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How Politics Deals with Expert Dissent: The Case of Ethics Councils

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Abstract

Over recent years, science and technology have been reassessed increasingly in ethical terms. Particularly for life science governance, ethics has become the dominant discourse. In the course of this "ethical turn" national ethics councils were set up throughout Europe and in the United States to advice politics in ethically controversial issues such as stem cell research and genetic testing. Ethics experts have become subject to traditional warnings against expertocracy: they are suspected to unduly influence political decision-making. However, any reliable ethics expertise has to reflect societal disagreements in moral issues. Therefore, expert dissent is a normal feature of legitimate ethics expertise. Based on theoretical considerations we argue that in principle, expert dissent does not cause problems for political legitimacy; rather, it enhances the salience of politics: obviously decisions on ethical issues cannot be taken on the basis of expert knowledge alone. We therefore conclude that expert dissent, not consent, supports politics. Focussing on Germany and Austria, we show how politics deal with expert

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dissent in practice. While in Germany politics acknowledge dissent and use it to foster a fundamental political debate, Austrian politics attribute authoritative power to ethics expertise and try to construct an overall consensus. This illustrates how the drawing of boundaries between politic and expertise differs.

Keywords
public bioethics, ethics commissions, ethics expertise, ethicization, science and technology controversies

There is a long tradition of social-scientific reflection on the relationship between science and politics, and research on expertise also seems to have a promising future. Among the developments that bear witness to this are ongoing debates in the field of science and technology studies. Harry Collins and Robert Evans (2002), for example, have spoken of a new phase in science studies in which "studies of expertise and experience" are coming to the fore. The work by Collins and Evans on "interactional expertise," which emphasizes the ability to use a number of disciplinary and field-specific "languages" (as distinct from being competent in the practices of these disciplines or fields) documents important aspects of this new phase (Collins and Evans 2007).

In this article, we concentrate on a kind of expertise that is constructed in a specific way: ethics expertise. This kind of expertise is produced by ethics councils, commissions that have been set up in many countries for the express purpose of providing policy advice (Fuchs 2005). This needs to be placed in the context of a broader upsurge in the attention paid to ethics. There is absolutely no doubt that we are today experiencing an increase in the number of problems and conflict situations that are being negotiated with the help of appeals to ethics. Scientific and technological conflicts, in particular, are at present increasingly being dealt with in terms of ethical concepts and categories. To describe this situation in more precise terms, we start off by sketching our own understanding of ethics as a specific governance semantics and setting out the challenges this presents for the formulation of sociological theories (sections Ethics and Governance: the "Ethicization" of the Political Discourse and Ethics as a Desideratum for Sociology). After this, we provide an account of the distinguishing features of debates that are conducted by means of appeals to ethics, as distinct from those that are addressed within a risk framework (section Ethics as Conflict Framing). After this, we examine the ways in which ethics expertise is used

by politics. We restrict this discussion to the debate about stem cell research and concentrate for the most part on Germany and Austria, while making comparative observations about the United Kingdom and United States, from time to time. After brief accounts of the most important institutions involved in the provision of ethical policy advice (section The Institutionalization of Ethics—the Landscape of Bioethics Councils) and of the most significant reports they have produced (section Controversial Ethics Expertise as a Product of the Advisory Bodies), we analyze the significance of expert dissent over ethical questions for political decision making (section Legitimization Problems in Ethical Decision Making? Two Ways of Dealing Politically With Expert Dissent). We show that expertise is treated differently in different countries and that these differences symbolize different ways of marking the boundary between expertise and politics (section Summary and Prospects).

Ethics and Governance: the "Ethicization" of the Political Discourse

Ethics, a traditional field of philosophy that was threatened by a loss of significance a few decades ago, is today a lively discourse with high political relevance. Ethics has become a decisive level of reflection and legitimization for the regulation of fundamentally contested societal–political questions in a wide range of social spheres. One is almost tempted to claim that today ethics is the decisive semantic form in which governance discourses are being conducted (see also Braun et al. 2008; Moore 2009). Some even argue that ethics and governance are today thought of as being as closely connected as ethics and technology were once thought to be (see von Schomberg 2007).[1] From the perspective of science and technology studies, the first examples that spring to mind in the context of ethical governance are contested research such as stem cell research and potentially controversial technologies such as nanotechnology. However, the ethics discourse is not restricted to "Knowledge Politics" (Stehr 2005), that is to say to the reactive or anticipatory regulation of (potentially) controversial research.

Ethics as a discourse of governance has also made itself felt in the economic sphere. In view of the growing importance of organizational policy formulated in ethical terms, some scholars have spoken of a "Renaissance of Ethics" (Pruzan and Thyssen 1994). Or, to take an example from a quite different field, analyses of the sphere of consumption have raised the question of the growing significance of ethical criteria for decisions about

individual purchases (Moorstedt 2007). Nico Stehr (2006) has recently spoken of a "moralization of the markets" in this context.

We can observe a comparable relevance of ethical categories in international politics. In this sphere, conflict constellations are increasingly being conceptualized in the categories of good and evil. Examples such as the expression "axis of evil" demonstrate what one can describe as the moralization of politics: the construction of political opposition is not carried out along the coordinates left/right or above/below but in the ethical–moral categories of "right" and "wrong" (Mouffe 2005). Medicine, to take a third sphere, has always involved ethical reflection and guidance. In view of growing uncertainty about decisions and the dilemmas that arise everyday in hospitals, medicine today needs ethical assistance more than ever. High-tech medicine and modern biomedicine give rise to questions of borderlines at the beginning and end of life and have contributed to a revival of ethical debate. Biomedical research has also become a field in which, because of conflicts over values and a high level of uncertainty, questions of regulation are treated as ethical problems.[2] In this context, new models of governance involving stakeholders and citizens' participation are also being tried out.[3]

However, ethics has a much wider significance. If one takes into consideration the establishment and professionalization of additional branches of ethics such as sport ethics, environmental ethics, and media ethics, it becomes clear that ethics is now the relevant discourse of reflection in nearly all areas of society. In this sense, one could argue that what we are currently experiencing is a proliferation of ethics as a specific discourse of reflection into various fields of society.

This does not imply that normative orientations would not influence actions in one of the above fields. Of course, there is no social action that would not be norm guided. But we can observe a remarkable increase in importance of a particular form of reflection in the public discourse on the basis of ethical concepts and rhetoric. Previously implicit norms are made explicit in a discourse framed in ethical terms.

Ethics as a Desideratum for Sociology

The diffusion of ethics we have described creates difficulties for social theory. Niklas Luhmann assumed in his early work that the purpose of ethics and morality was to stabilize interaction systems—in the form of "implicit or explicit communication about respect" (Luhmann 1978, 51). From this perspective, ethics plays no role at all at the level of societal subsystems and is only significant in interpersonal communication. In later work, though, as

he seeks to incorporate the boom in bioethics, Luhmann speaks of a moral reshaping of issues that are "in reality" questions of risk. This treats ethics, especially in the form of institutionalized expertise, as a kind of delayed politicization of disputed questions in which certain parties and positions are not represented (Luhmann 1997). But by arguing in this way, Luhmann does not do justice to the importance of ethics as a governance discourse. Ethics is not an "ideological" variant of the risk discourse, so to speak, but rather a distinct discourse that frames conflicts over technology in a specific way and creates new obligations to negotiate and to legitimize one's position, as we argue (see section Ethics as Conflict Framing). Wolfgang Krohn (1999) has tried to demonstrate the value of systems theory by carrying out a functional analysis of the system-specific contributions made by institutionalized ethics. He traces the development of ethical discourse as a progress from ethical–universalist reflection to system-specific ethics each of which stabilized certain ways of operating by shielding them from universal normative claims and ensuring that they could not get mixed up with other systemic logics. But one has to ask whether political and ethical questions can really be kept separate. Medical ethics in particular is a field in which there is a discussion about precisely this question, universalizable ethical categories related to the societal shaping of the "good life."

Systems theory is not the only grand sociological theory that has difficulty conceptualizing ethics. Jürgen Habermas' theory of communication, for example, has no way of analyzing ethics and morality sociologically because Habermas incorporates these categories, so to speak, into his theoretical framework. By treating discourses as expressions of the recognition of their own inherent validity, he makes ethicality a structural feature of human communication. But this places systematic obstacles in the way of any sociological examination of the processes that produce ethics discourses. It is therefore unsurprising that Habermas' work has been of most value in the field of discourse ethics but has not proved fruitful for the sociology of ethics.

Ulrich Beck is strangely indifferent to ethics discourses and questions of value. As the theoretician of risk society, he has made a major contribution by sharpening our awareness of new kinds of risk conflict and showing that we need to distinguish these from classically modern interest conflicts and conflicts over distribution (Beck 1992). However, also in his more recent publications Beck has not drawn a clear conceptual line between risk-type conflicts and questions of value; climate change and terrorism are both subsumed under the concept of world risk (Beck 2007), and he fails to consider the special character of conflicts that take the form of disputes about values.

We need to distinguish between conflicts that arise because of risks and those that take the form of ethical disputes. If this is not done, it is impossible to see clearly the particular significance of expertise in current conflicts related to biomedicine. For this reason, we want to look briefly at this question.

Ethics as Conflict Framing

In the recent past, societal controversies about the development of science and technology have been increasingly "ethicized." This applies particularly to the controversies that have been taking place about (new) technologies and branches of research in the field of life sciences (Lindsay et al. 2001). Concrete examples that can be mentioned include the continuing dispute about the use of "excess," deep-frozen human embryos or cloning for research purposes. In all these cases, issues in science and technology policy are expressly framed as questions of ethics. The ethics discourse appears to us today as nothing less than the natural form in which disputed issues should be addressed.[4]

The reference to ethics distinguishes these controversies from debates that are primarily negotiated and dealt with in terms of concepts of risk like the disputes and debates about large-scale technologies that have taken place since the 1960s. The typical feature of risk situations is that they involve conflicts relating to knowledge about the likelihood of certain events occurring and the attribution of the consequences of actions. What is the likelihood of a maximum credible accident in a nuclear reactor over the next twenty years? Or, when one looks at events that have already happened: how many people died or suffered as a result of the Chernobyl nuclear disaster? There is hardly any disagreement here about the normative evaluation of the consequences themselves; the disagreement is ("only") about their causes, calculations about the probability of their occurrence, and the chances of preventing them. In ethically framed debates, it is the assessment of the event itself that gives rise to such heated exchanges. Is "using" an embryo tantamount to killing a human being that should be protected and has its own dignity? Is it even permissible to weigh the relative value of protecting human dignity against the possibility of finding a cure for diseases?[5]

Questions of science and technology policy framed in terms of ethical concepts pose a particular challenge to the political system, that is, to a system that has to take valid decisions that are accepted as legitimate. Ethically framed questions are distinguished by the fact that one cannot decide with

certainty what is to be done, since there is no societal consensus on right and wrong. In addition, in relation to this kind of question, the existence of different views is no longer considered a problem that could in principle be overcome, removed with the help of greater rationality and more discussion; if anything, the range of views is accepted as understandable and even necessary. Different ethical positions can each in their own way claim to be credible. In the context of an ethics frame, any hope of consensus is abandoned—which does not happen in a risk frame; even if it is accepted that consensus is difficult to reach practically, it is still possible in theory, and it is still the leading idea. To put it in a nutshell: Ethicization renders consensus suspicious. Would it be plausible to reach a general consensus in normative questions among the public even if experts fail to agree? The rise of ethics implies that it is no longer disagreement that has to be justified. Rather, agreement has to be explained. To avoid any misunderstanding, the orientation toward consensus within ethics councils is an instrumental precondition to arrive at a *structured, well-ordered dissent* as a result of sorting out arguments and thought lines. However, in the light of ethicization, any attempt to arrive at fundamental consensus has to be considered futile and the result may be of little credibility. That is why, the ethical framing of questions of research policy presents problems with a particular structure for political action and decision making. Politics now has to deal with the (familiar) question of not only how different interests can be realized, weighed up, or discouraged but also how to mediate between diverging bodies of knowledge and risk calculations. It is now quite obvious that politics also has to take decisions about what modern biomedical research procedures are to be permitted under conditions of *normative* uncertainty. What political actions can, in view of this normative uncertainty, be presented to public opinion as justified? Which decisions are accepted as legitimate?

The institutional response to this problem seems at first glance to be a conventional one. Expert knowledge is what could be called the classical instrument to which politics turns when it has to justify decisions taken in conditions of uncertainty. However, this is now not just a matter of certainty about questions of knowledge (scientific experts have plenty of experience in the production of this kind of certainty) but also of certainty about questions of value. It is much more difficult to answer the question about relevant expert knowledge here—who can be considered any kind of expert on questions of values, morality, and ethics?[6]

We can observe today a wide range of commission-like advisory bodies designed to assure legitimacy of political action in ethical questions. Such is the demand for bioethics expertise that there has been a veritable boom in

commission ethics. In Germany and Austria, the two countries on which we concentrate from now on, this has led to a situation where different forums for institutional expertise exist simultaneously, a degree of confusion, and sometimes even to these bodies working against each other.

The Institutionalization of Ethics—the Landscape of Bioethics Councils

In this section, we single out and present in more detail the advisory bodies that have been of most significance for biopolitics in Germany and Austria, in recent years.[7] A comparison of these two countries is instructive because they are similar with regard to the structure of the political system and to the dominant philosophical discourse (deontological tradition). Furthermore, the biopolitical debate in both countries is closely related to the legacy of the Third Reich, which contributes to generally critical public attitudes toward research and to comparatively restrictive regulations of biomedicine. Due to these similarities, the differences with respect to how politics deals with expert dissent get highlighted.[8]

We only deal here with two of the most important kinds of body, national advisory bodies set up by the executive and legislative branches. The German Study Commission (*Enquete-Kommission*) existed between 2000 and 2005 in two different constellations and was the main institution responsible for advising the German parliament on questions of bioethics. To provide policy advice to the German executive at the national level, the National Ethics Council (*Nationaler Ethikrat* or NER) was set up.[9] These councils have produced the most important experts' reports on controversial questions of biomedicine in recent years.

The NER started to work in May 2001. Its establishment was accompanied by controversies that at times became very heated, in the Bundestag and elsewhere.[10] The NER had twenty-four members. It was set up on interdisciplinary lines but was not exclusively made up of specialists in the most immediately relevant fields. There were seven natural scientists (from biology, medicine, and genetics), five lawyers, four ethicists or philosophers, four theologians, two social scientists, and two representatives of disabled people's organizations. It is hard to draw a line between the "experts model" and the "stakeholders model" here, since in practice these two roles can hardly be separated from one another. (Is the head of a biomedical research institute a representative of the interests of his occupational group, someone whose role is to provide natural-scientific expertise, or both?) According to the NER's own official understanding of its role, it was

supposed to focus the interdisciplinary academic discourse, provide a forum for dialogue with citizens, and finally to express its considered view on "ethical questions posed by new developments in the life sciences, and on their consequences for the individual and society" (Ethikrat-Einrichtungserlass). The NER carried out its responsibilities as a policy advisory body by presenting a total of twelve comprehensive reports. The reports on stem cell research, prenatal diagnosis, and cloning can be singled out as having attracted public attention.

Two study commissions (*Enquete Kommission*, EK) worked parallel to the NER up until the summer of 2005. The EK on Law and Ethics in Modern Medicine existed from March 2000 until 2002, during the fourteenth parliamentary term of the Bundestag.[11] It was set up by the Bundestag to provide ethical–social evaluations of biomedical progress to prepare "decisions that have to be taken by the German Bundestag" (BT-Drucksache 14/3011). This EK was made up of thirteen members of the Bundestag and thirteen experts. The strength of the parliamentary fractions determined how many members of each party sat on the commission, and the experts were appointed by the parties. This EK was also noteworthy for its attempt to raise the issue of bioethics as a question to be actively discussed in the public sphere. During the two years of its existence, this EK published two reports on subjects such as stem cell research.

In May 2003, the EK was reconstituted for the next parliamentary term with a slightly different title "EK on Ethics and Law in Modern Medicine" (the accent was now shifted away from law and toward ethics). There were some significant differences of focus in this new period. During the fourteenth parliamentary term biomedical issues had been to the fore, but from 2003 onward, the EK spent most of its time discussing questions relating to the end of life (palliative care, advance directives). This was obviously an attempt to give the EK a distinct profile as a body discussing different issues from those being dealt with by the NER.

In Austria, a national Bioethics Commission at the Federal Chancellery (BEK) was set up in June 2001, shortly after comparable expert bodies had been set up in Germany and Switzerland. This commission has to date issued nine reports, of which those on stem cell research (2002) and preimplantation genetic diagnosis (PGD; 2004) have attracted attention among the public and policy makers.

When one compares the Austrian commission with the other NERs, three things stand out: (1) The majority of statements issued by the commission have been responses to requests from the government; most of them have been commentaries on proposals for national legislation or on EU

conventions due to be ratified. Reports on issues selected by the commission itself have been the exception. (2) There is an explicit provision giving members of government and administration the right to participate in meetings of the BEK. There is no comparable provision outside Austria. These two points reflect the fact that the BEK is very close to the world of politics. Of particular interest for our purposes is (3) the explicitly political provision that the task of the BEK is to produce consensus. Section 7(2) of the decree setting up the commission reads as follows: "When passing its resolutions, the commission shall strive to reach the broadest possible consensus." Compare this with the diametrically opposed wording of George W. Bush's Executive Order setting up the President's Council on Bioethics (PCB):

> The Council shall strive to develop a deep and comprehensive understanding of the issues that it considers. In pursuit of this goal, the Council shall be guided by the need to articulate fully the complex and often competing moral positions on any given issue, rather than by an overriding concern to find consensus. The Council may therefore choose to proceed by offering a variety of views on a particular issue, rather than attempt to reach a single consensus position.

The wording of the corresponding documents of the German and Swiss ethics councils is similar to that of the U.S. order. The Austrian commission currently has twenty-five members—ten medical specialists from different fields, four geneticists, three lawyers, three philosophers, two theologians, and two social scientists. Since the end of 2007, the commission has also included a representative of a large disabled people's organization. The setting up of the commission can be seen as a conscious and clear renunciation of a traditional Austrian model of policy advice (Gmeiner 2005). The Commission was constituted as an expert body rather than as one made up of representatives of the parties and other interests.

Criticism from disabled people's associations of the original makeup of the Bioethics Commission led, also in 2001, to the founding of a counter-commission, the Bioethics Commission FOR the Austrian Government (emphasis in the original). The declared objective of this alternative commission set up by disabled people's associations was to offer the chancellor a second opinion. It was dissolved in the autumn of 2006, after failing to secure the necessary basic financial support. At the end of its period of activity, this body had fourteen members (at times it had had up to twenty-one), with equal numbers of women and men, all of whom belonged

to disabled people's organizations. The statements issued by this commission were without exception critical. Its contacts with the government bioethics commission were good.

Controversial Ethics Expertise as a Product of the Advisory Bodies

In view of the question, we have set out to answer how politics deals with expert dissent; it is of course particularly interesting to ask whether and in what form the experts produce dissent. It turns out that there are striking differences between the councils, but these only become apparent when one looks beyond continental Europe.

The distinctive feature of the reports issued by George W. Bush's PCB, convened in 2001, is that they adopt the style of a report on the state of knowledge in a field, presenting an overview of ethical points of view and arguments. "[W]e don't have a collective view," said Leon Kass, a former chair of the PCB, at a meeting with George W. Bush in the White House at the beginning of 2002. One can see that this is indeed the case in the Council's two reports on stem cell research (The President's Council on Bioethics [PCB] 2004, 2005). Here, in the framework of a jointly authored treatment of ethical aspects of stem cell research, widely diverging points of view are set out without any attempt to evaluate them. The declared goal of the Council is to list arguments and counterarguments to inform policy makers and the public and to contribute to a more differentiated debate. The absence of consensus is not revealed in the form of distinct statements of different views but emerges as the jointly prepared text moves from one issue to the next ("some believe ... others point out"). These reports contain no recommendations for political action, let alone any unanimous ones. For this reason, no votes are taken on ethical positions; personal statements by individuals can only be found, if at all, in appendices (in the case of the 2005 stem cell report).

The situation in the United Kingdom is quite different. Here, the Nuffield Council on Bioethics (NCB), which enjoys a degree of authority and respect comparable to that of a national bioethics council (see Jasanoff 2005, 185ff.), published a report on stem cell research in 2000. This article addresses ethical questions, but the main thing it does is to formulate clear recommendations for action in research policy—based on consensus! The report states that the Council considers the production of stem cell lines to be legitimate, because this contributes to scientific progress and has therapeutic uses (Nuffield Council on Bioethics [NCB] 2000). And this is not an

isolated case. The NCB's reports contain none of the things one would normally expect to find as the specific quality of debates about ethics in expert commissions made up of people from different backgrounds—a range of views, minority opinions, and votes on divergent recommendations. Even on those rare occasions when different ethical positions are summarized, the end result is a shared conviction (e.g., NCB 2002, XXVII). One would have to look at this body more closely to identify the basis of the consensus. One important factor is, without doubt, the fact that within the NCB, consensus among experts is considered the criterion of high-quality expertise.[12] In addition, the recruitment policy contributes to an underrepresentation of deviating opinions and fundamental criticism such as from representatives of the churches or from philosophical positions beyond the utilitarian mainstream (Kastenhofer 2009, 100).[13]

Because we want to look in this section at the political use of expertise in the cases of Germany and Austria, we will explain briefly how societal disagreement in these countries is reflected in expertise on ethics. Once again, we look only at the case of stem cell research.

In 2002, a political decision had to be taken in Germany on the *import* of human embryonic stem cell lines. The production and use of embryos had already been banned by the 1991 Embryo Protection Law (*Embryonenschutzgestz*, EschG). Up until that point, there was no legislation specifying whether stem cells obtained from embryos could be brought into the country from abroad and used for research The politicians' desire to come to an informed opinion on this matter was prompted by an application for funding submitted to the most important state-funded body for financing research, the *Deutsche Forschungsgemeinschaft* (DFG), from a brain researcher who wanted to conduct a research project using human embryonic stem cells. The DFG wanted to wait for a Bundestag decision before finalizing its position, and this decision was originally supposed to be taken in 2001 (as it turned out, September 11 disrupted the schedule). As a preparatory step paving the way for a new law regulating the import of stem cells, the expert commissions worked out their positions on this question.

The report of the EK on Law and Ethics in Modern Medicine (Enquete-Kommission [EK] 2002), which comprises 150 pages, begins with an overview of the state of the debate in the scientific and medical literature and of the legal position in Germany and elsewhere, and this is followed by a discussion on the ethical issues, especially the moral status of the embryo. The positions said to be most frequently encountered in our society are summarized. After this, the report sums up the legal discussions. Up

until this point, the paper's wording is that of a report on the state of knowledge in the field. Diverging ethical and legal positions are presented without being evaluated. At the end of the report, recommendations for political decision making are presented. These are to a considerable extent pragmatically oriented, so that different ethical views can be summarized in one option. The overwhelming majority of the commission's members advocate a ban on stem cell imports, while a minority propose the toleration of imports as long as strict conditions are met.

In December 2001, not long after the parliamentary commission had reported, the NER published its statement on the same topic (Nationaler Ethikrat [National Ethics Council, NER] 2002). Because the Council had to work to a very tight schedule, its report is much shorter than that of the Study Commission and not as wide ranging in terms of the issues it addresses. After some brief preliminary remarks, the assessment begins immediately. The discussion is organized by dividing it into strictly separated subsections presenting arguments for and against, and this makes it very simplistic. Much of the time the two positions being presented come across as no more than criticisms of the counterarguments, and the argument never develops any rigor of its own. The ethical discussion about the moral status of the embryo is very short. In the concrete recommendations for legislators and the government, four positions are set out, two of which are subsets within the more broadly formulated basic positions. Fifteen members of the Council voted to allow imports (and nine of these also voted to permit the production of stem cell lines in Germany); ten members voted for a moratorium; and a subgroup of four members considered the import of stem cells fundamentally unethical. To sum up, while the majority of the NER's members voted in favor of importing stem cells, the majority of members of the EK were against this.

The report of the Austrian Bioethics Commission (BEK) addresses the same topics, but this body operated in a quite different political context from the German councils. In Austria, debates about the EU's Sixth Framework Programme (FP6) for research led unexpectedly to the emergence of stem cell research as a political issue in 2001-2002. There were disputes about whether Austrian taxpayers' money should be spent on supporting research with embryos in the rest of Europe. Up until this point, stem cell research had not been a matter of political debate in Austria, which was partly a reflection of the fact that there was no research in this field worth speaking of being conducted in the country. It is therefore unsurprising that Austria, like some East European countries, also has no specific laws dealing with research using embryonic stem cells.

The dispute about the FP6 erupted in this vacuum; Austria had to formulate a position of its own. At the end of 2001, the minister responsible asked the BEK to draw up a report containing such a position. "We needed a *decision*," a senior official explained to us in an interview. The BEK produced a report rapidly but—in contrary to its mandate—was unable to make a clear recommendation. The short report is made up of a brief consensual part and the presentation of two positions. Eleven members voted to support work on already existing human embryonal stem cell lines as long as certain conditions were met. Eight members rejected research on embryonal stem cells outright. The position taken by the majority in favor of research is formulated in fairly defensive terms. This was due to the political circumstances. The minister had taken a rejectionist stance in Brussels at an early stage, so the experts' suggestion that the government could adopt a less restrictive position had to be expressed diplomatically enough for her to be able to change her position without losing face. The argument of those opposed to research, however, reads in large part like a commentary on the position of their more liberal opponents. It is noticeable that any discussion on the moral status of the embryo, which as a rule is the main objection put forward against any lifting of restrictions on stem cell research, is avoided here. One can interpret this as recognition that profound ethical debates are counterproductive if the objective is the speedy formulation of a policy recommendation.[14]

We can therefore observe ways of dealing with dissent on ethical questions that take specific forms in different countries. In the United States, the PCB performed a kind of informational mapping of ethical positions without deducing any political recommendations from this map. In the United Kingdom, where consensus among experts is considered an expression of the rationalization of political debate, the focus is on unanimous proposals for regulation. In Germany and Austria, the ethics councils respect the existence of dissent, but when concrete recommendations for action have to be made, these differences are bundled together. One could therefore argue that different ideal conceptions of the process of providing political advice are expressed in the specific ways divergent views are dealt with within the commissions. If one takes Pielke's (2007) idealized typology of forms of policy advice as one's model, Germany and Austria can be said to come close to the "Honest Broker of Policy Alternatives" type.[15] This means that ethics councils function in such a way that, in a situation characterized by conflicts over values and a high degree of uncertainty, the range of options available to decision makers can be clarified by submitting clustered statements of the wide discourse.[16]

Legitimization Problems in Ethical Decision Making? Two Ways of Dealing Politically with Expert Dissent

Zygmunt Bauman has recently expressed the suspicion that most of the tasks previously reserved to the legislator will be taken over by "the variegated crowd of counsellors, interpreters and brokers" (Bauman 2000, 48), assuming that the modern state is no longer willing to act as the master builder of the rational society. We encounter this idea wherever people are puzzling over the function of national ethics policy advice. One can read warnings about the rise of an "advisers' republic" and a "deparliamentarization of politics" (see Schüttemeyer 2008). Politics, it is argued, is increasingly being influenced by a caste of experts that have no democratic legitimacy. The counterargument, which nevertheless has a good deal in common with the first view, is that ethics councils are submissive instruments serving political decision markers. Their function, it is claimed, is solely to provide legitimatory support for political positions that have already been decided upon. Continuing this line of thought, it is suggested that Gerhard Schröder's only purpose in setting up the NER was to create a forum in which moral reservations about stem cell research could be discussed and then set aside. The philosopher Gerold Prauss (2001), for example, has spoken of a "council for the Chancellor's ethics."

Is it the case that ethics expertise determines what is politically possible? Or that it simply serves political leaders as a way of providing a veneer of scientific authority for decisions that have already been taken? To investigate these questions, we return to the case of stem cell research.[17]

In Germany, the broad public debate about stem cell research came to an end for the time being when the German law on stem cells was passed in 2002. We have already described the ethics expertise that was mobilized in this process; the two positions were divided internally as well as between the councils. While the majority of members of the Ethics Council voted *for* the import of stem cells (under certain conditions), the majority of members of the Study Commission voted *against* this.

In the end, the German parliament took a decision that did not involve adopting the proposal made by the majority of the (parliamentary) Study Commission. After the great debate of January 30, 2002, which was considered to have been one of the Bundestag's finest hours, the proposal adopted was a compromise that permitted the import of stem cells as long as strict conditions were met (including a cutoff date similar to the U.S. regulation that limits the time of production of the stem cell lines[18]). The stem cell law is thus basically in conformity with the recommendation of the majority of

the NER. There is a certain irony about this, since the Ethics Council had been very unpopular among parliamentarians and was seen as a tool of the biopolitically liberal chancellor.

Our analysis of the way in which politics refers to and makes use of ethics expertise in the disputes about stem cell research, PGD, and cloning comes to the following conclusion.[19] The reference to the recommendations are primarily formal but not in terms of content. Usually, not very much is said about either the tenor of the votes or the majorities or minorities in favor of particular alternatives. Neither ethical arguments nor concrete positions are acknowledged in detail. The contents of arguments are not of great significance, and it seems to be more important that the reports should have been published. Accordingly, the reports taken in their entirety are welcomed as providing an important basis on which political decisions can be taken.

We would like to quote just one example from a parliamentary debate about cloning in 2003, "Regarding this issue (the issue of PGD; AB/WM) the comprehensive final report of the study commission of the last legislative period is available; we have available the opinion from the national ethics council. Arguments pro and con have been carefully elaborated on. This having been done, preparations for taking the decision are finished. Now everyone of us needs to have the courage to vote on it" (Detlev Parr, FDP, Member of the German Bundestag, February 20, 2003, Prot. 15/28, S. 2143).

Similarly, a press release issued by the then German Health Minister at the end of 2001 states relating to the stem cell question, "The two votes by the Study Commission and the Ethics Council will enrich our parliamentary discussions. In January, parliament must come to a decision and pass legislation to regulate these matters" (Andrea Fischer, press release No. 677 of the parliamentary group of the Green Party, December 2, 2001). On some occasions, it is stressed that both the EK and the NER reports, because of the way they succeed in setting out the structure of the debate and clarifying concepts, provide an important basis for responsible decision making. However, the main point of political reference is the recognition of expert dissent. The specific content of the vote among experts is uninteresting; what seems to matter much more is the fact that, at long last, experts' reports are now available. This is interpreted in such a way that political decision makers can—and must—now take action on the basis of informed expert dissent. This dissent is interpreted by politics as an invitation to act or rather as a legitimate occasion to ensure that a decision is taken. This was what one Green member of the Bundestag was saying when, after the publication of the NER report, she

demanded, "Now the Bundestag must take a free decision on an issue that is a matter of conscience" (Monika Knoche, press release No. 667 of the parliamentary group of the Green Party, November 29, 2001).

We can therefore say that politics do not present itself as executor of what may be a superior variety of experts' reason. For the most part, they do not use the experts' reports on ethics as a way of making their own position sound more plausible ("But the Ethics Council has said ...."). This would in any case not be very convincing; the Ethics Council may have said X, but it has always said the opposite of X as well. Usually, the reference to experts' reports on ethics is more a matter of *formally legitimizing* what political decision making has to be. When a range of expert opinions have been presented, one can point to this ethical stalemate as a signal that it is time for an independent decision to be taken, a decision that will now be genuinely political.

One can also see this in a speech by a liberal member of the Bundestag in the great debate about stem cell imports. She said, "Ladies and gentlemen, the Study Commission and the National Ethics Council have made their recommendations, but the decision (...) lies with us, in the hands of parliament where it belongs" (Ulrike Flach, statement at the 214 meeting of the German Bundestag, January 30, 2002). It is undeniable that ethics expertise is important for political decision making, but this importance remains symbolic. The reports produced by the ethics commissions are not celebrated as a triumph of ethical–scientific reason that the political decision makers should follow whenever they are in doubt but seen as an indication of the existence of coordinated but insurmountable differences of opinion that make political action necessary.

Three conclusions can be drawn from this. First, expert dissent over questions of values does not create any fundamental problem of legitimacy for politics. It would be more accurate to say that politics as a matter of decision making only becomes visible once again because of the differences of opinion among experts. The function of the commissions is to bring about a public perception that the issues are important and need to be regulated and that decisions need to be taken. At the same time, the commissions demonstrate that it is fundamentally impossible to decide these issues at the level of expert knowledge. And they also make it clear that genuine political action is necessary to (temporarily) calm things down.

Second, expert dissent serves in a particular way as an indication that politicians are well informed—they have available to them a defined spectrum of points of view that can be justified. Ethics expertise opens up for

politics a field of plausible, "socially robust" (Nowotny et al. 2001, 167) positions and so fulfils an important function in providing orientation. At the same time, in the narrower political decision-making process that takes place on the parliamentary stage, a specific rationality of political decision making is constituted, which emphasizes the difference between politics and science even more strongly. In the parliamentary debate about stem cell research, speakers repeatedly stressed that the parliamentarians or government were confronted with a question of "personal" judgment, a "matter of conscience." This shifts political action into the sphere of individual decisions about values. It is not scientific, logical rigor that is used to justify the political vote, but subjectivity and authenticity (Bogner and Menz 2002).[20]

Third, expert dissent guarantees political credibility. Where bioethical questions are concerned, it is not agreement between experts that lacks credibility but rather a policy that does not immediately give the counterexperts the opportunity to have their say as well. The political decision justifies itself not *in spite of* ambiguous advice from experts on questions of ethics and morality but *through* this ambiguity. Against the background of diverse recommendations, the political decision becomes more legitimate precisely because it could have turned out differently.

In concluding this section, we want to formulate our thesis about the political functionality of dissent in a more differentiated and sharper way with the help of a comparison between Germany and Austria. Up to this point, we have looked at Germany and characterized expert dissent as an element that stabilizes the distinction between politics and science. However, it is important to bear in mind that this marking of a clear boundary only emerges against the background of a very specific political way of handling dissent. Austria turns out to provide an interesting contrast for the analysis of how expertise is used politically—despite the similarities in the structure of the political system and the dominant philosophical–ethical discourse in both countries.[21]

We can observe clear differences between the way ethics expertise is used in Germany and its use in Austria (for a fuller account, see Bogner 2007). Austrian government justified their rejectionist stance in the dispute about support for embryonic stem cell research in the FP6 by referring directly to the content of the Bioethics Commission's report. The Commission, the government argued, had made a case for the relevance of restrictions on research that were not taken into account in the plans drawn up by Brussels. In another case, the attempt to establish a legal basis for the use of PGD, reference was made to ethical experts in a similar way. The Ministry of Health, which was responsible for this question, explained that the envisaged regulation corresponded to the

Table 1. Use of Ethics Expertise in Germany and Austria

	Germany	Austria
Political reference	Formal	Substantive
Way of dealing with dissent	Recognition of dissent	Creation of consensus
Logic of decision	Autonomy (political rationality, "conscience")	"Heteronomy" (hide-and-seek)
Relationship between expertise and politics	Clear boundaries	Unclear boundaries ("politicization of expertise")

substance of the Bioethics Commission's vote from 2004. In both cases, one can see that policy makers seeking to legitimize their decisions restricted themselves to pointing out that they were acting in accordance with the views of the Bioethics Commission. In doing this, political decision making can get by without developing any position of its own and providing supporting arguments for it. By referring in general terms to "the" vote of the experts, they suggest that they are being forced to act by ethical considerations, which restrict their political freedom to influence matters and lead to a situation in which politics does not even have to make an appearance. Or, to put it in more precise terms: politicians decide, but they do not want to be seen to be doing so. When biopolitical issues get difficult, the politics will hide behind a vote taken by experts.

The problem is that this game of political hide-and-seek can only work as long as the experts are unanimous. But there is no more unanimity among experts in Austria than there is in the German expert bodies. Our analysis of political responses shows that Austrian government constructs an ethical pressure to act by, in each case, piecing together a consensus from parts of the majority and minority positions. When one looks closely at the political use made of the reports, one sees that they have been quite simply "filleted." Individual parts of the Bioethics Commission's reports have been broken up, recombined, and in this way made compatible with the political position. However, this does not mean that an experts' report has simply been faked. Politics does not lie, it does not fake or fabricate the report; what it does is to reconfigure it. The result is a consensual position pieced together out of what is in fact expert dissent.

This way of using an imagined, self-created consensus reveals an ambivalent (bio)political ideal. On one hand, politicians must presume that the experts enjoy great authority, since if they do not it is impossible to explain the efforts made to bring political action into line with the experts' opinions. On the other hand, the real sovereignty of politics is manifested in

its capacity to deal instrumentally with ethics expertise. This shows that for politics ethics expertise is obviously not tantamount to "the truth."

Summary and Prospects

Two main points can be made in summing up the argument of this article. First, expert dissent secures and opens up different options for action and legitimization, and in this respect, it is functional for politics. Politics do not have their decisions made for it, and they have the possibility of legitimizing these decisions with reference to expertise. In this way, politics becomes visible as politics.

Second, our comparison between different countries makes it possible to see how dissent is handled in different ways for political purposes (table 1). In Germany, dissent is understood as the prelude to a fundamental political debate in which legitimacy is produced, not least by means of the quality of the procedure. This kind of formal reference to ethics expertise presupposes the recognition of dissent. Of course, the development of independent political positions does not take place in a way that is unconnected with expert knowledge; what happens is that reference is made to the field of possibilities defined by ethics expertise. This process also has the effect of releasing a considerable amount of potential for public debate. The issue of stem cell research, for example, became a topic for TV chat shows and the front pages of leading newspapers at the time the Bundestag decision was being taken at the beginning of 2002.

In Austria, we can observe a way of dealing with expertise that attributes authoritative power to the verdict of the experts. This does not mean that politicians believe everything the experts say. It does, though, mean that politicians are convinced they must present themselves as being in agreement with the experts if they are to appear credible. This explains the political activities designed to construct clarity and consensus.

If one considers these empirical findings in the light of the concept of "boundary work" (Gieryn 1995) found in the sociology of science, one can see that in the German case, the boundary between the spheres of advice and decision making is fairly clearly marked. In Austria, by way of contrast, the boundaries are much less clear. This can be described as a "politicization of expertise," which means that external expertise is subjected to the stubborn logics of action of the political system itself or politically subsumed. This does not mean that the experts are politically directed, manipulated, or determined or that their findings are dictated to them. Nor does it mean that expertise becomes attributable to a particular political party or can be

associated with particular interests (Weingart 2001, 131); in moral questions situated beyond left and right, this does not work. Subsumtion means that expert knowledge is used in a context where it is interpreted in accordance with nonscientific rules and is reconfigured, though the boundaries between science and politics remain stable in all other respects.

From the point of view of political science, we can say that dissent among experts does not present politics with fundamental problems of legitimacy—on the contrary. In bioethical controversies, expert dissent seems in fact to be a characteristic that is seen to guarantee the quality of expertise. In this sphere, unlike other spheres of policy, expert dissent is seen not just as to be *expected* but, it seems, actually *desirable*. In the national ethics commissions, Catholics and atheists, geneticists and representatives of disabled people, friends and enemies sit down together around the same table. For biopolitical questions, this kind of heterogeneous appointment to advisory bodies is the norm, and indeed it is evidently imperative for purposes of legitimization. Would a conservative government appoint a Marxist economist to advise it on economic policy?

Notes

1. The setting up of a Governance and Ethics Unit in the DG Research of the European Commission is an institutional expression of this development.
2. For a detailed discussion on this question, see Gottweis (1998), and for an overview of the international development of stem cell policy, see Downey, Geransar, and Einsiedel (2005).
3. On the significance of lay expertise and public consultation in this area, see Kerr, Cunningham-Burley, and Amos (1998) and Burgess (2004). For a more specific examination of governance processes, see Joss (2005). Joss and Bellucci (2002) provide a broad overview of participation in the sphere of science policy.
4. We therefore understand ethics as a "master frame," in the sense in which Dahinden (2002) uses this term. These frames are powerful patterns of interpretation that direct our perception, structure information, and order the discourses. For an overview of the term "frame," which can be used in many different ways, see Entman (1993). Entman's analysis shows clearly that the frame debate has now traveled a long way from its sociological origins in Goffman's interest in the organization of everyday communication (Goffman 1974).
5. The differentiation between a risk frame and an ethics frame does not imply that economic interests are irrelevant for science and technology policy. However, addressing economic interests as such is deemed inappropriate in ethically framed discourses. Any analysis focusing on material interests *only* misses the particular conditions of legitimization in differently framed conflicts.

6. At this point, we do not provide a comprehensive or a substantial definition of ethics expertise and deliberately do so. Rather, our focus on framing processes suggests ethics expertise to result from an ascription by the political system: accordingly, ethics expertise in the present context is a form of knowledge that is deemed relevant for the professional discourse over regulatory issues considered ethically problematic, for example within bodies giving policy advice such as ethics commissions. The question of the defining criterion of ethical expertise is expressed in the conflicts about the recruitment policy. The special feature of ethics expertise is the fact that it needs to be negotiated within an interdisciplinary team. Ethics commissions usually include a wide spectrum of experts from biology, medicine, law, social science, as well as representatives of the churches and professional ethicists. The professional background determines to a great extent whether and how expertise is acknowledged within the internal processes of bargaining in the commissions. In contrast to experts from the natural sciences, who can monopolize their specialized knowledge, the expertise of professional ethicists may be openly challenged because expertise in value questions is often supposed to be a basic competence of daily life.
7. For a historical overview of the institutionalization of bioethics, see Galloux et al. (2002).
8. Our discussion is based on a research project entitled "Expert knowledge, the public and political decisions," which has been funded by the German Federal Ministry of Education and Research in the framework program "Knowledge for decision-making processes" and has been carried out at the Institute of Social Research in Frankfurt am Main and the Institute of Technology Assessment of the Austrian Academy of Sciences in Vienna.
9. This body existed until the summer of 2007, and in the autumn of that year, it was replaced by the German Ethics Council (*Deutscher Ethikrat*). This has similar functions, but the procedure for appointing its members is different.
10. Criticism was directed in particular at the institutional construction of the NER and also at the fact that the process used for making appointments to it was not transparent. See also Braun (2005) for an analysis that situated the NER within the debate on biopolitics and argues that the body was a symbol of Chancellor Schröder's efforts to liberalize policy in this field.
11. On the tasks and structures of Study Commissions, see Brown, Lentsch, and Weingart (2006, 94-109).
12. Bob Hepple, the NCB's chair, spoke on the occasion of the presentation of a consensual report on animal experiments of the value of "avoid[ing] the polarisation which has so often stifled rational debate" and praised the report as "a short but ground-breaking consensus statement" (NCB 2005, 2).

13. Social scientists as well (e.g., Jones, Walls, and Horlick-Jones 2006) consider this orientation toward consensus as a criterion of quality for the outcome of ethics committees' deliberations. On an abstract level, this might be true for policy advice. However, any fundamental consensus in value conflicts cannot be expected to be rich in content and, above all, to be credible.
14. We cannot go into detail here about the interesting question of how expertise is negotiated in bodies such as the NERs. Our empirical analysis can be found in Bogner and Menz (2005), which shows clearly that ethics—in the sense of a philosophical discourse—does not play any major role in ethics commissions (cf., Bogner, Menz, and Schumm 2008).
15. Pielke's (2007) model is an attempt to draw attention to the way in which the provision of scientific advice is bound to vary according to contextual political factors (e.g., the intensity of conflict, uncertainty). His construction of four types of policy advice challenges the idea that there can be one universally valid recipe to be applied in all circumstances.
16. The role of an "Honest Broker of Policy Alternatives" did not comply with the official remit of the commission in the case of Austria, where consensus was set up as a major goal. However, in the course of the deliberation process, the council liberated itself from this obligation.
17. In the following, we focus only on the relationship between expertise and politics. Of course, ethics expertise has more than just the function of legitimizing political decision making. Under the most important is the function to foster public debate, which is usually one of the main intentions of NERs.
18. Recently, that date was moved from January 1, 2002, to May 1, 2007.
19. Our conclusions are based on an analysis of seven major parliamentary debates on stem cell research, PGD, and cloning between 2001 and 2005. Furthermore, we have analyzed all commentaries on the recommendations of the NER and the EK issued by members of the Bundestag in the form of press releases.
20. Our analysis thus differs from Mouffe's thesis about what she describes as the "moralization of politics," which we mentioned at the beginning of the article. What Mouffe (2005) means by this is the return of fundamental we/they discrimination to political debate, by means of which the opponent is categorized not as a "legitimate adversary" but as an enemy who must be combated. Moralizing exclusion of the enemy takes the place of political debate. In the case we are investigating, this kind of outbreak of anatagonisms is prevented by the individualization of political decisions about values. People who think differently about an ethical question are *not* excluded; rather, the individual positions they take are accepted as legitimate or even seen as an enrichment of the debate, in the sense of a pluralism of conflicts over values that are not themselves judged.

21. This shows that differences in the way politics deals with expert dissent are determined not only by different philosophical traditions (for example, the British utilitarian vs. the continental deontological positions) but also by different regulatory approaches (liberal or restrictive).

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