

In Qualified Praise of the Leon Kass Council On Bioethics

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Abstract: This paper argues the distinctiveness of the President's Council on Bioethics, as chaired by Leon Kass. The argument proceeds by seeking to place the Council in proper historical and philosophical perspective and considering the implications of some of its work. Sections one and two provide simplified descriptions of the historical background against which the Council emerged and the character of the Council itself, respectively. Section three then considers three basic issues raised by the work of the Council that are of relevance to philosophy and technology as a whole: the role of professionalism, the relation between piecemeal and holistic analyses of technology, and the appeal to human nature as a norm.

Key Words: Bioethics, Human Nature, Philosophy, Professionalism, Technology

Since its emergence as a well defined field of discourse in the 1970s bioethics has, more than any other form of critical reflection on technology, achieved specific institutional expressions and influenced the practice of technoscience. What follows is an effort to place in historical perspective one of these institutional formations — the President's Council on Bioethics established in 2001 by U.S. President George W. Bush and chaired until late 2005 by Leon Kass — and to consider its implications for philosophy and technology studies. To this end the paper will first review related institutional developments in bioethics, then offer an interpretative description of the Kass Council, before concluding with some general critical comments.

1. U.S. Federal Bioethics Commissions before Kass

From its beginnings bioethics has been manifested not only in academic research and teaching, and in the creation of non-governmental centers, but also in government-related committees or commissions directed toward the formation and implementation of public policy. With regard to academic research and education, the Hastings Center (founded 1969) and the Kennedy Institute (founded 1971) led the way; bioethics journals and bibliographies were

established, an *Encyclopedia of Bioethics* was edited (first edition, 1978). With regard to governmental entities, the 1970s and 1980s saw the establishment of federally mandated Institutional Review Boards (IRBs), Institutional Biosafety Committees (IBCs), and Hospital Ethics Committees (HECs) to bring reflective expertise and public consensus to bear on advancing scientific and technological forms of medical research and clinical practice. In the field of biomedicine issues of technology and ethics were given significant theoretical and practical expression.

In many countries there have also existed at the national level bioethics commissions which, in the United States, have been associated with a series of presidential administrations. During the administration of Republican President Gerald Ford (1974–1977) the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, administered by the Department of Health, Education, and Welfare, drafted guidelines useful to both IRB oversight regarding research and HEC guidance of clinical practice. Another recommendation of this National Commission was to establish an Ethics Advisory Board (EAB). During its brief existence from 1978 to 1980, the EAB reviewed issues involving fetuses, pregnant women, human in vitro fertilization (IVF), and initiated a moratorium on human embryo research.

Originally intended to become a standing federal entity, the EAB was disbanded because of perceived overlap with the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research established in 1978 by Democratic President Jimmy Carter (1977–1981). The Carter Commission, whose report on foregoing life-sustaining treatments led to the development of legal forms for personal directives concerning how one would want to be treated if unconscious and on artificial life support (often termed "living wills"), expired in March 1983 under Republican President Ronald Reagan (1981–1989).

The distinctive Reagan administration contribution was a Biomedical Ethics Advisory Committee (BEAC) to be appointed by a Biomedical Ethics Board (BEB) composed of six Senators and six Representatives. With its creation delayed for more than two years by partisan politics related to the abortion issue, the BEAC officially expired in September 1989 under Republican President George H. W. Bush (1989–1993).

Then in 1995 the administration of Democratic President Bill Clinton (1993–2001) created the National Bioethics Advisory Commission (NBAC). Originally NBAC was tasked with revisiting questions of human subjects research and investigating the proper uses of genetic information. However, after the 1996 cloning of the sheep Dolly, Clinton requested that NBAC direct its attention to the prospects for human cloning. Cloning thus became its first report, which recommended federal legislation to ban somatic cell nuclear transfer to create children. At the same time it argued such legislation should not interfere with less ethically problematic forms of cloning. Before its 2001 expiration, NBAC further produced reports on research involving biological materials, persons with mental disorders that impaired decision-making, and human embryonic stem cells. The policy proposed by the Clinton administration in its final year was to fund embryonic stem cell research but not stem cell line creation.¹

2. The Kass Council and Its Character

The human embryonic stem cell issue sparked creation of the President's Council on Bioethics by Republican George W. Bush. The issue had actually come up during one of the presidential campaign debates, and Bush had treated it as settled by the National Institutes of Health policy. But after winning the election, Bush revisited the issue, and in August 2001 gave a nationally televised address dealing with stem cell research. Many scientists had been arguing that research using human embryonic stem cells could yield therapies for disabilities associated with Alzheimer's and Parkinson's diseases, diabetes, and spinal cord injuries. But extracting stem cells from human embryos destroys the embryos, which conservative ethicists and many of Bush's Christian supporters found objectionable. The particular question for Bush was whether to endorse the proposed and already ready restrictive Clinton policy or to make the policy even more restrictive. His decision was a slight narrowing that would allow federal funding for research only on those stem cell lines that had already been extracted before the date of his speech. He concluded by announcing that given the importance of this kind of issue he would also create a new presidential council on bioethics to be chaired by Leon Kass in order to further examine the ethical and political issues surrounding all biomedical research.

Kass had earned a BS in biology and an MD from the University of Chicago, followed by a Ph.D. in biochemistry from Harvard University. After some years doing medical research at the National Institutes of Health, he taught in the classics based curriculum St. John's College (Annapolis, Maryland), and then

returned to the University of Chicago as a professor in the classics oriented Committee on Social Thought.

Kass's shift from medical research to philosophy was influenced by Leo Strauss, a professor at Chicago and St. John's who sought to revive the philosophical perspective of Socrates, Plato, and Aristotle along with the theological wisdom of the Bible. In promoting these ancient traditions, Strauss was critical of the modern thought that began with Niccolò Machiavelli, Francis Bacon, and René Descartes. He was especially skeptical about the modern project, to be driven by needs rather than guided by ideals, for a new science that would conquer nature. Such a project was likely to eventuate in a willful pursuit of power unconstrained by moral or religious limits that would be ultimately self-destructive. When Kass expressed a version of this skepticism about modern science and technology, he won the attention of those North American political and religious conservatives who themselves harbored suspicions of the modern scientific project as subverting the moral and religious traditions.

In consultation with Kass, Bush appointed 17 persons to the Council. Critics suggested this group was biased by the inclusions of a significant number of political and religious conservatives. Not only did Kass note some hypocrisy in the complaint, since previous federal commissions had excluded representatives of the right to life movement, but it soon became apparent that there was genuine disagreement within the Council. Some members were in fact strong proponents of biotechnology who dissented from Kass's moral criticisms of science. Indeed, in his original executive order creating the Council, Bush had indicated that "the council shall be guided by the need to articulate fully the complex and often competing moral positions on any given issue and may, therefore, choose to proceed by offering a variety of views on a particular issue rather than attempt to reach a single consensus position" (Bush 2001). Kass himself acknowledged that insofar as the Council engaged in serious discussions of the competing human goods animating biomedical research and technology, disagreement would naturally arise because different people often weigh such goods differently. What was important, Kass insisted, was that every serious point of view should be considered as part of a deliberative reflection that might well not reach consensus.

Bioethics scholars also voiced complaints that the Council contained few members who were professional bioethicists. But this exclusion was deliberate, and at the first meeting of the Council, Kass indicated a desire to steer discussion

away from the methods and topics that had dominated bioethics as a professional field of academic expertise. “This is a council on bioethics, not a council of bioethicists,” he explained. “We come to the domain of bioethics not as experts but as thoughtful human beings who recognize the supreme importance of the issues that arise at the many junctions between biology, biotechnology and life as humanly lived” (President’s Council on Bioethics 2002a).

Kass thus guided the Council toward a kind of ethical and political inquiry in which thoughtful persons consider the perennial questions of human life — often using classic texts that illuminate a spectrum of basic alternatives — without expecting to reach closure on the answers. In its initial meeting, Kass actually began by leading a discussion of Nathaniel Hawthorne’s short story, “The Birth-Mark,” about a scientist who unintentionally kills his beautiful wife while trying to remove a minor blemish. The implication was that the scientific pursuit of power and perfection could, by failing to appreciate the limits of the human condition, turn utopianism into an enemy of the good. Kass thus sought to transform Bioethics Council discussions into something like a seminar on science, technology, and the human condition that would draw not just on technical papers but on the wisdom common to all the humanities, from literature and philosophy to history and religion.

The Council was nevertheless viewed by many as under the thumb of a political agenda. Such a possibility was highlighted when, in early 2004, there was a slight adjustment in Council membership, an event that played out on the pages of the *Washington Post* (see Weiss 2004 and Blackburn 2004, with a response from Kass 2004). More substantively, bioethicist Eric Meslin (2004) argued that the council was not adhering to the spirit of the of Federal Advisory Committee Act of 1972, and bioethicists George Annas and Sherman Elias criticized Kass for leading a “neoconservative bioethics council” that pursued “a narrow, embryo-centric agenda” (Annas and Elias, 2004, p. 19). Although the moral status of human embryos is an important issue, Annas and Elias admitted, such issues as access to healthcare, the commercialization of science and medicine, drug pricing, and bioterrorism also deserve attention. They further charged that neoconservatives such as Kass failed to embrace a global bioethics based on human rights because embryos do not have human status in existing international human rights documents.

In response, Kass suggested that critics had not read the Council’s reports carefully enough to see how fair it had been to arguments on all sides of the

various debates with which it dealt. Journalists, for instance, had focused attention on some political implications of the Council's recommendations rather than the reasoning supporting them. In many cases recommendations were in fact quite limited, as in reports on using biotechnology for enhancing human life, on stem cell research, and on the regulation of reproductive technologies. Although such reports argued Kass's fears about the moral dangers from biotechnology, they also regularly acknowledged arguments promoting biotechnology. Indeed, part of Kass's concern has been the attractiveness of the pro-biology arguments. Considering them is part of Kass's way of promoting serious and fair-minded discussion of the deep moral questions raised by modern science and technology.

3. Implications for Philosophy and Technology

During Kass's four-year tenure as chair, the Bush Council on Bioethics experimented with at least three distinctive practices at an important juncture in the historical development of biotechnologies. Since the 1500s the modern technological project has addressed itself primarily to meso- and macro-scales of the external material world; the forces in nature have been progressively harnessed to increase human productivity and to gird the planet with high-speed systems of transportation and communication while subjecting the biosphere to chemical transformation and the risk of nuclear weapons. In the last quarter of the 20th century this project turned its attention toward the micro-level internal workings of the human body and began to imagine the nano-scale reconstruction through design of both life and materiality. At the inauguration of this new phase in the development of modern technology the Kass Council sought to promote thinking (a) that enrolled more than professional bioethicists, (b) that did more than piecemeal or specialized analyses, and (c) that referenced human nature as a norm. Each of these characteristics has implications for understanding the relationship between philosophy and technology.

With regard to stepping outside the professional bioethics community: The professionalization of bioethics may be seen as a version of professionalization of philosophy. In its Greek origins, Socrates criticized philosophical professionalization by distinguishing himself from those who charged money for their teaching and by presenting the practice of philosophy as coextensive with the human good. "The unexamined life is not worth living for humans" (*Apology* 38a). Even in its early modern forms, philosophers such as Bacon and Descartes placed philosophy in the midst of human affairs. The professionalization that

took place in the 20th century tended to turn philosophers into experts who work in universities at increasing removes from the public. Something similar took place with bioethicists during the 1980s and 1990s: They became experts who assisted bioscientists and biotechnologists in their work. The Kass attempt to step outside this model of bioethical professionalization thus poses a question for any philosophical attempt to grapple with technology. How much should the philosophical engagement with technology be a matter for experts? To what extent should it instead be an effort to promote critical reflection among a democratic citizenry?

By their very character, questions concerning the proper role for technical expertise in personal and public policy decision making are not answerable by experts alone but require collaboration between non-experts and experts. Moreover, different institutional formations for the development and utilization of expertise have emerged in different countries. For instance, one analysis of the utilization of scientific and technical expertise in Germany noted how such expertise could function in two quite different ways: to improve the quality or effectiveness of political decision making or to rationalize and justify political decisions already made (Brown, Lentsch, and Weingart, 2005). The Kass goal, however, representing what might be called a conservative political agenda for revisiting how science and technology have been used to endorse liberal political interests, has been more to utilize expertise to bring otherwise often marginalized issues and perspectives into the realm of public discussion. The aim has been to revisit or investigate a number of specific policy decisions and the issues at stake as more open aspects of the public agenda.

With regard to the scope of such reflection, whether expert or democratic: Should it proceed on a piecemeal, case-by-case basis, or might it be appropriate to attempt to think technology in general? Coordinate with professionalization has been the rise of disciplinary specialization. Especially in science, analytic distinctions have been drawn between physics, chemistry, biology, and more. Philosophy itself has become more and more fragmented into logic, epistemology, metaphysics, ethics, aesthetics — even 18th or 19th century epistemology or the philosophy of science or pragmatism. In the philosophy of technology there has been an on-going argument about whether there is even such a thing as technology (in the singular), or whether what exists are only technologies (in the plural). On the one hand, division of labor, disciplinarity, and specialization have all been praised for their effectiveness and the ways they have increased the production of knowledge. On the other, there has been

increasing recognition that reality itself seldom appears with firm disciplinary divisions and that certain problems are amenable only to multi- or inter- or trans-disciplinary collaboration. Too much focus on rocks alone blinds us to mountains. Thus, in response to the strong tendency in bioethics to focus on case studies of particular issues (the just allocation of dialysis technologies, the ethics of heart transplants, confidentiality in information records keeping, etc.) the Kass Council chose (imitating Martin Luther) to “sin boldly” by conceptualizing biotechnology as a whole and even technology in general. The result, in effect, is to challenge the philosophy of technology to reconsider its contemporary rejections of grand narratives (e.g., Jacques Ellul’s *La Technique*) in favor of the manifolds of social constructions and conceptualizations in technologies.

Finally, driven in part by its commitment to public discourse and attempts to talk about technology as a whole, the Kass Council has sought to revive the possibility of referencing nature — especially human nature — as a norm. This is undoubtedly the Council’s most problematic stance. It no doubt constitutes in part an extension of Kass’s effort in his 1985 book, *Toward a More Natural Science*, to respond to Strauss’s admission in the preface to *Natural Right and History* (1953) that the demise of natural law ethics can be traced to a loss of the teleological understanding of nature, which was itself at the core of the modern scientific project that itself turns science into the handmaid of technology. But more importantly, it derives from the fact that in the public realm nature is much more commonly taken as a basis for normative reflection than, say, utility or deontology. Despite more than five hundred years of scientific corrosion acting on the concept of nature, nature to some degree remains a source of awe and a kind of ontological correlate of moral order: “the starry heavens above me and the moral law within me” (Immanuel Kant, *Critique of Practical Reason*, 1788, Akademie vol. 5, p. 161).

It is worth noting, for instance, the persistence of nature as a touchstone in both liberal and conservative traditions of criticism in North America. Political liberals tends to take external nature (the environment) as some kind of good to be preserved, while political conservatives often appeal to social or inner nature (social traditions and human nature) as norms. The former criticize environmental pollution, the latter attempts to alter traditional social orders, including especially religious ideas and beliefs, or proposals to re-engineer human nature. What is significant is that both sides of the political spectrum grant some normativity to some (however attenuated) aspects of nature. Is ethics best served by the prosecution of a philosophical attack on even this residual

form of nature, or by some attempt at the sympathetic interpretation if not rehabilitation of such appeals?

Consider from this perspective the Bush Council report *Beyond Therapy: Biotechnology and the Pursuit of Happiness* (2003). In this unexpectedly best selling volume — the popularity of which was paralleled by that of the Council anthology *Being Human* — Kass and colleagues sought to consider broad issues about what it means to be human in the presence of possibilities for the re-engineering not just of the external world but of the inner worlds of human birth, growth, and experience. The 400 page report examines the biotechnological possibilities in both genetic engineering and drug treatment for the parental enhancement of children (chapter 2) and the adult auto-enhancement of, for example, athletic performance (chapter 3). Also considered are the prospects for the transmutation of the experience of aging (chapter 4) and the manipulation of emotion and cognition (chapter 5). In each instance the report expresses special concerns about possibilities for the deformation of humanity not from above by totalitarian governmental use of biotechnology but from below by positive consumer endorsement of the biotechnological satisfaction of desires that a traditional perspective would likely judge to be illegitimate temptations rather than legitimate needs. And precisely because of the admitted inadequacy of the therapy vs. enhancement distinction, *Beyond Therapy* suggests an effort to revive nature as a normative category. Whether and to what degree this is possible remains a fundamental challenge.

These characteristic experiments in bioethical reflection by the Kass Council pose more general challenges in at least two areas. First, there is a challenge to diversify efforts for the critical examination of science and technology — such as those associated with the Ethics and Values Studies program of U.S. National Science Foundation program or the Ethical, Legal, and Social Implications (ELSI) program of the Human Genome Program. One may well ask whether the Kass Council exemplifies approaches that might complement or enhance these other efforts. Second, there is a challenge to the professional philosophy and technology community. Might there be a danger with philosophy and technology studies becoming too professionalized or specialized? Any such questioning will need to include a degree of self-criticism that considers the special responsibilities of a regionalization in philosophy which, more than the philosophy of science or of art, has as part of its heritage public responsibilities and a large measure of ethical concern.

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