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59. Empirical ethics is not a magic bullet for applied ethicists¹

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Abstract

Ethicists are often included as part of interdisciplinary research projects when the research is deemed ethically controversial, e.g. in research aimed at developing biotechnologies to be applied in food production. The stated or implied expectations are often that ethicists can deliver a stamp of moral approval or advice on how to avoid moral disapproval. We argue that these expectations ask too much of applied ethics. A normative judgment requires a combination of ethical analysis and a normative perspective, but it is not possible for the ethicist to decide whether one normative starting point is objectively better than another. In light of this, some ethicists have turned to empirical ethics to find a normativity that is independent of the ethicist's particular biases. In this paper we assess the dialogical empirical ethics methodology developed by Widdershoven *et al.* as an example of an approach that claims to develop an emerging normativity through interaction with the stakeholders in the process. However, we find that this approach inevitably introduces ethicist-dependent normativity that cannot be relied upon as the sort of objective answer that is sought by those posing the question. The focus on generating normativity undermines the methodology when it is not successful, and in fact does not represent the most important contribution of such methods when they are successful. When methods are directed away from their attempt to 'generate' normativity, and instead onto their ability to 'translate' normativity into a given context, they represent a valuable tool in providing the type of guidance that is increasingly asked of ethicists. Understanding and pursuing this alternative aim does not diminish the importance of including ethicists in controversial research projects, but it changes their role: Instead of providing normative judgment, they should be used to make the values that are relevant to the research project transparent, determine how those values and commitments could be expressed in the given context, and facilitate dialogues between stakeholders.

Keywords: ethics consulting, ethics methodology, bioethics, normativity

Introduction

Ethicists are often included as part of interdisciplinary research projects when the research is deemed ethically controversial, e.g. in research aimed at developing biotechnologies to be applied in food production (Jao *et al.*, 2020; Mertz *et al.*, 2020). The stated or implied expectations are often that ethicists can deliver a stamp of moral approval or advice on how to avoid moral disapproval. In other cases, they are asked to provide guidance on specific actions that are to be carried out in practice, either in the local context, or in broader policy perspectives. In the following, we will refer to the act of providing such moral evaluation or action guiding recommendations as providing an 'ethics solution' to an issue.

We argue that this expectation asks too much of applied ethics. The field of applied ethics is diverse both in opinions and commitments, and when single ethicists or groups of ethicists are included in projects, they cannot be expected to be able to provide ethical guidance that is comprehensive enough to include

¹ This paper is in part a result of earlier work done within the Horizon 2020 project 'MycSynVac' (www.MycSynVac.eu), and we would like to thank our collaborators on this project.

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all these diverse views, without the conclusion becoming so broad that it becomes irrelevant in terms of guiding specific actions or the conclusion being dependent on some normativity that cannot with any kind of honesty be said to be 'objective'.

Of course, there may be cases where different, potentially conflicting, ethical perspectives combined with a factual analysis give overlapping advice. In these cases, an ethicist might be able to deliver a broadly socially acceptable answer, but not even 'a majority vote' cast by ethical theories necessarily imbues objectivity on an opinion. However, often there is no consensus between the major normative perspectives. Another exception to our claim consists of cases where ethicists provide ethical consults in hospitals, in various ethical committees, etc., where there are often existing guidelines on the subject that allow ethicists to provide more direct recommendations. So this paper will concern itself with cases where ethicists are asked to provide an 'ethical solution' within areas where there are no pre-existing guidelines and standards of practice that can be readily applied.

A normative judgment of the type requested in an 'ethics solution' requires two separate elements: a combination of a) a concrete ethical analysis of the issue at hand and b) an application of a normativity to the given issue. In current methodologies, empirical ethics attempts to contribute to both of these elements, which we find overstretches the justified reach of the methodologies proposed in ways that can undermine their findings. Our central concern is that it is not possible for any given ethicist to objectively determine whether one normativity is better than another. Some of the current methodologies within empirical ethics attempt to overcome this issue by employing justifications for their normativity that is separate from the ethicist on the surface, but we find that they are in fact introducing the same 'ethicist-bias' issue in more subtle ways (Carter, 2020; Jao *et al.*, 2020; Mertz *et al.*, 2020; Wöhlke and Schicktanz, 2019). Whether the normativity comes from the ethicist or some sort of process involving the general public or a specific set of stakeholders it is still normativity and thus not an objective account of 'what is right'.

Consequently, current empirical ethics methodologies fail to provide convincing answers to one of the elements needed to deliver the ethics solution asked of the ethicist (they fail to deliver a normativity that can be applied to the issue at hand), and thus are not satisfactory methodologies for providing answers to the type of issue that they purport to address. Interestingly, we find that such methods run into issues exactly because they are attempting to deliver on the normative side of the question (so to speak), and that the attempt to establish this normativity is also a flawed division of labour. Thus, even if ethicists claim to use new empirical tools to imbue some independently justified value base into their ethical evaluation, they are in fact still supplying a subjective normativity through their methodology. In democratic societies it falls within the domain of democratic institutions (or funding bodies) to set the normative agenda in research – and take responsibility for it as an opinion that however well- or ill-informed can be discussed as any other normative prescription.

An example

The authors of this paper have been a part of the H2020 project 'MycoSynVac' which serves as a useful example of such a case. In this project, we were tasked with providing ethical evaluation and assessment (an ethics solution) to a research project intended to develop a synthetic vaccine for use in food production animals in order to combat diseases that currently are difficult or impossible to treat. Here, some of the decisions within the normative element of our work were to a large extent decided by the context of the task, including sociological studies of stakeholder views that preceded the normative element of our work. The project had been funded by the EU, and by researching the sentiments and opinions of both laypersons, vaccine experts, synthetic biology experts and stakeholders, a quite clear normative background was set out. This included the starting point that such a vaccine is *prima facie*

morally acceptable but is less desirable than a 'natural' vaccine, and that the potential for increases in animal welfare is essential, along with a focus on ensuring a fair distribution of the goods derived from the development of the vaccine.

However, translating these broader normative 'standards' into specific recommendation and actions remained difficult, representing the real challenge in providing the ethics solution requested of us, and it is an area where better methodological tools would be useful. Thus, the essential challenge of this type of work is not 'generating' normativity, but rather 'translating' normativity into useful prescriptions in practice. So, where some current empirical ethics methodologies focus on generating normativity (and often stumble in our view), the real usefulness of such methodologies, (in the context of providing the ethics solution needed in this and many other cases), lies in their ability to translate a rather nebulous set of normative values into practical and actionable guidance and assessment.

An empirical ethics that generates normativity

While more than one empirical ethics methodology potentially suffers from the issue described in this paper, we will discuss one of the prominent empirical ethics methodologies in more detail in order to support our claim. This is the dialogical empirical ethics methodology described in (Widdershoven *et al.*, 2009).

Widdershoven *et al.* described a 'dialogical' empirical ethics methodology in their 2009 paper. The approach supposedly generated normative conclusions through dialogue with relevant stakeholders, more specifically through focus group interviews that produce a fusion of horizons. Essentially, the ethicist works together with participants to generate the normative conclusions of a study. As an example, Landeweer *et al.* (2011) used the methodology to justify their claim that there had been an improvement in the moral views of participants in their study on coercion in psychiatry. In both Widdershoven *et al.* (2009) and Landeweer *et al.* (2011), the authors argue that the fostering of moral deliberation between study participants can lead to deeper moral reflections about difficult ethical cases that participants encounter in practice, and that this type of dialogue can lead to changes in their moral stance. This new considered stance that is shared among the stakeholders is then claimed to be an ethically superior stance.

However, claiming that there is a change in stakeholders' moral stances and that the new stance is more considered is only a very preliminary step in claiming any normative justification for this new stance beyond that which the participants had before engaging in the process. If the process is left at this stage, the authors themselves acknowledge that they are only justified to claim that: 'Intuitively we consider the new perspective developed in the case story as qualitatively better than the views the nurses shared before the focus group started' (Landeweer *et al.*, 2011). However, this does not carry much moral weight. Intuitions should be used with caution when legitimizing moral stances. In order to be able to credibly argue that this new stance that has emerged from the process is a more justified normative conclusion, there must be some feature about the claim which this justification can be attributed to beside it being 'more considered'.

Ethicist bias and claims of 'moral improvement'

The authors recognize this limitation and proceed to argue that moral conclusions cannot only be changed, but that they 'can be improved' (Landeweer *et al.*, 2011). But 'improve' is of course a key word in this context: What does it mean to improve an ethical decision? It would seem that the through their answer to this question the authors claim to have a methodology which can generate normativity that is ideally free of ethicist-bias.

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One interpretation of the claims in the paper is that the nurses in the study initially were making sub-optimal decisions and that the study shows that by engaging in the process described in the paper, they are able to improve these decisions from a normative viewpoint. On this interpretation, the paper has a rather limited conclusion, but crucially, this conclusion would also rely on some ethical standard which is not established within the paper. Essentially, if the claim is interpreted narrowly, the authors are claiming that they have not established a normativity but rather have developed a method that allows participants in their study to align more naturally with a pre-determined normativity by following the prescribed method. This would clearly fall victim to the exact issue that is at hand in this paper: the methodology relies on an externally supplied normative standard in order to evaluate moral improvement in the practical context.

Thus, the claim that the method can generate normativity that is in some sense 'free' of the ethicist is not achieved, and the method fails to generate both elements mentioned in the introduction that are needed to satisfactorily provide an ethical solution to the case (i.e. an ethical analysis of the context of the case as well as a normativity that can be applied to the case in question). In other words, the paper turns out to be an empirical paper 'about' ethics, rather than an empirical ethics paper. Furthermore, as the authors do not appeal to any established normativity in the paper, it is a presentation of a method that claims to improve decision-making, without transparent standards for how 'improvement' is measured. More could be said on such an interpretation of the paper, but it is likely that a stronger interpretation is a fairer representation of the authors intent, and as such, we will now move onto assessing the paper in this light.

We interpret the paper as having the more ambitious goal of seeking to present and employ a methodology that can in itself reliably generate improvements upon current ethical decisions without including an external normative perspective. In other words, the claim must be that there is some feature of the methodology that provides justification for the claim that a normative conclusion P that has been reached by engaging in the process described in the paper is reliably more normatively justified than a conclusion Q that has been reached prior to or without engaging in this process. All this allegedly independent of the normativity of the ethicist herself. Support for this interpretation can be found within the paper itself as the authors state that they want to 'determine whether the changes in moral views of the nurses were actually an example of moral development, improving the moral quality of the decisions concerning seclusion at the wards?' (Landeweer *et al.*, 2011). When providing a positive answer to this question, they appeal to the dialogical method established in the earlier paper (Widdershoven *et al.*, 2009).

However, the question remains, how moral justification can be generated by the methodology itself. In the two papers discussed here, the argument is claimed to be based in part on the hermeneutic philosophy of Hans-Georg Gadamer (Widdershoven *et al.*, 2009: 238). The argument essentially is that dialogue about morally complex issues can lead to development of new perspectives, as well as a shared and developed understanding of the world and questions at hand. Through the process, a fusion of horizons happens, and the participants are left with a 'better, fuller understanding of moral situations' (Widdershoven *et al.*, 2009). Consequently, participants are able to see new solutions to difficult moral problems and are better able to morally evaluate solutions in general, and this ideally leads to agreement on more normatively justified decisions.

This approach has some similarities to a theory of justification that is native to the ethics field, namely the reflective equilibrium made famous by John Rawls in his 'A Theory of Justice' (1999) (first published in 1971), and later expanded upon by Norman Daniels (1979). However, the wide reflective equilibrium concerns itself with finding justification (traditionally in some form of coherentism) viewed from the perspective of the individual engaging in the exercise, whereas the methodology developed in

(Widdershoven *et al.*, 2009) appears to rely on an interactive process between individuals that allow insight into some normative features that are external to the individual.

Thus the approach can purportedly reliably improve upon the normative judgments of the participants in a way so that not only coherence is achieved within the perspective of an individual but so that intersubjective development is achieved. So, in essence, by joining the methodological approach with a hermeneutic meta-ethical commitment, the authors are able to claim moral authority for the normative conclusions reached in this type of study. If you accept the premises, the authors can legitimately claim that conclusions regarding difficult moral cases can be improved by engaging in this process, and that the justification for this claim is a function of the process itself.

But whether to accept the premises is exactly the issue at hand: On the surface, the appeal of this methodology is that it seems to be able to provide both elements of the answer often sought from ethicists: (1) it provides concrete analysis of the issue at hand through deliberation with relevant stakeholders and ethical expertise; and (2) it provides an ethicist-neutral normativity which can provide guidance on the specific issue. However, it should be clear that the normativity that is at the foundation of the conclusion is in no way neutral to the biases introduced by the ethicist. Rather, the conclusion is held up by a meta-ethical commitment to an absolutist reading of the hermeneutic philosophy of Gadamer, which cannot be said to be broadly shared within the ethics community, nor if it were, would represent any objective normativity.

A way forward for ethics solutions

In the above, we have presented two interpretations of what a prominent empirical ethics methodology can provide when searching for normatively justified solutions to a specific case. If the hope is that such methodologies can provide an improvement to how ethics solutions are carried out by ethicists when called upon by decisionmakers to provide guidance or input on policy or practice with regard to increased normative justifiability through ethicist-neutrality, we find that the methods fail. On the narrow interpretation, the method requires an externally provided normative standard in order to be able to get the claims of 'moral improvement' off the ground. On the ambitious interpretation, the method requires a commitment to dialogical methods that can deliver universally valid results in order to show 'moral improvement'. In both cases, the method fails to deliver a perspective that is sufficiently ethicist-independent, insofar as it implies a fairly specific set of values or 'justification by process' normativity that cannot be objectively justified as being preferable to other normativities.

So, should empirical ethics methodologies like the one described here be dismissed as effective tools to provide ethics solutions of the type more and more frequently requested by decision-makers? In our view, this is not the case. Rather, we believe that such methods have become vulnerable to this form of criticism exactly because they attempt to deliver more than is possible. If their ambition is scaled back such that they do not claim to be able to generate objective normativity (especially independently of the ethicist), they can serve as one element of a successful strategy to provide ethical solutions going forward. By adapting the methodology to a more narrow interpretation, what one is left with is a useful tool for assessing the context within which one is attempting to generate and express ethical advice that is useful in practice. In this case, no normativity is provided by the method itself, but neither is such a normativity necessary. In most cases, some normative standards are set by the context within which the ethicists are asked to provide their analysis, like in the case of MycoSynVac. Often, funders, politicians, stakeholders, or general academic ethics consensus has provided a broad normative standard that will be necessary to rely on in the practical context. In such cases, methods like the one described here are useful tools to translate such a normativity to a set of practical recommendations that can be implemented. In this way, empirical ethics methodologies can provide significant value by way of their ability to bridge

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the gap between broader normative standards, and the type of specificity required from ethical solutions. Especially if the ethicists remember to emphasize the limits of their guidance with regard to normativity.

Conclusion

It is becoming more common for ethicists to be asked to provide ethical solutions by funders and stakeholders that provide an objective normative evaluation of e.g. a technology. However, providing such a solution is a challenge for ethicists because ethics by its very nature cannot provide objective answers to normative questions. Many empirical ethics methods purport to be able to solve this problem by providing two elements: An ethicist-independent normativity as well as a way to translate this normativity into practice. In (Widdershoven *et al.*, 2009) the authors provide a somewhat integrated strategy for achieving both of these aims. However, we find that the method fails to deliver on the first element: It cannot deliver an ethicist independent normativity. But, in our view, this is not necessary for such methods to be useful. In practice, broad normative standards are most often set by the context within which the ethicist is working. We argue that by removing focus from the ability to deliver objective normativity, and instead focusing on translating a transparent normativity into useful ethical advice, not only are many of the methodological weaknesses avoided, but the method is also better positioned to provide an important tool for ethicists going forward.

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