

The Scope of the Recent Bioethics Debate in Germany: Kant, Crisis, and No Confidence in Society

TANJA KRONES

The past five years have brought important and rapid developments for the scientific bioethics community in Germany. Bioethics was institutionalized as an obligatory part of the undergraduate and graduate schedule in medical schools. Clinical ethics committees are spreading all over the country, and research on ethical issues of biomedicine is sponsored on a large scale, for example, by the German Ministry of Education and Research (BMBF). Two main institutions, dealing with bioethics and biopolicies, were established and have worked on central bioethical issues, mostly ending up with diametrically opposed recommendations: the Enquetekommission Recht und Ethik der Modernen Medizin (Parliamentary Commission on Law and Ethics of Modern Medicine), composed of parliamentarians of all political parties and appointed external experts, and the National Ethics Council, composed of experts, politicians, several stakeholders, and representatives of the Catholic and Protestant churches.

The current German public bioethics debate was initiated by the German Medical Association (Bundesärztekammer, BÄK) in 2000, which published a draft for discussion on preimplantation genetic diagnosis (PGD).¹ Since then, four important debates on biopolitics have taken place in the German Parliament: The first in 2001, was a reaction to the proposal of the BÄK in 2000 and focused primarily on the risks associated with PGD. The second debate followed in January 2002, over the legislation of embryonic stem-cell research, which finally passed the parliament in June 2002 (Stammzellgesetz StZG).² The third debate, in 2003, addressed issues in reproductive and therapeutic cloning, and a second consecutive Parliamentary Commission on Ethics and Law of Modern Medicine was inaugurated. Finally, fourth, in March 2005, the members of parliament took up questions involving end-of-life decisionmaking, including the advantages, dangers, and limits of advance directives.

In this article, I examine the scope, as well as some of the peculiarities, of the German bioethics debate over the past five years, as can be reconstructed from the parliamentary and mass media debates and from the recommendations given by the two most prominent bioethics institutions: the Parliamentary Commissions on Law and Ethics of Modern Medicine and the National Ethics Council regarding issues of PGD, stem-cell research, advance directives, and euthanasia. I concentrate on the PGD debate and stem-cell research and compare the connection of the official debate with some results of our research at the University of Marburg on context-sensitive bioethics in Germany.

In our research we explored, analyzed, and compared the views of experts, patients, and the public on PGD and stem-cell research in Germany.³ According to our analysis, the official bioethics and biopolitics debate can be characterized by an inherent rhetoric of crisis and mistrust of German society to solve problems in an ethically appropriate way. The official view is that the public has to be led and protected by experts and strict legislation that is deductively derived from the application of clear, universal principles of our Kantian-rooted Constitution. On the other hand, several surveys of both the German general public and experts in the field suggest they share a more liberal and pragmatic perspective and stress the ambiguities in seeking solutions to bioethical problems. It remains to be seen if the results of recent empirical studies and projects on bioethical issues, supported by the German Ministry of Education and Research, will lead to a more context-sensitive legislation on ethical issues at the beginning and end of life. Such an outcome can be doubted in view of the strong alliance of influential ethicists and politicians from all political parties and societal streams, who continue to promote the notion that new emerging problems can only be solved by referring to universal truths and principles found historically in the ideas of major philosophers.

Roots of the Current German Bioethics Debate

Legislation and politics are not independent from history and philosophical traditions. Even in relatively culturally homogeneous areas, such as Western European countries, specific traditions and historical events shape normative discourse. From the beginning there were substantial differences in the European discourse on bioethical issues. The Anglo-Saxon approach has been relatively more pragmatic and empirical, often following utilitarian lines of argumentation. Bioethics in Germany, with its idealistic philosophical tradition, is prominently discussed from a deontological point of view, implicitly or explicitly reflecting a Kantian philosophy from all ethical perspectives, including discourse ethics,⁴ a feminist approach⁵ and even utilitarian arguments⁶ (which are rarely applied in our country).

One can roughly describe three major features that underlie the current German bioethics debate. First, the horror of Nazi Germany is still present. The continuing awareness of the potential for inhumane outbursts has produced a high level of public sensitivity toward issues having to do with eugenics and possible discrimination toward the disabled. However, charges of a Nazi-like argument can be misused to thwart political opponents. Second, German constitutional law, rooted as it is in Kantian universal principles of human dignity and the right to life of every human being, might encourage a more categorical approach to problem solving. Third, there is evidence of a deep crisis in German identity that is influencing the recent debates on biopolitics.⁷ There is strong skepticism on the part of German political elites and dominant bioethics experts that the public at large has the ability to competently solve its problems on its own. This mistrust results in a strategy of looking beyond Germany to import vital resources (e.g., immigrants, stem cells) from abroad, while at the same time promoting efforts to instill trust and pride in German culture and capabilities. How these conditions influence the German bioethics debate on the issues concerning the beginning of life is described in the following section.

The German Debate on Ethical Issues Concerning the Beginning of Human Life

As depicted above, the recent German debate on the regulation of technologies impacting the beginning of human life was initiated by the BÄK in March 2000. In the draft offered for discussion, the BÄK proposed to allow PGD for severe genetically acquired diseases, usually resulting in the death of the child. This proposal was closely linked to the cautious legal solution on PGD in France. Yet, according to the German Embryo Protection Act (EPA)⁸ of 1990, PGD and other IVF procedures, such as blastocyst culture and cryopreservation, as well as egg donation, are prohibited by law. Implementation of the restrictive EPA was made possible because of a new and broad “techno-skeptic”⁹ alliance formed in the 1980s between two usually opposing ideological groups: left-wing intellectuals, among them many feminists, and the conservative pro-life lobby. The fundamental position of left-wing intellectual circles regarding biopolitics and bioethics culminated in the first congress of “Women against Gene and Reproductive Technologies” in 1985 and in the so-called “Singer debate,” in which philosopher Peter Singer was “silenced” during his stay in Germany. The combination of the “indivisible human dignity of the embryo argument” with the argument that links prenatal diagnosis, PGD, and embryo research to the eugenic measures of Nazi Germany was adopted as a strategy of this influential group.

The left-wing techno-skeptic position can further be characterized by constructing a dichotomy between “good (feminine) mother nature” and “humanity-threatening (male) technology,” an argument closely linked to Hans Jonas’ “Imperative of responsibility.”¹⁰ Modern technology, nuclear and gene technology in particular, are, according to Jonas’ argument, marked by a radical departure from everything previously known, disturbing the balance between humanity and nature in ways that are long-range, cumulative, and irreversible. Therefore, rationality of technology and belief in an everlasting progress of technology have to be fundamentally questioned. These positions were used in alliance with the conservative, partly religiously motivated, pro-life lobby in the debate on EPA and also in the recent PGD debate against what they view as a new political enemy soft on eugenics: the hopeless “techno-optimist.”¹¹ The techno-optimist still believes in progress through technology, also including gene technology, and stresses science’s and societies’ ability to foresee and control potential risks.

Another distinction, having to do with a general theory of science perspective, is the view held by many German intellectuals, either implicitly or explicitly, that bioethics is mainly influenced by utilitarian thinking and is, therefore, also a threat to humanity itself. In accord with this criticism is the fear, or suggestion, that humanity will be threatened unless the full protection of the “citizen embryo” is achieved. To protect the human dignity and rights of the in vitro embryo, a schism was created between those with a more liberal or pragmatic way of thinking (e.g., including physicians treating patients with infertility problems and inherited genetic diseases and some social and natural scientists) and those thinking more categorically (e.g., the majority of feminists, the pro-life lobby, organizations of handicapped persons). This gap is obvious in the vigorous debates on bioethical issues in the German Parliament and the mass media. It is also represented by the two main bioethics commissions. The majority of the National Ethics Council is committed to the more pragmatic and liberal approach, whereas in the Parliamentary Commissions on Law and

Ethics of Modern Medicine, the techno-skeptic view and a deontological approach clearly prevailed. Accordingly, the two commissions, in regard to PGD, took opposing positions. A bare majority of the National Ethics Council voted in favor of PGD legalization, whereas a clear majority of the Parliamentary Commission on Law and Ethics of Modern Medicine voted against it.¹² Yet, recommendations of the Parliamentary Commissions are more influential, because their proposals for legislation are directly debated in parliament.

In the mass media, the two sides of the bioethics discourse were also present. According to our extensive print media analysis of the debate on PGD and stem cells in 2000 and 2001, the majority of comments and articles from the whole political spectrum argued against legalization of PGD and stem-cell research, whereas, interestingly, the majority of letters to the editors favored legalization. Physicians and stem-cell researchers were most often described as supporting a more liberal legislation whereas representatives of the churches and techno-skeptic intellectuals were cited as most often opposed. Clearly underrepresented were the views of couples who would be directly affected and other important lay groups, such as disabled persons. In the end, expert and techno-skeptic views prevailed in the political debate, which were also reflected in the print media.

Keeping in mind that opponents and supporters make up a wide spectrum of opinion, arguments used by both sides are often mixed, containing deontological, consequentialist, liberal, and feminist considerations. As Margot von Renesse, Chair of the first Parliamentary Commission on Law and Ethics of Modern Medicine, commented, the human dignity argument was sometimes, much to her regret, used by both sides of the dispute as a means of discrediting the other. The supporters saw the dignity of scientists and prospective mothers fundamentally attacked if PGD and embryo research were strictly prohibited, whereas the critics of PGD placed the human dignity of the "citizen embryo" into the spotlight of the public debate. Up to now, the opponents of PGD have prevailed in that there has been no move to reform the EPA, and current political developments, the recent election, and the economic crisis in Germany have consumed attention. I do not anticipate an initiative to challenge the EPA in the near future.

The ambivalence surrounding the debate on PGD was rapidly replaced by the debate on stem cells. In August 2000, stem-cell researcher Oliver Brüstle applied for funding for a research protocol using embryonic stem cells. It was clear that, due to the EPA, the production of embryonic stem cells derived from surplus in vitro embryos was prohibited in Germany. To progress with his research, Brüstle applied for the use of imported embryonic stem cells. Following this application, the bioethics debate became the most important topic in the political and scientific arena during several months and generated hundreds of leading articles in the press. Advocates on both sides and belonging to all political parties took part in the stem-cell research dispute. The opinions of Chancellor Gerhard Schröder and President Johannes Rau, both members of the Social Democrats (SPD), were in prominent opposition to each other. The appointment of the National Ethics Council on May 2, 2001, by techno-optimist Gerhard Schröder, was considered by the techno-skeptics in the German Parliamentary Commission on Law and Ethics of Modern Medicine as an obvious tactic intended to promote, in their view, demeaning stem-cell research. The inauguration of the National Ethics Council was directly followed by a famous speech of President Johannes Rau on May 18, stating that stem-cell research,

PGD, and euthanasia were developments clearly moving society toward the inevitable slide down a slippery slope. In his speech, as well as in most scientific, political, and ethical arguments, the ambivalent rhetoric of crisis and potentiality, aptly described by ethnologist Stefan Sperling,¹³ was the prominent view expressed. This pattern of argument resulted in an equally ambivalent solution regarding stem-cell research that reflects some features of German legislation on abortion.¹⁴ The primary themes promoted by the official political and bioethical discourse include the following:

1. We, as Germans, have, due to our history of Nazi Germany, a high sensitivity and fear of making horrible mistakes again. Therefore we have to be exceedingly suspicious and cautious with regard to developments that might have the potential for violating human dignity in our society. Because historically as a society we did not prevent but supported the horror of Nazi Germany, we do not fundamentally trust the ability of society, and that of lay people in general, to act in an ethically appropriate way. Only strict legislation, such as the EPA, rooted in our Constitution, offers protection against violations of humanity.
2. As Germans, we have a humanistic philosophical tradition, resurrected after the Nazi regime, that forms the basis of German Democracy. We therefore share the responsibility, and also ability, to find ethically clear solutions, based on universal principles laid down in our Constitution. Respected experts should inform our political elites, and all should clearly follow the two supreme principles of our Constitution, human dignity and the right to life of every human being, including the *in vitro* embryo. Decisions should be made by these elites rather than relying on the opinion of the public or other countries. Neighboring countries with more liberal approaches (for example, Great Britain and the Netherlands) that lack our historical experiences and idealistic philosophy might therefore learn from our model of decision-making and not vice versa. Thus, our strict legislation on reproductive technology should be adopted by others.
3. Our country faces fundamental transitions. The identity of our nation is fundamentally rooted in the principle that German citizenship is based on blood lines (i.e., determined by German parentage rather than place of birth) resulting in an image of a homogeneous people. For a long time the Germans were characterized as working people and intellectual heroes, who produced the best quality products in industry, literature, and science. The slogan “we are not an immigrant country” was upheld by the conservative forces even when it became clear that immigrants, invited to come to Germany as temporary guest workers in the economic boom of the 50s and 60s, were unwilling to return home but remained with their families. Recent decades have witnessed how this reality has weakened the concept of “Germanism”: Our economy is nearing recession and our Social System is depleted. The German birthrate is alarmingly low. Our children are not sufficiently prepared educationally, as shown in the international PISA student evaluation study, to compete with other industrialized countries. Therefore, German society and identity, as described above, is at stake. The only solution thought by some is to encourage immigration of more highly qualified persons, particularly in the fields of science and computer technology.

Although the ambivalence inherent in the German stem-cell debate, and the effort to find compromise leading to the Stammzellgesetz (StZG) by allowing the importation of embryonic stem cells, is readily understood by most German politicians, it is not easily accepted from an international perspective. This solution states that, in principle, research on embryonic stem cells derived from the destruction of viable human embryos is clearly an ethical violation and is to be prosecuted. German researchers can also be prosecuted for destroying embryos to produce stem cells, even if they undertake their research in other countries. It was often stressed during this debate that Germans do not want to be responsible for the destruction of a single embryo for scientific purposes. There was a parallel concern stressed in the political and ethical debates and in the mass media: Germans desperately need to keep up to date with scientific progress and to be world-class players in scientific endeavors. Research on embryonic stem cells appears to be scientifically and economically promising enough (at least for techno-optimists) to require importing stem cells from abroad.

The reasoning supporting the political compromise went as follows: For German research to avoid being responsible for the destruction of embryos, the importation of embryonic stem cells created before January 1, 2002, will be allowed. Due to StZG, embryonic stem-cell research is illegal in principle, but will not be punished if the newly established "Central Ethics Commission on Stem Cell Research" (ZES) approves the research, following strict guidelines. The formula "illegal but not punished" is also the understanding that underlies the abortion legislation in Germany. Since the abortion ruling of the German Supreme Court in 1975 and the EPA came into force,¹⁵ this became the only way to arrive at context-sensitive case law under the provisions of the Constitution respecting the rights and dignity of early embryos.

There was also a debate as to whether to require informed consent on the part of the couple or the donor, but such a proviso was not included in the text of the StZG. The debate centered on two arguments, both, to my mind, equally problematic. First, according to the information obtained so far, no established stem cell line before January 2002 clearly fulfilled the criteria of a bona fide informed consent. Because of the need for embryonic stem cells to save the economy and benefit future patients, we turned a blind eye toward the issue of informed consent. The second argument advanced in the StZG, rejecting the issue of making informed consent a prerequisite to importing embryonic stem cells, is closely linked to the mistrust, especially on the part of techno-skeptics, as to whether society at large can make ethically appropriate decisions. Such leaders as Regine Kollek, a prominent feminist member of the National Ethics Council, argued that we should not give couples or donors the right of decision regarding their eggs and embryos, because of their tendency to make inappropriate ethical decisions. We are, therefore, left with having to rely on the decisions of expert commissions and courts.

The German Public and Expert Discourse on Bioethical Issues and the Naturalistic Fallacy Paradigm

In the summer of 2005, an article by Kathrin Braun, "Not Just for Experts: The Public Debate about Reprogenetics in Germany"¹⁶ was published in the *Hastings Center Report*. This article is astonishing for two reasons. First, Kathrin Braun, an expert appointed to the first Parliamentary Commission on Law and

Ethics of Modern Medicine, has been one of the most influential adherents of the antibioethics movement in Germany. Her willingness to publish her view in a bioethical journal might suggest that she no longer considers bioethics to be a mere utilitarian tool to address slippery slope research activities.¹⁷ The second reason for surprise was her assertion that the arguments of the techno-skeptics, with whom she has been closely associated, are part of a “republican discourse” that represents the opinion of the German public. She characterizes this discourse as a common ethos to which policymakers should refer because, given their social and moral nature, problems cannot be solved without citizens and policymakers engaging in a broad public debate. On the other hand, in her view, the thinking of techno-optimists can be characterized as having a fundamental misunderstanding of the predominant public skepticism with regard to biomedical developments such as PGD and stem-cell research. According to Kathrin Braun, techno-optimists share the view of a model of public discourse that sees society as being unable to predict the future benefits of biotechnology, and thus considers bioethics to have the responsibility of educating and correcting public opinion.

Although I agree with her depiction of the underlying “techno-skeptic’s argument” that she puts forward in this article, I take issue with her claim that this view represents the majority opinion of the public. On the contrary, according to survey results, including our own, an overwhelming majority of the general public (88%), were in favor of legalizing PGD in Germany.¹⁸ The survey groups were made up of representative samples of the general population, of experts in the field of human genetics, ethics, midwives, pediatricians and obstetricians, and affected couples, that all favored legalization. Within these groups, the embryo is mainly regarded, not in terms of human dignity and right to life, but as a cell cumulus deserving of special protection due to its potentiality. In contrast, the techno-skeptical discourse, being the most prominent stream in left- and right-wing intellectual circles, is also socially skeptical, referring primarily to Michel Foucault’s concept of biopower, the history of Nazi Germany, fundamental principles of the German Constitution, and the naturalistic fallacy paradigm. The naturalistic fallacy, first recognized by David Hume as an impermissible inference of causes and effects, means that we cannot extrapolate from the “is” (here: societies’ opinion on PGD) to the “ought,” the course of action to be taken from a normative ethics perspective. In this line of argument, embryos are not only deserving of protection but also by some left-wing ethicists, such as Jürgen Habermas, to be considered as virtual participants in the discourse.

The same gap between societal opinion and the techno-skeptic view can be found with regard to the recent debate on advance directives. The Parliamentary Commission of Ethics and Law is recommending a surveillance of every decision to forgo treatment by courts, even if patient’s wishes, as expressed in an advance directive, and the medical situation are both unambiguous. Techno-skeptics also do not advocate recognizing the validity of advance directives in cases where a patient is in a permanent vegetative state. They take the view that individuals should be protected from their own former decisions, because it is impossible to foresee what someone may really want in this situation. Most of the representative surveys contradict this position and again indicate a liberal opinion also toward end-of-life decisionmaking in our society.

In summary, the absence of democratic processes among all participants is, to my mind, the most problematic feature of recent bioethics discourse in Germany. This lack results in a clash of paradigms creating a value–fact distinction where philosophers and those favoring normative bioethics devalue the contribution of descriptive bioethics and empirical facts. Although this linear model of ethical reasoning¹⁹ is recently and increasingly contested by social scientists and some philosophers, it still represents the orthodox view of German bioethical reasoning.

Perhaps, this recently revealed and obvious gap between the German bioethics debate and the results of bioethical field studies in Germany will contribute to the wider international bioethics discourse with regard to appropriate ways of finding solutions to bioethical problems and to further clarify the relationships between normative and empirical concepts.

Notes

1. Bundesärztekammer (BÄK). Diskussionsentwurf zu einer Richtlinie zur Präimplantationsdiagnostik. *Deutsches Ärzteblatt* 2000;97(9):A-525–8.
2. See Schiermeier Q. German Parliament backs stem cell research. *Nature* 2002;7(415):566; see also Heinemann T, Honnefelder L. Principles of ethical decision making regarding embryonic stem cell research. *Bioethics* 2002;16:530–3.
3. Projects on “Context sensitive bioethics in reproductive biomedicine” conducted by the Working group of Bioethics–Clinical Ethics and the Center for Conflict Studies at the University of Marburg, in cooperation with the Universities of Giessen, Heidelberg, Berlin, and Leipzig, funded by the Ministry of Education and Research (BMBF). See Krones T, Richter G. Preimplantation genetic diagnosis (PGD): European perspectives and the German situation. *Journal of Medicine and Philosophy* 2004;29(5):623–40; see also Krones T, Schlüter E, Manolopoulos K, Bock K, Tinneberg HR, Koch MC, et al. Public, expert and patients’ opinions on preimplantation genetic diagnosis (PGD) in Germany. *Reproductive BioMedicine Online* 2005;10(1):116–23.
4. Habermas J. *Die Zukunft der menschlichen Natur. Auf dem Weg zu einer liberalen Eugenik?* Frankfurt: Suhrkamp; 2001.
5. See Biller-Andorno N. *Gerechtigkeit und Fürsorge. Zur Möglichkeit einer integrativen Medizinethik.* Frankfurt a.M./New York: Campus; 2001; see also Braun K. *Menschenwürde und Biomedizin. Zum Philosophischen Diskurs der Bioethik.* Frankfurt a.M./New York: Campus; 2000; Haker, H. *Ethik der genetischen Frühdiagnostik. Sozialethische Reflexionen zur Verantwortung am Beginn des menschlichen Lebens.* Paderborn: Mentis; 2002.
6. Merkel R. Rechte für Embryonen? Die Menschenwürde lässt sich nicht allein auf die biologische Zugehörigkeit zur Menschheit gründen. In: Geyer C., ed. *Biopolitik: Die Positionen.* Frankfurt a.M.: Suhrkamp; 2001:51–65.
7. See Sperling S. From crisis to potentiality: Managing potential selves: stem cells, immigrants and German identity. *Science and Public Policy* 2004;31(2):139–49.
8. For the English translation of the Embryo Protection Act, see *International Digest of Health Legislation* 1992;43:740–5. In fact, the EPA does not contain explicit statements on the moral status of the embryo. Yet, according to the EPA, every totipotent cell after the syngamy of the two genomes is considered as an embryo and most of the interpreters see the EPA in the line of the ruling of the German supreme court (Bundesverfassungsgericht) in regard to abortion in 1975. In this judgment on abortion, prenatal life from the moment of implantation into the uterus was regarded as having a right to life. Accordingly, abortion was still defined as a criminal act, “illegal but not punished,” but every woman can abort after undergoing counseling in the first 3 months of pregnancy or can abort until the baby is carried to term, if the birth of the child was considered by the woman and her physicians to be an unbearable burden for her. The underlying reason for the implementation of the EPA was to protect the human embryo effectively in the process of in vitro fertilization (IVF), because in the definition of the 1975 judgment, the pre-implantation embryo was not explicitly considered. For an overview of the German debate on the status of the embryo and PGD, see Krones T, Richter G. Preimplan-

- tation Genetic Diagnosis (PGD): European perspectives and the German situation. *Journal of Medicine and Philosophy* 2004;29(5):623–40; see also Schreiber HL. The legal situation regarding assisted reproduction in Germany. *Reproductive Biomedicine Online* 2003;6(1):8–12.
9. See Kathrin Braun's view on the bioethics debate and alliances built in the debate, also referred to in the last paragraph of this article.
 10. See Hans Jonas' *The Imperative of Responsibility* (1984), first published in German: Jonas H. *Das Prinzip Verantwortung*. Frankfurt: Insel Verlag; 1979.
 11. See note 9.
 12. See Final Report of the Enquete-Kommission Recht und Ethik der modernen Medizin. Drucksache 14/9020, Deutscher Bundestag; 2002. Nationaler Ethikrat, Stellungnahme Genetische Diagnostik vor und während der Schwangerschaft; 2003. Available at: www.ethikrat.org/stellungnahmen/stellungnahmen.html.
 13. See note 7, Sperling 2004.
 14. See note 8 discussion.
 15. See note 8 discussion.
 16. Braun K. Not just for experts. The public debate about reprogenetics in Germany. *Hastings Center Report* 2005;35(3):42–9.
 17. See her book *Menschenwürde und Biomedizin*, quoted in note 5, which is considered as a central scientific basis of the German antibioethics movement.
 18. See note 3, Krones et al. 2005.
 19. See Lindemann Nelson N. Moral teachings from unexpected quarters. Lessons from the social sciences and managed care. *Hastings Center Report* 2000;30:12–7; see also Haimes, E. What can the social sciences contribute to the study of ethics? Theoretical, empirical and substantive considerations. *Bioethics* 2002;16(2):89–113; Hedgecoe, A. Critical bioethics: Beyond the social science critique of applied ethics. *Bioethics* 2004;8(2):120–43; Borry P, Schotsmans P, Dierckx K. The birth of the empirical turn in bioethics. *Bioethics* 2005;19(1):49–71.