

The End of the Great Bioethics Compromise

by Jonathan D. Moreno

The ideological struggle that riled bioethics in the most recent election cycle, embodied especially in the sometimes harsh debate about the President's Council on Bioethics, has been latent in the field from the very beginning. Joseph Fletcher's pioneering work in the 1950s and 1960s identified humanity's opportunity, made possible by the new era of genetic knowledge, for self-creation. Fletcher looked this brave new world in the face and liked what he saw, but as the first generation of self-conscious American bioethicists joined him in the later 1960s, they started ringing alarm bells. Gene therapy, recombinant DNA research, designer babies, organ transplants, xenotransplants, artificial organs, life-extending medical treatments, and bold human experimentation seemed to threaten traditional concepts of human boundaries.

Out of these esoteric worries and the public scandals and controversies that sometimes accompanied them, bioethics developed the consensus philosophy and social role it has largely assumed since the 1970s: Keep a close eye on scientific innovation for its societal implications, apply the brakes now and then as needed through regulations or guidelines or just the glare of public discussion, and let the bioethicists be the ones to analyze how all this is going. Call it the Great Bioethics Compromise.

A few scattered critics have argued that this arrangement ultimately guarantees science a green light, disguised as a flashing yellow, and empowers an in-group of self- and mutually-appointed bioethicists to manage traffic. Mean-

while, the argument goes, the public is bought off through superficial assurances that the shop is being watched. Even the unique and well-funded Ethical, Legal, and Social Issues program of the National Human Genome Research Institute can be viewed as a happy coincidence of the interests of science, which wants to appear to be restrained, and the interests of ethicists, who want to actually be paid.

One of the few who has for the past thirty years expressed varying degrees of discomfort with this implicit arrangement is Leon Kass. His gradual and somewhat grudging acceptance of in vitro fertilization technology has not diminished his consistent reservations about where science is taking the species. Also relevant is the fact that, until his current appointment, Kass seems to have studiously avoided becoming a part of the regulatory ethics apparatus of advisory committees, commissions, and the rest, even though as an early Hastings Center Fellow he certainly had the connections and status to be involved. He avoided such activities, that is, until he could be assured of leading a body whose bioethics agenda he could set, including avoiding moral consensus as a goal. What distinguishes Kass's approach to bioethics from that of many of his contemporaries is not so much his skeptical attitude about the prospects the life sciences offer humanity, as the fact that he is one of a very few whose discourse continues to resemble that of the prophetic founders of the field.

Kass never quite bought into the Great Bioethics Compromise. In the

mid-1970s, Kass was one of a small group, perhaps a few dozen scholars and scientists, who met together as often as they could to share a common fascination for bioethical issues. The Compromise was established toward the end of that decade, in the wake of the Quinlan decision (1976) and during the National Commission for the Protection of Human Subjects (1974-78). In retrospect, it is remarkable that it all happened so fast, largely without the protagonists' awareness.

The Compromise was made possible partly thanks to an implicit agreement that in effect allowed deep divisions about certain issues related to the origins of human life to be courteously ignored. Until around 1980 the group was so small that all of its members fit into a single room, and they needed to get along well enough to keep talking. But consider that if *Roe v. Wade* had been decided in 1982 rather than 1972, bioethics might have been deeply split and the Great Bioethics Compromise severely threatened. As it was, there were so few people in the field in 1972 that the full effects of the decision were not immediately felt in incipient bioethics. The fact that the Callahans—Dan and Sydney, a founding couple of bioethics—themselves embodied the pro-choice/pro-life division and yet obviously kept talking to each other provided comfort that the rest could as well.

Although during the late 1970s and 1980s there were signs that not all was well, the agreement to stay civil nonetheless held, enabling bioethicists to emerge in that decade in the role the Great Compromise made possible. One notable incident was the birth of Louise Brown in 1979 with the help of in vitro fertilization. Because the results of IVF came to seem benign, we have largely forgotten the anxiety that accompanied it. Still, that brief but vigorous discussion prefigured much of the current debate about reproductive cloning.

Another incident that could have threatened the Great Compromise was the Reagan administration's decision in 1980 not to appoint the National Institutes of Health Ethics Advisory Board, a body put in place by the federal regula-

tions to identify protocols for IVF research that could receive federal funding. This maneuver effectively prevented the NIH from funding IVF research, and that de facto ban has continued ever since. But what was at the time a surprising and, to some, disconcerting politicization of a bioethics body was of interest mainly to the handful of individuals in the field. Since bioethicists didn't yet identify strongly with one partisan group or another the implicit agreement was not threatened.

A third incident that could have undermined the courteous surface of the growing bioethics community was another Reagan administration decision in 1984: an unsuccessful attempt to apply federal law prohibiting discrimination against the handicapped to decisions to deny life-sustaining treatment to severely ill newborns. The issue was somewhat obscured by the clumsy apparatus the administration tried to impose on neonatal intensive care nurseries, including a notorious "hot line" to facilitate whistle blowing on discriminatory non-treatment by nurseries. But presumably those who were sympathetic to the philosophy behind the Baby Doe Rule, with strong reservations about "quality of life" judgments, were less discomfited by the episode than those who were not.

A few years later, an attempt to create a congressional bioethics commission to succeed the President's Commission ran aground because no agreement could be reached on pro-life and pro-choice members. That body never met, and the legislation that created it ran out its clock. In this case, though, the context was so explicitly partisan that there was little temptation to threaten the politesse back in bioethicsland.

All in all, the Great Bioethics Compromise attained more momentum as academic positions, research centers, professional organizations, ethics committees, and government panels became a steady parade in the later 1980s and 1990s. This movement was reinforced by the fact that many of the issues occupying the field did not obviously engage the early worries about reshaping the human. A blissful and somewhat mis-

leading *pax bioethica* held its shape for two decades.

As H. Tristram Engelhardt, Jr., has argued, the new field of bioethics was embraced at least partly because it promised to provide a space for morally neutral, apolitical discourse.¹ Within the field, the Compromise allowed its members to participate in this understanding. For many reasons, including the charged environment created by a deeply divided polity, the event of the President's Council on Bioethics has occasioned a shock to the field's academic civility and has destroyed the Great Bioethics Compromise.

With the dissolution of the Great Bioethics Compromise the field has fully lost its innocence. It is best for both sides to face this fact and to decide that they will address the excesses of the past several years. Now that the administration that appointed the Council has been decisively re-elected, a bit of noblesse oblige with regard to its critics is in order. For example, the Council could decide to push the envelope of its charter, as other presidential commissions have done, and take up some subjects that are not mandated by the White House but very important to the country. An example is the health insurance crisis, which surely raises moral as well as political questions and will have to be addressed someday. Moving even a little beyond the sexy biotech issues to those often collected under the rubric of justice would go some distance to displaying good faith, even if the conclusions were not progressive ones. It might even help advance the "richer bioethics" the Council says it wants to pursue.

As for the critics, it is no use to blame the President's Council for the fact that it was appointed by a partisan president. Although partisanship was somewhat less obvious in the formation and membership of previous bioethics commissions it was nonetheless a factor, and after all presidents do have the right to choose their own advisors. (I say this as one who resigned from a Bush-appointed advisory committee on human research protections as publicly as I could. I thought it peculiar that I was not asked if I was willing to serve under a charter

that identified embryos as vulnerable human subjects along with pregnant women, prisoners and children, thus begging a lot of important questions.) The texts produced by the Council provide plenty of fodder for debate. They should be subjected to systematic evaluation, as have the products of previous bioethics commissions. Yet the literature has so far fallen short of targeting the Council's reports.

Such is life after the Great Bioethics Compromise. Whether and how we can keep talking to each other during the next years may define the outcome of what may justly be characterized as a crisis of identity and perhaps the survival of bioethics as we have known it.

Acknowledgment

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1. H. Tristram Engelhardt, Jr., "Consensus Formation: The Creation of an Ideology," *Cambridge Quarterly of Healthcare Ethics* 11, no. 1 (2002): 7-17.