

Public Ethics and Faith

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Robin Gill's piece in this issue explores the challenges of being a theologian in the work of bioethics committees tasked with drawing up advice or policy; for use not just in the public square but in some way on behalf of the 'public'. This might be Government, state sponsored organisations (such as the National Health Service), or key social institutions embodying public values (such as the health professions). The challenge for bodies commissioned to undertake this work in public bioethics is to give an account of problems and solutions that both speaks to and also on behalf of a diverse and morally pluralist society. The challenge that Robin explores, in his account of the 'second audience' for his work, is how to bring theology to bear on this practice.

My contribution explores this same area of activity but from a different perspective; that of an academic health care lawyer and public sector chairman. My place at the table comes from being thought to hold expertise and experience in roles conceived as secular. As a chairman (previously of the Human Genetics Commission and currently of the Nuffield Council on Bioethics, the nearest that the United Kingdom has to a National Ethics Committee), I understand my most important task to be the creation of an environment which facilitates the richest and most profound deliberation on the matter in question. As an academic lawyer, I have a responsibility both to ensure that the parameters established by existing rules are understood and also to ensure that they are open to critical appraisal. I find disciplines outside law, including philosophy, theology and sociology, vital and interesting contributors to this endeavour, but have neither training nor credibility in these fields. How, then, can I understand and assess the appropriate boundaries for my personal and professional contributions?

Further, where and how do faith voices fit in the culture of public ethics that prevails in the United Kingdom? One of the things that has struck me when meeting colleagues from other national ethics committees, especially in mainland Europe, is how secular our public discourse has become. I have not observed the hostility to Christianity in public life that former Archbishop Carey proclaims. In over twenty years on NHS Boards, I frequently encountered people whose public service was motivated by their faith. It is not that Christians are excluded from public life, but that their voices are strangely constrained. Explicitly religious ideas and values have largely disappeared from the language and concepts used in debates.

This particular manifestation of secularism is a peculiarly British obsession. It is common for National Ethics Committees in other countries to include a significant number of theologians, but this is now rare in the UK. This is a major problem for our public ethics. For many people, theology (or at least the traditions of their faith communities) is a core source of guidance for their thinking on bioethical issues. Public bioethics needs to be sufficiently grounded in the society it serves to be recognizable by citizens; without this it cannot expect to command respect. At the same time, it needs to draw on appropriate expertise and be built upon rigorous thinking (to be more than just public opinion or the views of elected politicians). This is a fundamental problem in liberal political

theory; justifying substantive values in morally pluralist societies. It is also an important issue in the practice of public bioethics commissions.

This problem is in many ways similar to that identified by Robin Gill through his typological distinction between theological ‘purists’ and ‘realists’. Can participants in public ethics simultaneously maintain the integrity of their theological positions while influencing wider public thinking? Nigel Biggar puts the dilemma slightly differently; as a (false) choice between ‘a “conservative” ... theological seriousness, which is shy of attending too closely to public policy; or a “liberal” engagement with public policy, which is theologically thin and bland.’¹ Like Gill, he rejects the suggestion that Christians should disengage from public bioethics – ‘where public deliberation is properly secular, liberal and polyglot, Christians should take the opportunity to say it as they see it, so loving the world as to orient it toward moral reality and as to care not a fig about how distinctive their own identity appears.’² The work of both is addressed to a Church that has at times seemed hesitant to engage in public ethics and demonstrates the importance of overcoming this reluctance.

This piece considers three aspects of the current practice of public bioethics in the United Kingdom that provide the context in which those persuaded by the theological case for engagement must shape their contributions and draws out some implications both for the public policy and for the Churches. The first concerns the ground rules for this public discourse. The second concerns the challenges of working for a common purpose with those of different views and arises from the collegiate nature of committee work. The third considers the architecture of public bioethics; the institutions through which it operates. Each is a dimension of public deliberation that has become secular in the reductionist sense of religion-free rather than pluralist in the Augustinian sense of the common life during ‘the *saeculum*, or the “age” between the Resurrection and the eschaton, when Christians, pagans, the righteous and the unrighteous, the saved and the damned must live alongside each other and negotiate a common life.’³

Terms of engagement

The ground rules for public discourse raise issues of tactics, strategy and integrity for those with particular standpoints. Church leaders sometimes exclude themselves from public debate by the way in which they express their views. This can be neatly illustrated by the interventions of two senior Roman Catholics to the possibility of same sex marriage being recognised in the laws of the United Kingdom. Cardinal Keith O'Brien described it as a ‘grotesque subversion of a universally accepted human right’;⁴ emotive language that can express disagreement but provides no basis for resolution because it offers no reason or logic, merely a visceral and aesthetic abreaction. This is a risky tactic from a faith which counts amongst its foundational stories Jacob's consanguineous,

¹ N Biggar, *Behaving in Public: How to do Christian Ethics* (Eerdmans, Michigan, 2011) p xvii.

² *Ibid.* at p 107-8.

³ *Ibid.* fn 2, p 46.

⁴ ‘Catholic cardinal criticises gay marriages plan’ BBC News 4/3/12 <http://www.bbc.co.uk/news/uk-politics-17249099>.

bigamous marriage in which his first four children were born from surrogate pregnancies using (sex?) slaves. A story in which surrogate motherhood was used by Rachel and Leah competitively – Rachel gloats that ‘I have played a fine trick on my sister and it has succeeded.’⁵

This outburst was closely followed by the issue by Archbishop Vincent Nichols of a pastoral letter on marriage to be read at Sunday Mass.⁶ It set out arguments in language that is temperate and seeks to make a distinctively Christian contribution but in terms that non-Christians can understand. Some are theological, the Roman Catholic vision of marriage to speak to the faithful. Others are empirical and have broader resonance; that the institution of heterosexual marriage is ‘at the foundation of our society... a crucial witness in our society, contributing to its stability, its capacity for compassion and forgiveness and its future, in a way that no other institution can’. Yet others appeal to ‘natural law’; ‘The roots of the institution of marriage lie in our nature.... and written into our nature is this pattern of complementarity and fertility’.

The intervention made by Cardinal O’Brien was a tactical error if he was wishing to engage in public ethics. It served to exclude Christians from the enterprise by suggesting that they have nothing to offer but strong opinion. Some might see this as a ‘prophetic’ role; holding a mirror up to society, drawing attention to its failings, and challenging it to reform (repent). To a ‘theologically purist’, this might seem attractive, but there are linguistic and cultural ‘rules of engagement’ that need to be taken into account if Christian contributions are to be heard in public debates. These include the need for some degree of ‘fit’ with the current frames of reference. There needs to be a common conceptual currency for discussion to take place, although this does not mean that it has to be accepted uncritically.

There are good reasons to think that the way in which bioethical issues are discussed in public bodies and examined in the courts struggles to comprehend theological concerns. The framework of debate in the UK is built around a model based on competing individualistic rights in which concepts of human dignity and the common good sit uncomfortably. Thus, the debates around the regulation of end of life care and assisted conception are cast in terms of whether there is evidence of harm that justifies constraining personal choice, not in terms of the intrinsic value of life. This makes it difficult to voice traditional Christian formulations of the issues, as became clear in the way the case of Diane Pretty was argued before the European Court of Human Rights.⁷ On a micro-level, judges struggle to fit the way in which religious people explain their motivation into individualist models of medical law when considering patients’ competence to take decisions or making judgements about where their interests lie.⁸

There are strategic issues for faith communities about shifting the terms of debate to better accommodate theological insights. I see the work that Robin Gill describes, promoting a virtue ethics approach that can better accommodate a biblically grounded conception of the healing

⁵ Gen 30:8. Ch 29-30 contains the full story.

⁶ <http://www.catholic-ew.org.uk/Home/News-Releases/Archbishops-Letter-on-Marriage>

⁷ See the discussion in J Montgomery, ‘The Legitimacy of Medical Law’. In Maclean, S (ed) *First Do No Harm: Law Ethics and Medicine*, Aldershot: Ashgate, 2006, 1-16.

⁸ J. Montgomery, ‘Health Care Law for a multi-faith society’. In: Murphy, J (eds) *Ethnic Minorities, their Families and the Law* Oxford, Hart Publishing 2000, 161-179.

virtues, without requiring acceptance of biblical authority, as an example of this type of activity. Much of our public bioethics has become dominated by an individualism imported from North America and we have lost the sense of the common good that is more dominant on mainland Europe. From the perspective of a public sector chairman, I am concerned where the ground rules of debate privilege some voices and create barriers to others being heard. Theologians need to be engaged in this strategic work of opening up the limitations of the way in which we discuss issues to constructive criticism. However, I think this is not of concern only to theologians and this raises second aspect of public bioethics.

Public Ethics as a collegial enterprise

This concerns the implications of its collegiate nature; whereby a group of people needs to agree formulations of the problems and solutions that will inevitably differ from the ones that they would have articulated as individuals. This is in part personal - members of committees will want to be consistent to their previous public positions. They need to consider when they are prepared to be party to different conclusions if that is the consensus. While minority or dissenting opinions are sometimes expressed in the reports on public ethics, this is not the expectation at the outset. From the perspective of a chairman, someone who set out to dissent, was not prepared to listen to the views of others or contemplate signing up to a common position would be thought to have accepted the invitation to participate in bad faith.

An equivalent issue arises on a disciplinary basis. It is inevitable that bringing people together from different academic disciplines requires them to articulate and defend their views in ways that depart from the approaches, methods and jargon that are the tools of trade when arguing with their colleagues. This is just as true of philosophy or law as it is of theology.⁹ Engaging in public ethics involves exchanging some disciplinary rigour for the opportunity of influence. This clearly brings pitfalls, but it would be a strange view of the value of academic rigour that it should be guarded with such care that it became unable to speak to any but its most arcane practitioners. The risks involved should not be ignored, but avoiding them completely would impoverish public ethics by excluding vital voices.

This is not to say that inclusivity at every stage is required. That can paralyse the operation of public ethics. It is appropriate to exclude from membership of the Human Fertilisation and Embryology Authority those who are so fundamentally opposed to research involving human embryos that they could not carry its the licensing and supervisory roles. However, it would be unacceptable to silence those who hold these views in the wider public debate about establishing or reforming the HFEA; here prohibition is a option that deserves careful consideration.

A further problem arises from the fact that public ethics is an enterprise that needs to speak to a particular social and political context. Bioethics commissions must show some degree of 'fit' with prevailing thinking to be influential. Positions that do not resonate at all with the public and opinion formers are unlikely to be understood or acted upon. A balance needs to be struck between arguments of principle and pragmatic concerns with the likely impact of any recommendations made. This can include assessments of faith issues. In 2008, the Organ Donation Taskforce established a strand of work with faith communities. Their leaders were supportive of organ donation but not of a presumed consent or opt-out model. In the context of the principal objective of

⁹ See J. Wolff, *Ethics and Public Policy: A Philosophical Enquiry* (Routledge 2011) for a discussion of this problem from the perspective of a philosopher.

saving lives, the support of faith leaders for the wider transplant programme was more valuable than pushing further for an opt-out system. This was just one of a number of pragmatic considerations that led the Taskforce to its conclusion that 2008 was not the time to adopt an opt-out system, leaving open the question of whether such a system was morally desirable.¹⁰

These several characteristics of the nature of public ethics raise challenges of integrity. Consensual alliance with others, or accommodation to public thinking, can be appropriate, but may also amount to compromising those involved. For a theologian, this problem might be captured in a biblical metaphor – when has the salt lost its flavour? It is also a challenge from a chairman's perspective; facilitating a consensus that all the members can adopt without compromising their personal or professional integrity. This collegiality implies common enterprise that enhances rather than extinguishes the sense of purpose that participants bring to public ethics.

The Architecture of Public Ethics

The third area of interest concerns the architecture of public ethics; the institutional structures of public bioethics. There are many aspects to this; two seem particularly significant in contemporary practice in the United Kingdom. The first concerns the recognition of expertise and the interplay between this and idea of representation. The approach that has been taken to this in recent years by Government bodies goes some way to explaining why the personnel of public bioethics in the UK are less theological than in other countries. This has been to seek to ensure fairness in public appointments through open competitive recruitment against defined competencies. Applicants are invited to produce evidence that they meet these criteria from their past experience. In the last recruitment round before the demise of the Human Genetics Commission in 2012, we set out to find new members with explicit faith commitments, but struggled to find evidence within applications of the competencies that had been predefined in the appointment process. Those within churches who were interested in ethical issues were not generally able to demonstrate the generic leadership qualities that had been developed as needed in public sector appointments.

In a slightly different way, the Nuffield Council on Bioethics has defined its values in terms of 'rationality' and 'rigour' so that 'all arguments should be capable of being heard but should be submitted to tests of coherence and rationality... based on the best evidence available, and supported by careful and comprehensive analysis.'¹¹ To achieve this, it seeks to recruit people with established reputations. It is surprisingly difficult to identify people with academically credible reputations in theological ethics. This may be a consequence of the decline of theology in the University sector. The Council has recognised the need to ensure 'the composition of the Council better reflects, and is responsive to, the needs of a wider, more diverse society.'¹² Healthy public ethics may require a balancing of expertise and representation.

It would be wrong to see this as a conspiracy against faith, but it does impoverish public debate on bioethical issues. Churches should consider whether the relative lack of recognised expertise in public ethics may well reflect factors within their own practices. These might include the reluctance of theological purists to engage with colleagues outside their faiths. It might follow from the

¹⁰ see further, J. Montgomery, 'Reflections on the nature of 'public ethics''. (2013) 22(1) *Cambridge Quarterly of Healthcare Ethics* 9-21.

¹¹ *Strategic Plan 2012-16*, p 4.

¹² *Ibid.* p 7.

privileging of general ministries over sectoral ones. The Church of England's decision to subsume social responsibility into mission robbed it of a recognisable voice in this field. Whatever the causes, it seems surprisingly hard to identify candidates with recognised positions within faith communities who are also creditable as experts in the arena of public ethics. No doubt there are many Christians who are involved as disciplinary experts, but too few are recognised as experts in theological matters.

The shift under the current government away from a model of bureaucratic public ethics (a by-product of the 'bonfire of the Quangos') provides an interesting opportunity. While the Human Fertilisation and Embryology Authority is now to continue, the Human Genetics Commission (an advisory body to Ministers) was abolished in 2012 and its successor, the Emerging Science and Bioethics Advisory Committee was disbanded in 2014. Government has retreated from the arena of public bioethics. Faith communities need to consider how they should respond. The Falconer Commission on Assisted Dying, funded by those with firm secular views (although independently administered by the think tank Demos) is treated by many as equivalent to a Government Commission. There is a space here into which religious organisations could move and recover the leadership roles that they have had in the past.

Conclusion

Robin Gill draws attention to a key feature of the practice of public ethics, that it brings together people who care deeply about getting things right, but who may well disagree about what that entails. He captures an aspect of this in the phrase striking up 'alliances for the common good'. Those brought together to explore the issues will usually have been chosen not because they agree, but precisely because they bring different skills, perspectives and expertise that will provide a richness to the deliberations that cannot be achieved within their own disciplinary, faith or other communities. Each of the contributors brings to the exercise commitment but must also work with the others to discern the way forward.

This piece has drawn attention to some of the features of contemporary public ethics that provide the current context for this work. It suggests that participants need to accept that it has ground rules and institutional architecture that will not appeal to all those engaged in theological ethics. It draws attention to some problems that need to be addressed within this framework, but it proceeds on the basis that it is not fundamentally flawed. It is no part of the argument that all those engaged in theological ethics should also be engaged in 'public ethics'. However, it is important that the Churches accept collective responsibility for ensuring that at least some of them are.