Journalism Debate Shifts From Freedom To Limits of Inquiry

By Stephen Klaidman

The ethical debate in the journalism community has traditionally been dominated by questions of press freedom. It is a fundamental assumption of journalists that because so many other rights are contingent on free expression it is of paramount importance to challenge all efforts to impose restraints on the right to publish or broadcast. It is noteworthy, therefore, when the debate shifts 180 degrees to questions about the limits of inquiry. Such a shift has taken place in recent months in response to a series of events that fall into two basic categories—electoral politics and national security. The former pits personal privacy against the public’s need to know things that might bear on a candidate’s fitness for high public office; the latter opposes the need for secrecy in some sensitive matters of state to the public’s claim to open government on such matters.

The privacy question has arisen in connection with the Presidential campaigns of no fewer than five declared candidates, two of whom have dropped out of the race as a result of press reports on their activities. They are Gary Hart and Joseph Biden (the two who are no longer running), Jesse Jackson, George Bush, and Pat Robertson. A sixth case, involving Michael Dukakis, though ethically interesting, does not turn on questions about the limits of inquiry. Such a shift has taken place in recent months in response to a series of events that fall into two basic categories—electoral politics and national security. The former pits personal privacy against the public’s need to know things that might bear on a candidate’s fitness for high public office; the latter opposes the need for secrecy in some sensitive matters of state to the public’s claim to open government on such matters.

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The pivotal issue in both the Hart and Biden cases is how a candidate’s right to privacy ought to weigh against the electorate’s need for information about the candidate’s character that could be deemed relevant to his or her performance in office. There is little doubt in either case that relevant issues of character were raised.

In Hart’s case, it is possible to set aside questions about the Colorado senator’s infidelity to his wife and focus on other issues such as his infidelity to his campaign staff, whom he promised that he would avoid even the appearance of sexual impropriety, and his foolhardy challenge to the press to keep him under surveillance. Stories about Hart’s philandering had circulated in the Washington press corps for years and were verifiable, but were never published. The consensus in the press shifted in favor of publication only in the context of Hart’s recklessness in a Presidential campaign. The question, then, is was his behavior of a kind that should have overridden whatever privacy rights he retained as a public man seeking the highest public office in the land? Since questions about Hart’s judgment, veracity, and sense of responsibility to his constituents, are relevant concerns of the electorate, it is hard to see how he can invoke a claim to privacy that would keep such information from voters. In a democracy information material to the legitimate concerns of voters cannot be legitimately withheld from them. Since candidates are rarely altruistic enough to volunteer information that is potentially damaging to their campaigns, it is the role of the press to ferret it out and make it public. That is what happened in the Hart case. The press’s motives might well have been mixed in reporting on Hart’s liaison with Donna Rice, but the result was the desired one.

In the Biden case, the matter of the Senator having committed plagiarism in law school, in and of itself, seems not relevant more than 20 years later. It is certainly not a reliable indicator of his character today. But when the Delaware Democrat misrepresented his academic record while campaigning recently in New Hampshire that was a different matter. No candidate has the right to expect that he can lie about his record, even of the relatively distant past, and have that information kept from the public if it is discovered. There are two simple reasons for that. The first is that it distorts the information base that voters must use to decide for whom they will vote. And the second is that voters are entitled to expect that a candidate will not dissemble as part of his campaign. In that context the plagiarism incident becomes fair game because it hints at a pattern of behavior as opposed to a single incident that might be easier to forgive.

On the matter of secrecy and open government, Bob Woodward’s book “Veil” reopens some of the thorniest questions of media ethics. There is no space here to consider the moral scope of permissible press inquiry into the intelligence activities of government and the moral justifications for publishing or not publishing what is learned. Instead, I will seek to answer just two questions. Was Woodward justified in surreptitiously gaining entry to William Casey’s hospital room when Casey was dying from a malignant brain tumor, and was he justified in drawing the conclusion that Casey knew about the diversion of money from the Iran arms sales to the Contras from Casey’s elliptical response?

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To answer the first question requires a judgment about what was at stake. What was to be gained from an answer, which if negative would hardly be definitive and if positive would only confirm what most people believe anyway? The answer, it seems to me, is not much, therefore the visit, if its purpose was to seek an answer to that question, lacked adequate moral justification. As to the second question, without knowing more than I do about Casey’s physical and mental state at the time of Woodward’s visit, it is impossible to judge whether the former director of central intelligence was even capable of a rational response to Woodward’s question. But even if Casey had been rational, a nod and the words “I believe...” trailing off into nothingness seem like an awfully weak foundation on which to support an investigative reporter’s weighty preconception. If Woodward had good reason to believe that his interpretation of Casey’s gesture and words were sustainable, he has failed to demonstrate it.

Books

Recent Acquisitions

(New additions to the collection of the National Reference Center for Bioethics Literature.)


Applebaum, Paul S.; Lidz, Charles W.; and Meisel, Alan. INFORMED CONSENT: LEGAL THEORY AND CLINICAL PRACTICE. New York: Oxford University Press, 1987. 286 p. Directing their comments toward health-care professionals, the authors discuss the history, ethical principles, legal background, and everyday applications of informed consent.


Lomasky, Loren E. PERSONS, RIGHTS, AND THE MORAL COMMUNITY. New York, Oxford University Press, 1987. 283 p. A theory of personal rights is presented as an expression of individualism, then applied to individuals such as the handicapped, fetuses, animals, and corpses.


Veatch, Robert M. THE PATIENT AS PARTNER: A THEORY OF HUMAN-EXPERIMENTATION ETHICS. Bloomington, IN: Indiana University Press, 1987. 241 p. The ethics surrounding the use of human subjects in research, their informed consent, and regulations protecting them in a variety of research contexts are studied by this scholar.

(By Marlene Fine)
Bioethics Is Emerging In West Germany, but State of the Debate Is Far Behind the US

By Hans-Martin Sass

By comparison with the situation in the United States, bioethics in the Federal Republic of Germany is in the early stages of gestation. Even the term bioethics is not widely known. Medical ethics is not part of the required curriculum in any medical school, nor is there any academic position in medical ethics, even though some scholars in the history of medicine as well as some clinicians do offer seminars in medical ethics. Public debate so far has been dominated by legal argumentation with physicians only reluctantly becoming involved.

In the decade after World War II Nazi crimes involving human experimentation dominated the bioethical debate in West Germany and they still figure prominently as part of coming to terms with history. During the sixties and seventies, however, other issues were emerging, and a major public debate took place on abortion. Legislation was passed that made abortion during the first trimester legal under certain conditions. Although for the moment the abortion issue seems settled in law, morally the debate continues. Moreover, recently bioethical discussions have broadened to include issues such as in vitro fertilization and embryo transfer, prenatal diagnosis, withholding treatment, and health-care allocation.

Much of the debate in West Germany focuses on whether new issues should be dealt with by legislation and regulation or by self-regulation in the medical community and individual choice on the part of patients. For the moment, the balance of public and political opinion seems to favor handling most moral issues in the traditional paternalistic way, which is to say through legislation and regulation by the state.

In the last two years, however, there have been some changes that could speed up the development of bioethics as a separate discipline in West Germany. The term bioethics was first introduced in the federal republic just last year in a special issue of the journal Mensch Medizin Gesellschaft (vol. 11, Dec., 1986). Some of the contributors to the issue were H. Tristram Engelhardt Jr., Joseph Fuchs, S.J., Rihito Kimura, Warren Reich, and Hans-Martin Sass. Also last year, the Academy for Medical Ethics was founded, which includes more than 30 scholars in the fields of medicine, philosophy, and theology. Working groups within the academy study issues such as teaching ethics, AIDS, and medical technology assessment.

A Center for Medical Ethics was also established at Ruhr University last year. The center has published a well-received worksheet for medical-ethical practice, which emphasizes the importance of factoring a patient’s values into the medical decision-making process. Given the still paternalistic framework of medical decision-making in West Germany, to which most physicians and patients subscribe, it is not surprising that the worksheet endorses final responsibility for the physician.

In June, 1987, the first Extended German Bioethics Course was held in conjunction with the Intensive Bioethics Course of the Kennedy Institute of Ethics. The German course, which was underwritten by the Volkswagen Foundation, brought a group of 15 leading physicians, philosophers, theologians, pharmacologists, and editors to the Kennedy Institute. There will be at least one such course offered in 1988.

The major debates in 1988 are likely to be centered on regulatory issues in human reproduction and biotechnology; treatment of defective newborns and chronically and severely ill patients, and the just allocation of resources in a society widely described as a welfare state.

With respect to the moral acceptability of new forms of human reproduction, the medical community has so far accepted in vitro fertilization for married couples while at this point rejecting other technically feasible options. Embryo research with the goal of improving techniques of in vitro fertilization and for other limited research purposes during the first 14 days after fertilization has been accepted by the Federal Chamber of Physicians. Local ethics committees to oversee this research will operate under the over-all supervision of a central ethics committee of the chamber.

Meanwhile, the federal government has introduced legislation to criminalize most options available under new fertility technology. For example, the proposed Embryo Protection Law would provide up to three years in prison for using gametes in research without the consent of the donors, and up to five years for germ-line manipulation or for “damage to the

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health of the human resulting out of the embryo. Manipulating embryos for purposes of abortion is expressly exempted from prosecution if it is done during the first trimester and under specific social and medical indications. The double standard of outlawing research while protecting abortion has led to criticism, especially by research institutions. A committee of inquiry of the West German parliament has taken a position similar to that of the draft legislation. The commission has also recommended a five-year moratorium on the release of genetically engineered microbes into the environment.

Other specific issues expected to engender controversy in the months to come include cost containment in an expensive welfare system; the use or nonuse of aggressive life-sustaining treatment; the introduction of living wills, and recommended changes in the law that would allow physicians to provide better palliative care, even when such treatment might shorten the span of life.

Roundup

• Concern for Dying is holding a seminar titled “Death, Dying and Decisionmaking: Psychological Care of Patients and Families,” at the Seabrook Island Conference Center, Charleston, S.C., from March 6-9. The seminar is designed to provide a forum for a small group of physicians, nurses, social workers and lawyers in which they can explore and develop the psychological understanding and counseling skills needed to provide care for patients/clients and their families facing life-threatening illness and/or trauma. Participants are encouraged to bring their own case material for discussion during the seminar. For further information contact Concern for Dying, 250 W. 57th Street, N.Y., N.Y. 10107, (212) 246-6962.

• Call for Papers: The 27th Transdisciplinary Symposium on Philosophy and Medicine will be devoted to the topic, “Historical and Philosophical Problems in Medical Genetics.” Papers are invited that explore the concepts of genetic health and disease, the nature of explanation in medical genetics, the ethics and the ethos of medical genetic research and practice, from the perspectives of the history of medicine, the philosophy of science, medical anthropology and sociology, and ethics. The symposium is planned for Dec. 11-12 in San Francisco. Final papers are due no later than July 1 and they will be competitively reviewed. For a more detailed description of the conference write to Eric T. Juengst, Ph. D., Division of Medical Ethics, UCSF School of Medicine, 1362 Third Ave., San Francisco, CA 94134.

• Prof. Rihito Kimura, director of the Asian Bioethics Program at the Kennedy Institute, gave a keynote speech on “Bioethics and Acupuncture” at the Second International Symposium on Acupuncture and Electro-Therapeutics on Oct. 19, 1986, at Columbia University.

• Edmund D. Pellegrino, M.D., director of the Kennedy Institute, has been named to the advisory committee of the national Biomedical Ethics Board.

• Abigail Rian Evans spoke on Ethical Issues in Testing and Screening for AIDS at the National Leadership Coalition on AIDS, Oct. 5-6.