EU legislation, preventing the EU from being fragmented by ethical dilemmas in the coordination of different state-based ethics.

However, though a clearly stated principle allowing member states' subjectivities to make sovereign decisions about values, subsidiarity has also been referred to as a matter of objectivity.

Ethics and subsidiarity have been intimately connected from the very beginning of the European integration process. In his 1989 *Discours de Bruges*, Jacques Delors has described subsidiarity as the practical way to make possible 'l'émergence de l'Europe unie et la fidélité à notre nation' (the emergence of a united Europe and the faithfulness to our nation); he also saw the role of 'ethics' as providing the symbolic dimension to reconcile the state and individuals: 'Au-delà d'un nationalisme triomphant et d'un individualisme exacerbé, l'éthique revient en force'¹⁹ (beyond a triumphant nationalism and an extreme individualism, ethics has to be strengthened again). Subsidiarity and community ethics are thus strongly connected terms, as the former concept 'stems from a traditional society organized in communities to which each person "naturally" belonged;' where 'naturally'

19. J. Delors, 'Discours de Bruges 21.10.1989', in *Discours de Jacques Delors, Europe Documents* 1576, 1-8.

means that the individual was feeling this belonging as a part of himself, as a fundamental element of his humanity.²⁰

However, in today's context, the subsidiarized construction of values in the EU may respect member states' will in their relationships within the EU, but it certainly deprives citizens of the ability to express their own views, whenever their visions are not subsumed by member states' sovereign ethics. From the citizens' points of view, this way of framing ethical deliberation, though making the sovereign power of 'national ethics' stronger, does not represent them but only the states' ethics – literally, the ethics-of-the-states.

Also, subsidiarity about values is a challenge to European legislation and the European Parliament as the main institution directly representing European citizens.

Notwithstanding, in a recent debate during the approval of so-called advanced therapies products²¹ involving embryonic cells, the members of the European Parliament themselves reinforced the idea that subsidiarity is a matter of objectivity in ethical issues.

There is 'no room in the text for personal ethical views,'²² one representative said. 'Any self-styled ethical objections are completely overthrown by the fact that the inde-

pendence of the member states guarantees them the power to impose restrictions on research,' another commented.²³ Members of Parliament's opinions, the majority argued, being 'subjective', namely expressing their personal subjective views, cannot 'objectively' represent 'public morality', which only member states are entitled to embody. The objectivity of subsidiarity is *de facto* a sort of European 'ethical sustainability' or 'ethical coexistence' among sovereign states.

In this paper I argue that the EU construction of ethics as a politically legitimizing factor, has primarily been inspired by the restless quest for objectivity. The objectivity of ethics started with its nature of isolated and purified discourse on values; it proceeded through the appeal to committee procedures and expert knowledge; and, now, member states' public morality has become a synonym for objectivity about values.

Among the approaches to providing legitimacy for the EU integration process, two different methods have been described by some scholars of public policy: one frames Europe as a community based on common values; the other conceives of it as a *sui generis* polity going beyond inter-governmentalism and based on rights. In the former case, Europe is seen 'as a community in which the different national modes of allegiance and identification are to be harmonized. The success of the EU depends upon developing a shared identity and a value basis for integrating different conceptions of the good life, and a diverse range of societal interests.'²⁴

23. Marco Cappato (ALDE), in writing, Italy, <http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=2&procnum=COD/2005/0227>. Accessed 24 March 2009.

In the latter, the EU is 'in need of direct legitimization and a firmer basis of popular participation than the one provided for by the democratic processes at the state level. Here, the integration process hinges on the ability to establish a fair system of cooperation founded on basic rights and democratic procedures for deliberation and decision-making.'²⁵

The compulsive enforcement of top-down ethics has been associated with a misleading conception of objectivity, whereas ethics has been managed in the EU more as a tool to exert power in a self-legitimizing way than as an exercise of democratic sharing.

From this perspective, on the contrary, 'subjectivity' would actually mean that citizens and their representatives may express themselves and exert their rights and powers: a concept of 'subjectivity' that resonates with the fundamentals of the state under the rule of law. It has been observed that in the EU integration process, though citizens have achieved rights they have not been able to give them a coherent frame. The lack of a European collective identity and the absence of a unifying public sphere for identity-formation of the European citizens are the main reasons for the democratic deficit in the EU. The EU as a 'process of unfinished democratization'²⁶ requires less 'ethics' and more comprehensive and convincing processes towards constitutionalization and citizens' participation.

24. E.O. Eriksen and J.E. Fossum, 'Europe in Search of Legitimacy: Strategies of Legitimation Assessed', *International Political Science Review* 25, 2004, p. 437.

25. *Ibid.*, p. 438.

26. E.O. Eriksen, *Citizenship and Democratic Legitimacy in the EU*, Final Report. EUR23114, Brussels, 2005, p. 13.

20. Y. Soudan, 'Subsidiarity and Community in Europe', *Ethical Perspectives* 5, 1998, p. 180.

21. Regulation (EC) No 1394/2007 of the European Parliament and of the Council of 13 November 2007 on advanced therapy medicinal products and amending Directive 2001/83/EC.

22. Adamos Adamou, on behalf of the GUE/NGL Group, <http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=2&procnum=COD/2005/0227>. Accessed 24 March 2009.