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Credentialization or Critique? Neoliberal Ideology and the Fate of the Ethical Voice

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In this commentary we respond to White, Jankowski, and Shelton's (2014) article about structuring a written examination to assess what the American Society for Bioethics and Humanities (ASBH) calls health care ethics consultation "core knowledge competencies" (ASBH 2011). We challenge the need for such tests and question what purpose they serve save to further advance a neoliberal version of ethics—an ethics colonized by the corporatist ideology of "entrepreneurial freedoms and skills within an institutional framework" (Harvey 2005, 2). Focusing on health care ethics consultants, the authors propose a credentializing examination to measure ethical "core competencies" in a manner that would be "statistically reliable" and based on "factual information, which is noncontroversial." They further speculate on "business plan development" and the "budgetary implications" of such minutiae as multiple-choice versus essay questions, and the outsourced costs of "psychometric analysis and review." The article itself gets tangled in its own web of proceduralism and managerialism, ignoring the substantive ethical stakes of the litigious creep toward the credentialization and professionalization of bioethics.

If bioethics were subject to a professional body and a standardized examination, the terms of ethical deliberation and decision making would be sharply circumscribed. "Factual" terms and procedurally verifiable practices—arbitrarily defined—would determine in advance what kinds of questions could be asked, in what way, by whom, and of whom. And under ever-increasing pressure to "vocationalize" curricula, educational institutions would alter their instruction to "teach to the test." A professional credentialing body would tend to fix ethical meaning and decision-making "best practices," oblivious to the complexities of ethical life. In the name of efficiency, we could expect a loss of diversity (e.g., critical feminist approaches and cross-cultural perspectives). Ethics would care less and less about the vulnerable and marginalized among us; law, case studies, and textbook decision modeling might at long last replace suffering patients and their kin. In short, a "credentialed" ethicist would work within a corporate model of delivery and reflect the biases of law, public policy, and medicine—precisely those domains that ethicists ought resolutely to critique.

While the authors offer examples of credentialing examinations from law, medicine, and pharmacy, the activities of these professions do not map tidily onto the work of ethics. Ethics is not a *technē* or skill set based on a "domain of factual knowledge." Passing an examination on consequentialism does not make one a consequentialist, and a student could know the stakes of particular cases without any sort of ethical imagination or empathy. The proposed examination, then, mistakes ethics discourse as statements-of-fact or constative utterances, rather than performative ones (Austin 1962). After all, ethics discourse is not neutral; it does or performs something beyond merely describing something empirically. The ethical voice is transitive, generative, world-making; it makes demands and demands a response and responsibility; it stages the collision of often competing values (not "facts"); and it makes a normative claim in the absence of absolute certainty.

Engelhardt (2011) offers a trenchant critique of the ASBH "core competencies" doctrine, and challenges the

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authority of the ASBH to make such (normative) decrees. Significantly, Engelhardt claims that the "ethics" of health care ethics consultants may be legally normative, but it is not morally normative. Health care ethics consultants act, he writes, as "quasi-lawyers" who "manage risk," "engage in mediation," and "give legal advice." This displaces ethics into the domain of law and policy, if not public relations and customer service. We would add that this tactic attempts to rescue ethics, as it were, from a secular, postmodern malaise, "a period in which moral pluralism and a loss of ultimate orientation are becoming salient and widely acknowledged" (Engelhardt 2011, 130). By speaking in the name of the law and the state, ethics once again speaks a sovereign discourse—a performative power that was lost when ethics became unmoored from metaphysics and God, and haunted, we are told, by pluralism, relativism, even nihilism.

But if the ethics of health care ethics consultants is an ethics in name only, there is no move afoot to rename these individuals as legal or policy consultants. For the word "ethics" lends nostalgic credence to the voice of law and the state, shoring up the performative power of this speech to set and enforce normative limits, and to have these norms accepted, at once, as "ethical." (Of course, juridical and state structures are not by definition ethical; on the contrary, juridical and state powers often operate through systems of violent exclusion, segregation, and control that are at times egregious and patently unethical.) And drawing on Butler's (1997) argument concerning the performative power of legal judgment, we claim that the converse is also true: The regulatory power and authority of the health care ethics consultant operate in and as the sovereign power of legal discourse. Despite appearances, and despite the banalities of examination details (format, cost, duration, pass rate, grading mechanisms, etc.), the credentialing examination is not a neutral term or tool in the debate. The examination itself has a discursive power that functions as a switchpoint between ethics, law, and the state. It is at the heart of a regulatory apparatus. This power will be the prerogative of the few to affect the many. It is sure to be divisive and discriminatory because it will delineate "ethical" norms, and will define the domain of ethically permissible speech, just as the law demarcates the domain of the licit from the illicit: who is credentialed, who has authority to speak "ethically," in what context, to what (or whose) ends, and with what moral performative force. When the ethical voice is indistinguishable from law or state power, ethics is no longer ethics.

We write here of ethical voice or speech, rather than ethical decision making or consulting, because we wish to highlight the sociocultural and political contexts within which ethics discourse circulates and produces its effects. Rejecting the normative claims in which bioethics remains invested, Foucault argued, "There are different ways to 'conduct oneself' morally, different ways for the acting individual to operate, not just as an agent, but as an ethical subject of action" (1985, 26). But as we noted earlier, the current epoch is marked by neoliberal free-market ideology that has reconceptualized life through economic terms and rendered it rational, calculable, competitive, and evidence based. Thinking otherwise is difficult. The examining and credentialing of health care ethics consultants reflects larger and more worrisome trends that privilege certain kinds of thought (what is acceptable to say) and limit opportunities for counterconduct by ensuring policies are in place to predetermine actions. As Engelhardt (2011) notes, the "ethics" of health care ethics consultation "has become dominant in the sense of becoming juridically canonical through being established at law and in embraceable public policy" (p. 130).

Ethics, then, has come to serve a neoliberal ideology that stands outside of its critical purview; it is the vassal of a neoliberalizing juridical and state apparatus. With its insidious reach into all levels of education, including specialized health care training, neoliberalism has robbed children, health care providers, and policymakers alike of the means by which to formulate an ethical critique. How do we address this gap in bioethics? Is this the rarefied domain of a few ivory tower theorists?

First, it is problematic to suggest that a paralegal and professional body of ethics health care consultants can operate independently, practically, outside the field of ethical theory. If praxis amounts to no more than the implementation of "core competencies," which themselves are vague and lacking in facticity, then we are in a world where the means justify the ends. Rather, we ought to open and to complicate the terms of debate across many, possibly colliding, public spheres. This should be done with an attention to what Murray and Holmes (2009; 2013) have called "critical ethical reflexivity," which invests bioethics with a critical etho-political attention to the conditions and the scenes in and through which the ethical voice is heard or silenced, and in and through which the terms of this dialogue are produced as meaningful or not, legitimate or unlawful, true or false. This means, too, taking responsibility for structuring conditions, such as the drive toward professionalization and credentialization, to examine whose interests these systems serve, whose lives and livelihood they enable and foreclose. Will this credentialing allow ethics consultants to challenge biomedical hegemony in health care decision making? To better advocate for the interests of patients and their families? Or will they be reduced to "ethics inspectors"—checking boxes and litigiously confirming that predetermined standards have been met?

Our point has not been to resurrect some notion of sovereignty, either juridical or statist, or to shore up the sovereign autonomy of the individual in whose name bioethics is said to speak. Rather, we maintain that bioethics has a responsibility for those complex contexts and conditions in and through which we speak, act, and appear as ethical beings. We hope that our brief commentary conveys a sense of urgency and encourages others to decry the loss of ethical imagination and to resist assimilation by reigning or fashionable ideologies. ■

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