

THE INSTITUTIONALISATION OF BIOETHICS IN THE EUROPEAN UNION



EMMANUEL AGIUS
DEAN, FACULTY OF THEOLOGY
UNIVERSITY OF MALTA
MEMBER OF THE EUROPEAN GROUP OF ETHICS
IN SCIENCE AND NEW TECHNOLOGIES
(ADVISORY GROUP TO EUROPEAN COMMISSION)

EUROPEAN BIOETHICS?

- Bioethics: typical and specific product of the American culture?
- “American ethos” (Albert Jonsen):
 - a destiny to make life better than it is and a conviction that it is possible to do so
 - a faith in the values of individuals and their capacity to reach consensual agreement
 - a vague but genuine commitment to a conventional morality
- Diego Gracia: Jonsen’s interpretations are extremely ‘parochial’ and ‘ethnocentric’

THE IDENTITY OF A EUROPEAN CULTURAL PERSPECTIVE

- Cultural articulation of bioethics (Charles Taylor)
- Bioethics is not only the product of reason alone
- Bioethics is shaped by beliefs, values and modes of thinking grounded in a specific culture
- Morality and identity (Charles Taylor)
- Bioethics is ‘communitarian’ or ‘cultural’
(reflects not only individual responsibilities but also social dimensions of life)

THE IDENTITY OF A EUROPEAN CULTURAL PERSPECTIVE

➤ Features of European Culture

- Europe is not merely a geographical entity, but also a political, historical and cultural concept
- Influence of Christianity
- Historical events: French Revolution, Two World Wars
- European values: human rights and freedoms, tolerance, equal opportunity, social justice, human dignity, solidarity

CONTROVERSIES TO IDENTIFY A EUROPEAN PERSPECTIVE

- Is it possible to identify a European approach to bioethics?
- Influenced by a variety of philosophical theories and methods (H. ten Have)
- Influence of theological traditions
- Anglo-Saxon, Central Europe and Mediterranean countries (Diego Gracia)
- “Latin” model of bioethics (S. Leone, Elio Sgreccia): life, liberty, responsibility, totality, social subsidiarity

TOWARDS EUROPEAN HARMONISATION

- Pluralism is a source of strength of Europe (unity in diversity)
- Harmonisation of values is desirable
- EU – common policies in several fields
- EU – national competence: specific bioethical issues are regulated by Member States (embryo research, patenting, reproductive technologies, abortion, euthanasia, protection of animals)
- Divergences in bioethical policies
- Role of the Council of Europe (CDBI)
- EU – Role of the European Group of Ethics (EGE)
- Landmarks in harmonisation process:
 - Convention for the Protection of Human Rights and Dignity of Human Beings with regard to the Application of Biology and Medicine (Oviedo Convention)
 - Various Protocols

THE EUROPEAN UNION AS A COMMUNITY OF VALUES



THE EUROPEAN UNION AS A COMMUNITY OF VALUES

- EU - created as an economic community of shared trade.
- Eventually it developed further as political community thanks to common beliefs and ideals.
- From the beginning, there was a consensus that peace (the overarching goal of unification during the post-war era in Europe) was to be achieved only on the basis of democracy.
- Furthermore, it was a shared belief that economic prosperity was bound to a free market and 'movement without borders' within the Community.

THE EUROPEAN UNION AS A COMMUNITY OF VALUES

- Finally, by affirming and adopting the UN Declaration of Human Rights (not as a mere document, but as a concrete and responsible response to the atrocities of the early 20th century), the European Community gave primacy to respect for the dignity of every individual.
- Advocated in the *European Charter of Fundamental Rights* and the Council of Europe's *Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine* (Oviedo 1997).
- Democracy, freedom, human rights, equality and solidarity, based on the affirmation of pluralism and (political) subsidiarity, are pillars of Europe's ethical self-understanding.

THE EUROPEAN UNION AS A COMMUNITY OF VALUES

- Europe is not only constituted by the plurality of its traditions, histories, ethnic groups, cultures and religions, but also by its different legal, education, social welfare and health-care systems.
- The recognition of this diversity and the respect for plurality have become important driving forces in the unification process.
- In some areas, harmonisation is sought.
- In others, diversity is respected or even encouraged in order to sustain cultural pluralism.

THE EUROPEAN UNION AS A COMMUNITY OF VALUES

➤ The fundamental principle of European ethics is, ultimately, the principle of **human dignity**.

➤ The EGE has endorsed this principle in its various opinions, giving further clarification to this debated principle for example in Opinion 20, quoting W. Cheshire who defines human dignity as

‘the exalted moral status which every being of human origin uniquely possesses. Human dignity is (...) not contingent upon any functional capacities which vary in degree. (...) The possession of human dignity carries certain immutable moral obligations. These include, concerning the treatment of all other human beings, the duty to preserve life, liberty, and the security of persons, and concerning animals and nature, responsibilities of stewardship.’

THE EUROPEAN UNION AS A COMMUNITY OF VALUES

- In May 2007, on the occasion of the 50th anniversary of the Treaty of Rome and following the political crisis after the referenda on the future of the Union, the Heads of State and Government of the European Union adopted a political document (the Berlin Declaration) where the European political project was re-launched.
- This Declaration outlined the intention of all EU Member States to agree on a new Treaty to be ratified before mid-2009.
- The Declaration adopted an unprecedented approach in defining the EU's policy objectives. Instead of advocating socio-economic goals, the Berlin Declaration pointed to the need for establishing a new dimension in the EU that is based on *shared values*.

THE EUROPEAN UNION AS A COMMUNITY OF VALUES

➤ The Declaration states that:

‘EU countries are striving for peace and freedom, for democracy and the rule of law, for mutual respect and shared responsibility, for prosperity and security, for tolerance and participation, for justice and solidarity.’

➤ This new target is endorsed in two important institutional steps taken the same year:

- **Charter of European Fundamental Rights**
- **Lisbon Treaty**

THE EUROPEAN UNION AS A COMMUNITY OF VALUES

- On 12 December 2007, the *European Charter of Fundamental Rights* was proclaimed by the Presidents of the European Commission, the European Parliament and the European Council.
- For the first time in the European Union's history, the European Union Charter of Fundamental Rights endorses in one single text the whole range of civil, political, economic and social rights of European citizens and all persons residing in the EU.
- The Charter endorses a set of important values, such as human dignity, freedom, democracy, protection of human rights, pluralism, non-discrimination, tolerance, justice, and solidarity and gender equality.
- This political agreement has consolidated the relevance of these fundamental values for EU policy.

THE EUROPEAN UNION AS A COMMUNITY OF VALUES

- In particular, it introduces the notion of a Europe of rights and values: Human dignity, freedom, democracy, equality, the rule of law and respect for human rights are the core values of the EU which are set out at the beginning of the Treaty of Lisbon.
- Promoting these values, as well as peace and the well-being of the Union's peoples, are now the main objectives of the Union.



- European Parliament President Jerzy Buzek on the European Day against the Death Penalty (10 October 2009) said: *‘The European Day against the death penalty is the day on which we recall that the defence of human rights and a justice system based on the full respect of human dignity is a key part of our shared European values.’*



- In his first speech after his nomination on 19 November 2009, Council President Van Rompuy advocated *‘Europe is a community of values’*.



- Commission President Barroso indicated to the European Parliament: *‘our union is founded on values: respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights.’* (President Barroso, Speaking with one voice: defining and defending the European interest, European Parliament Plenary: vote on new College, Strasbourg, 9 February 20105).

THE INSTITUTIONALISATION OF EUROPEAN BIOETHICS



de l'Europe
800 millions
d'Européens
Council of Europe
800 million Europeans

INSTITUTIONALISATION OF EUROPEAN BIOETHICS

- How EGE started and its predecessor
- Recent changes in working methods and ethical points of departure.
- Overview of EGE work 2005-2012 and its impact.
- Current challenges: European and global

Three Main Types of Ethics Committees

➤ On the basis of their functions and tasks:

(i) to present background material and to give an overview of problems, positions and arguments in order to facilitate and stimulate debates and reflections;

(ii) to give advice, like most, if not all, national and international ethics committees, including the *European Group on Ethics in Science and New Technologies* (EGE) and the *Nuffield Council on Bioethics*; and

(iii) to take decisions on research activities (research ethics committees)

1991: The First Group of Advisers

- Nov 1991, The EC, under President Jacques Delors, set up the GAEIB, *Group of Advisers on the Ethical Implications of Biotechnology*.
- Purpose: to incorporate ethics in decision-making process of community research and technological development policies.

EGE replaces GAEIB

- Dec 16, 1997, the EC set up the EGE, the *European Group on Ethics in Science and New Technologies*, which replaced the GAEIB.
- Remit not limited to Modern Biotechnology, widened to ‘Science and New Technologies’
- Members increased to 12, and new disciplines were added.
- The 1997 decision provided that EGE could examine subjects suggested to the Commission by the European Parliament or the Council.
- May 29, 2005, mandate revised. Members increased from 12 to 15, allowing a wider range of competences (e.g. food safety and security)
- New membership reflecting the enlarged EU.



- **Emmanuel Agius** (Malta)
- **Inez de Beaufort** (The Netherlands)
- **Peter Dabrock** (Germany)
- **Andrzej Gorski** (Poland)
- **Hille Haker** (Germany)
- **Ritva Halila** (Finland)
- **Julian Kinderlerer** (United Kingdom)
- **Paula Martinho da Silva** (Portugal)
- **Linda Nielsen** (Denmark)
- **Herman Nys** (Belgium)
- **Siobhan O'Sullivan** (Ireland)
- **Laura Palazzani** (Italy)
- **Pere Puigdomènech Rosell** (Spain)
- **Marie-Jo Thiel** (France)
- **Günter Virt** (Austria)



THE INSTITUTIONALISATION OF EUROPEAN BIOETHICS

➤ The EGE is :

1. **independent** (the members are not representatives of their countries – as they are in the Council of Europe – nor representatives of any ideological school or churches),
2. **multidisciplinary** (there are biologists, medical scientists, geneticists, media- and computer scientists, philosophers, lawyers and philosophical and theological ethicists) and
3. **pluralistic** (the members are supposed to represent various points of view as well as different ideological backgrounds).

Mandate and Composition

- The members do not represent their country or any organisation they happen to belong to.
- They are chosen on the basis of their personal qualities.
- The members have different scholarly backgrounds, such as philosophy, theology, law, medicine, natural science,...
- ...and they come from different cultural backgrounds, indicating European pluralism.

Working Methods

- The group can take initiatives concerning themes for reports, but usually topics are suggested by the President of the EU and discussed in his cabinet
- The working methods of the group: internal meetings, hearings of invited experts, commissioning of special reports, organisation of round tables, web consultations.
- Consensus sought, but dissent is possible.



Roundtables



Have an important role
in EGE's work:

- Provide additional input to our thinking
- Establish a dialogue between different stakeholders
- Promote transparency
- Focus is on dialogue

Collaboration

- Collaboration with commission services has increased during the last two mandates.
- Collaboration possibilities are limited by the current mandate, according to which the EU President should be the first to see a new EGE report.
- Representatives from other councils and organisations (Nuffield Council) are regularly invited to our round tables.

Ethical aspects of **human tissue banking** (21/07/1998)

Ethical aspects of research involving **the use of human embryo in the context of the 5th framework program** (23/11/1998)

Ethical issues of **healthcare in the information society** (30/07/1999)

Ethical aspects arising from **doping in sport** (14/11/1999)

Ethical aspects of **human stem cell research and use** (14/11/2000)

Ethical aspects of **patenting inventions involving human stem cells** (07/05/2002)

Ethical aspects of **clinical research in developing countries** (04/02/2003)

Ethical aspects of **genetic testing in the workplace** (28/07/2003)

Ethical aspects of **umbilical cord blood banking** (16/03/2004)

Ethical aspects of **ICT implants in the human body** (16/03/2005)

Ethical aspects of **Nanomedicine** (January 2007)

Ethical review of **FP7 hESC** (July 2007)

Ethical aspects of **Animal Cloning for food supply** (January 2008)

Ethical aspects of **modern developments in agricultural technologies** (December 2008)

Ethical aspect of **synthetic biology** (17 November 2009)

Ethics of **information and communication technologies** (22 January 2012)

Forthcoming opinion on **the ethics of energy**

- For the period 2005 to 2009 the EGE has produced opinions on subjects as diverse as nanomedicine, conditions for funding of human embryonic stem cell research in FP 7, animal cloning for food purposes, new technologies in agriculture and synthetic biology.
- The current EGE has worked on an Opinion on the ethical implications of Information Communication Technology (ICT) and following the June 2011 Competiveness Council on the Euratom Programme, another Opinion on a sustainable energy mix in Europe. In 2013 the EGE will work on an Opinion on the ethical implications of security and surveillance technologies.

- President Barroso has benefitted of EGE inputs for the following policy sectors: nanotechnology, marketing of new medical devices and medicinal products, Biosafety, novel food legislation, animal welfare, embryo research, GMO, EU CAP revision, biodiversity, climate change, global trade, digital agenda, bio-security, risk assessment and environment protection, food security, raw materials (including financial speculations), privacy protection, bioweapons, internet governance, innovation and research, etc.
- The forthcoming EGE Opinions will cover the following policy items: energy (safety, security, distribution and priority setting in EU energy mix), climate change, food security, intergenerational responsibilities, legal frame for energy, macroeconomics and energy, surveillance, defence, anti-terrorism etc.

Ethical Principles and Values for Responsible Action and Decision-Making

- Respect for human dignity
- The principle of justice
- Consumers' free choice
- Patients' informed consent
- Precautionary principle
- Principle of human responsibility
- Subsidiarity





EGE



EC



- **Ethics has to be systematically integrated in EU policies**
 - **Global dimension has a key importance**
 - **Ethics as a pre-requisite of a responsible use of Science & Technology**
- The Commission has included protection of fundamental rights in all its policies
 - FP7 finances ethics and R&D (DG RTD)
 - Ethics is a topic in several EC policy spheres
 - Ethics review is a monitoring tool established by the EC.
 - EU legislative framework safeguards subsidiarity in ethics while promoting values indicated in the Charter of Fundamental Rights

Structuring the EU Debate on Bioethics

- The Commission finances **pan-European debates on bioethics and networking between relevant bioethics bodies**. Some examples of networking activities promoted and supported by the Commission include:
 - a) The **Forum of National Ethics Councils (NEC Forum)** established in 2003 by DG Research and clustering the National Ethics Committees of the 27 Member States. It now involves all 27 Member States and EGE NEC Forum joint meetings are organised regularly.
 - The **International Dialogue** aims to facilitate the sharing of information and open dialogue in the fields of bioethics between European and non-European National Ethics Councils (NECs). Invited participants at this event include **EGE**, the Chairs of **15 non-EU NECs** (USA, Canada, Mexico, Brazil, Argentina, South Africa, Egypt, China, Japan, Philippines, Australia, Indonesia, India, Russia and PABIN), the Chairs of the **EU 27 NECs**, representatives of International Organisations (**Unesco, WHO, CoE**).

EGE and CDBI

- EU and Council of Europe are different Organisations
- EGE often refers to, and uses, the *Oviedo Convention*, especially in reports on topics related to biomedicine
- CDBI is always invited to send a representative to our round tables, and Carlos de Sola and/or Laurance Lwoff have often made valuable interventions

Relevance of the EGE reports

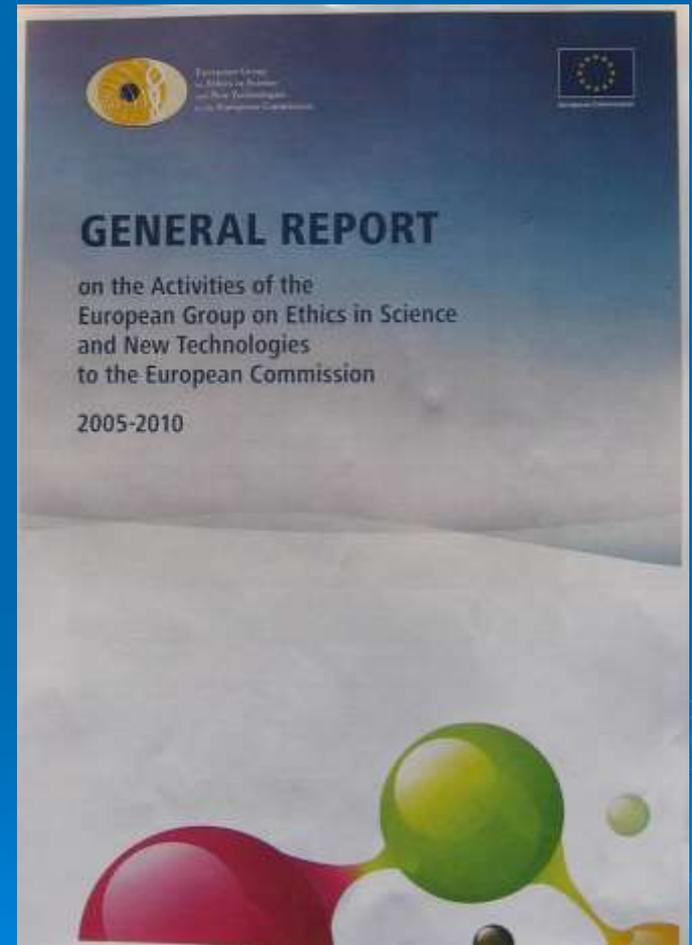
- The scope of the reports have been widened, from focusing almost exclusively on issues raised by trends in biomedical research and biotechnology to much wider issues, including cloning of animals for food purposes and novel methods and techniques used in farming.

Principle of Human Dignity

- Human dignity is (...) not contingent upon any functional capacities which vary in degree. (...) The possession of human dignity carries certain immutable moral obligations.
- These include, concerning the treatment of all other human beings, the duty to preserve life, liberty, and the security of persons, and concerning animals and nature, responsibilities of stewardship.'

EGE Activity Report : 2005-2010

- The report gives account of our work during this mandate.
- The report differs in some ways from previous General Activity Reports (GARs).
- It addresses issues related to the role ethics will play in the new constitutional setting of the EU.
- It makes an assessment of how the EU has taken action in fields covered by EGE opinions



General Activity Report

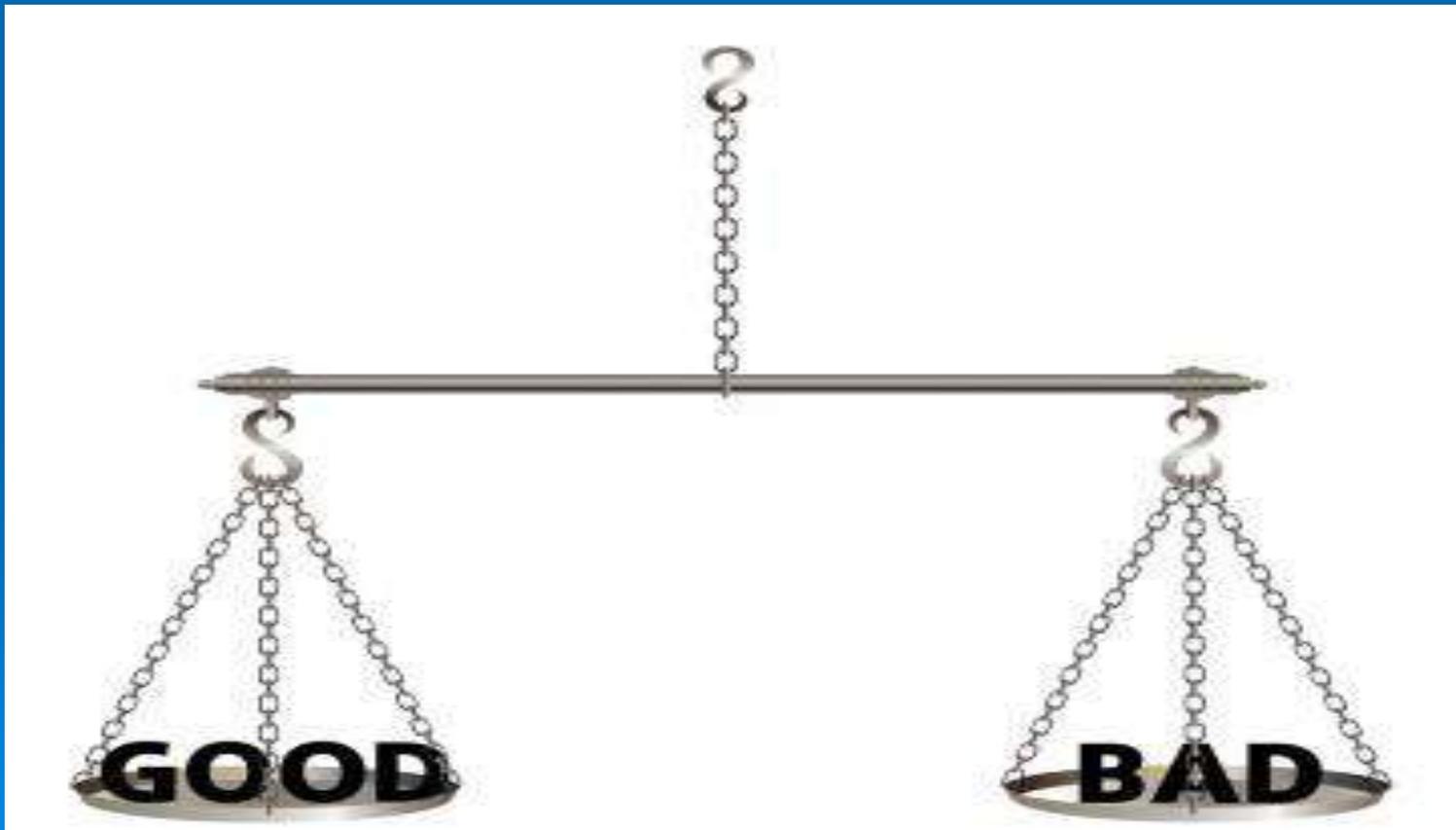
- This part presents and discusses the role of ethics in the European Union.
- The political vision of the EU as a community of values is explored, in particular the *Charter of Fundamental Rights* and the *Lisbon Treaty*.
- The *Berlin Declaration* pointed to the need for establishing a new dimension in the EU that is based on shared values.
- ‘EU countries are striving for peace and freedom, for democracy and the rule of law, for mutual respect and shared responsibility, for prosperity and security, for tolerance and participation, for justice and solidarity.’
- *The Berlin Declaration*

Work done during mandate 2005-2010

- Between 2005 and 2010 the EGE published 5 reports ...
- on very diverse subjects, ranging from nanomedicine to novel methods in agriculture and synthetic biology
- 4 roundtable proceedings, and 7 issues of our newsletter *Ethically Speaking*.
- Changes were made to promote transparency and inclusiveness,
- in particular EGE selection rules and rules of procedure,
- open round tables for interested stakeholders and NGOs and web consultations, as well as
- the widely used EGE website with more than 168000 visitors last year.

THE INSTITUTIONALISATION OF EUROPEAN BIOETHICS

Moral Pluralism vs Theological Ethics



THE INSTITUTIONALISATION OF EUROPEAN BIOETHICS

➤ Moral pluralism as challenge for theological ethics

The more the world and Europe become globalised, the more we realise diversity with regard to:
religion, culture, law and institutions.

➤ This raises the question of how common regulations could ever be adopted – especially those which are influenced by the growing importance of institutionalised ethical commissions.

THE INSTITUTIONALISATION OF EUROPEAN BIOETHICS

- Ethicists with a theological background know that the high ethos and ethical standards of Christianity are respected.
- But it is possible to adopt this ethos as the criteria within a pluralistic society? This objection leads to further questions.
- Firstly, this is a challenge for theologians themselves: Is the church able to communicate its universal claims authentically in theory and practice to today's postmodern and pluralistic culture?
- On the other hand, theological ethics stands for a clear-cut definition of the term "pluralism". It is important to draw a distinction between:
 - empirical pluralism that cannot be refuted, and -
 - structural pluralism of a liberal democracy.
- Both are different from normative pluralism.

THE INSTITUTIONALISATION OF EUROPEAN BIOETHICS

- Normative pluralism defends the claim of rightness of ethical decisions accepted by pluralistic society, i.e. a viewpoint claiming that all morals are equal (ethical relativism).
- This position means the complete resignation of ethics from its stand as a normative science which ultimately leads to its dissolution into social sciences.
- A moral position which does not make transparent its underlying assumptions (in this case metaphysics) of philosophical ethics would reduce ethics to utilitarianism and pragmatism and thereby privileges a certain philosophical trend that makes its metaphysical assumptions without bringing these reflections for review.

THE INSTITUTIONALISATION OF EUROPEAN BIOETHICS

- There are various degrees of reflection in these implicit assumptions that are often left unmentioned. Sometimes these moral non-reflected assumptions are also implied in the presentation of empirical research findings. There is good and bad metaphysics and this needs to be debated.

THE INSTITUTIONALISATION OF EUROPEAN BIOETHICS

- A position which assumes that human dignity starts as late as birth. This position is founded on the basis of positive law in many countries and is demonstrated in factual legal court sentences. This attitude projects legal positivism back to ethics, causing a circular argument. It mentions metaphysical assumptions – but it often does not disclose them.
- A position which justifies human dignity on the basis of an external attribution of interests builds on philosophical, or mostly hidden, theological assumptions.

A position which assumes that human dignity starts at birth, basing this opinion on biological arguments, such as the sensitiveness of a foetus, turns an empirical statement into a normative one. But this is just another so-called ‘naturalistic fallacy’.

THE INSTITUTIONALISATION OF EUROPEAN BIOETHICS

- A position which claims that reciprocal recognition and acceptance, as well as the ability of self-respect, are the prerequisite of ethical appreciation of human dignity. Such a position is just a deduction from a philosophical assumption that has not yet been proven. This position would exclude many people, as well as many life situations and phases of life, from personal human dignity. How is this assumption's philosophical background founded?
- A theory which denies that the prenatal phases of life are part of a person's life – because the person only exists when he/she is accepted and recognised by others – does not explain what should be explained, namely our self-understanding as a person in history.
- Conformity of plurality as ethical criterion is not valid and only provides pseudo-compromises.

THE INSTITUTIONALISATION OF EUROPEAN BIOETHICS

- Such a viewpoint, widespread in ethical commissions, privileges the respective current ethical and moral minimum. It reflects a circular argument – the result of the minimal solution is elevated to become the norm. This is also metaphysics, but not reflected.
- “Through metaphysical suspicion or metaphysical objections one’s own privileged strategic position is pursued. Thus the debate does not come to an end, but it is rather stimulated. It is brought back to the table– not only in view of the need of a law-making policy.”

THE INSTITUTIONALISATION OF EUROPEAN BIOETHICS

- The relevant decisions for our countries are taken more and more often in the EU: 15 members of the EGE, 27 commissioners and 730 elected delegates for the EU Parliament in Brussels are faced with more than 15,000 highly-paid lobbyists of the multinational companies in Brussels.
- On the other hand, the new Reform Treaty encourages lasting interactive action for the churches (article 17: “The EU maintains an open, transparent and regular dialogue with the churches and communities in acknowledgment of their identity and their special contributions”).
- Much depends on the churches and within the churches much depends on the commitment of theological ethicists. It is a worthwhile challenge to be taken!

CHURCHES AS DIALOGUE PARTNERS WITH EUROPEAN INSTITUTIONS



CHURCHES AS DIALOGUE PARTNERS WITH EUROPEAN INSTITUTIONS

- The European Union must be a community of values and not simply a more efficient way of pursuing policies in co-operation between a number of countries.
- The values of peace, justice, reconciliation, solidarity and sustainability, found at the heart of the Christian Gospel, should be benchmarks for testing the results of the European Convention.
- Religious and spiritual heritage of Europe and its contribution to the formation of European values.

CHURCHES AS DIALOGUE PARTNERS WITH EUROPEAN INSTITUTIONS

- The aims of the European Union based on human rights, liberty and solidarity reflect the richness of its cultural, religious and philosophical traditions.
- The role of churches and religious communities should be specifically identified in any system of structured dialogue and consultation.

CHURCHES AS DIALOGUE PARTNERS WITH EUROPEAN INSTITUTIONS

- Article 17 (the former Article I-52 of the Constitutional Treaty) is part of the Treaty on the Functioning of the European Union (TFEU) and reads as follows:
- *"1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.*
- *2. The Union equally respects the status under national law of philosophical and non-confessional organisations.*
- *3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations."*

CHURCHS' ROLE IN EU

- In addition to institutional reform, the Treaty introduces into EU primary law an Article of notable importance for the Churches.
- By means of Article 17 of the Treaty on the Functioning of the EU, the EU recognises the identity and specific contribution of Churches and engages on this basis an « *open, transparent and regular* » Dialogue with them.

CHURCHS' ROLE IN EU

- Thanks to this Article, Churches and religious communities are able to strengthen their Dialogue with the European Commission, Council and Parliament and so contribute more efficiently to reflecting on European policy.
- Inspired by Catholic social teaching and strengthened by their background experience, Churches are enabled to pursue a critical and constructive Dialogue with EU decision makers on the policies put forward by the EU.

CHURCHS' ROLE IN EU

- The Churches in Europe therefore welcome the dialogue between the European Union and the Churches and religious communities as an instrument allowing them to partner the EU more effectively so that it becomes a Community of peoples and values, aware of its responsibility, united and welcoming
- In the recent years, a practical dialogue had already been established between the European Institutions and COMECE and its ecumenical partners. Thanks to this "*practical dialogue*", the trust between European institutions and Churches has increased over the years. COMECE now wishes this dialogue to intensify and deepen, on the basis of Article 17. COMECE calls on Churches and Christians all over Europe to seize this dialogue opportunity, based on their expertise and their humanity, to make a contribution to the European project.

Thank You!

