

Corinna Jung: Ethics committees – A New Way to Find Solutions?

Presentation on the 4S Annual Meeting of the Society for Social Studies of Science (4S)
held jointly with European Association for the Study of Science and Technology (EASST)
August 20 – 23, Rotterdam, The Netherlands

Ethics committees – a New Way to Find Solutions?

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1 Introduction

In today's societies, many problems can hardly be solved by only one scientific discipline any more. This is a common place. That's why ethics committees on different levels of society become more and more important. Ethics as a new (old) scientific discipline seems to arise.

But how do ethics committees find solutions? How do they work?

These questions are difficult to answer. I will try to answer at least a bit of it by having a closer look at two ethics commissions, which were to prepare recommendations for the German Parliament and the Government for the legal regulation of advance directives.¹

2 The Situation in Germany

In Germany, we had a very special situation in the year 2003/2004: There were two commissions on the highest political level that were concerned with advance directives. The one was the parliamentary commission “Ethics and Law in Modern Medicine”, the other was the commission of the Ministry for Justice named “Patients Autonomy at the End of Life”.

Both commissions consisted of experts from different disciplinary backgrounds, both commissions prepared a report with recommendations, but: They presented very different recommendations.

¹ Advance directives are instructions given by an individual specifying what should be done for his health in case he is no longer able to make decisions. (http://en.wikipedia.org/wiki/Advance_directive [August 4th,2008]) For example: do I want artificial nutrition or artificial respiration, blood transfusion, antibiotics, ...

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Whereas the parliamentary commission had a majority for “protection of life” and wanted to allow the discontinuation of live support only for irreversible diseases regardless of medical treatment, the governmental commission strengthened the patients' autonomy at the end of life and was pro "right of self-determination". They wanted to allow a validity of advance directives also for non-irreversible diseases (like Alzheimer's disease or persistent vegetative state).

How could this happen? Why did we have two commissions at the same time?

3 The Appointment of the Two Commissions

There was a concrete case in the year 2000: a man fell into an irreversible coma after a cardiac attack. For such a case, he had been well prepared. He had written an advance directive. There he had regulated, in case of an irreversible coma state he would not want life support any more. Also, he had made his son to be his representative and to stand for his will.

After one and a half years in coma, therefore, the son wanted his fathers' life support to be stopped. He asked for permission at the county court to have his fathers stomach tube removed. The county court rejected it. So the case went to another court that decided the first court could not have rejected the sons request at all in the first place. Finally, the case came to the highest court in Germany, the Federal Court of Justice. There, the judges strengthened the power of advance directives in general – but unfortunately, they left many questions unanswered. For example: should advance directives count in all cases or only for irreversible diseases?

Therefore, the minister for justice decided to work on a legal regulation for advance directives. She initiated a task force named “Patients Autonomy at the End of Life”. This committee met for the first time on September 8th, 2003 and presented its recommendations in form of a report on June, 10th 2004.

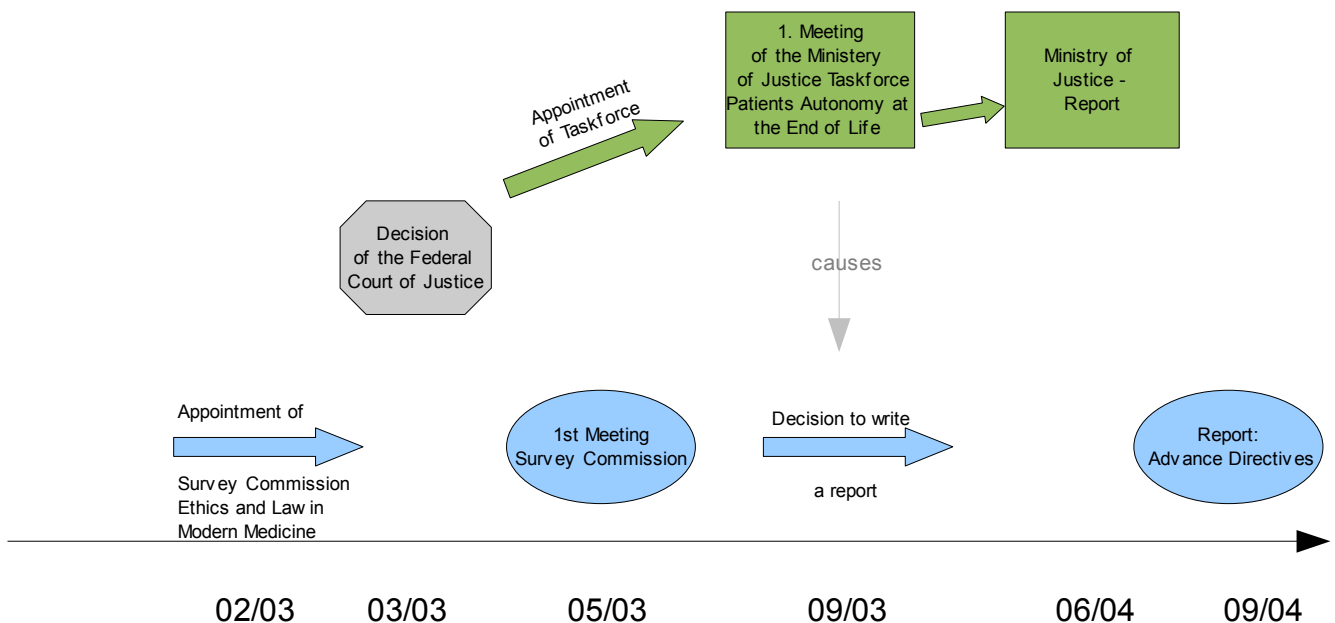
Now it becomes complicated: Before the justice minister had decided to install her commission, the parliament had already decided to continue their ethics commission. In the legislation period before, this ethics commission was installed under the name “Law and Ethics in Modern Medicine”. It was mainly concerned with beginning of life issues like stem cell research and cloning. Now, in the second legislation period, they had named the commission “Ethics and Law in Modern Medicine” and had already decided to look closer at end of life issues like palliative care, hospices and advance directives. This happened in February and their first meeting took place in May 2003.

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When now the commission of the ministry was initiated, the parliamentary commission decided to work out recommendations about advance directives first. They also had in mind to be faster than the other commission, but this didn't work out. So they presented their report in September 2004. This commission was therefore earlier, later, and at the same time.

Figure 1: Chronology of the Appointment of the Two Commissions



I already mentioned: the results of both commissions were very different. Therefore, I will look closer at the commissioners in both commissions – because this shows us the selected experts and the provided expertise.

4 The Commissions

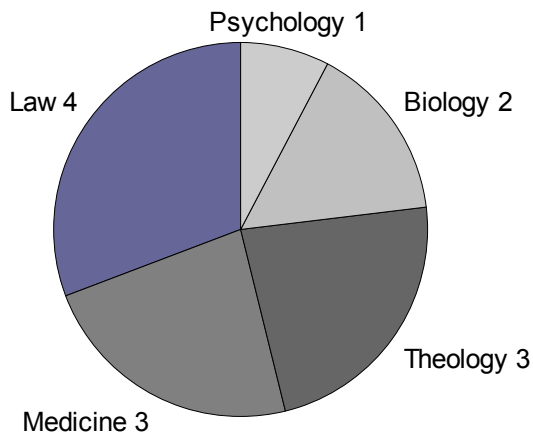
The parliamentary commission was constructed for the whole legislation period. It was partly filled with politicians and partly with experts (13 politicians, 13 experts). The experts came from various disciplines like law, medicine, theology and every party appointed them paritatically.

This is pretty much a mode 1 experts commission (Gibbons et al 1994), at least at the first glance.

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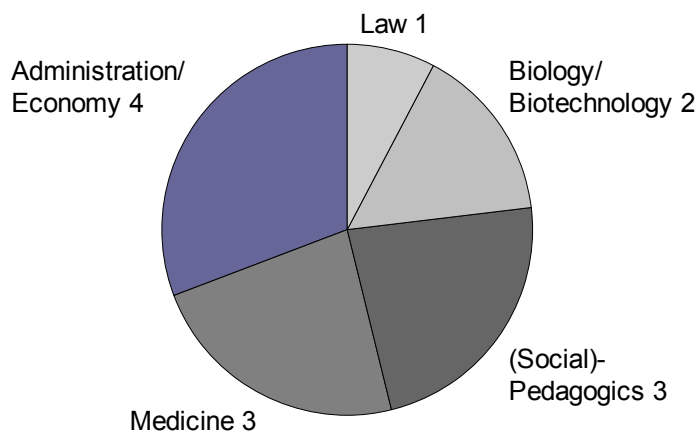
Figure 2: Experts in the Parliamentary Commission



Law	Medicine	Theology	Biology	Psychology
4	3	3	2	1

I think it is also necessary to look at the backgrounds of the politicians, because they are not originally politicians, they do also provide a certain expertise which is important for the whole deliberation process.

Figure 3: Politicians in the Parliamentary Commission



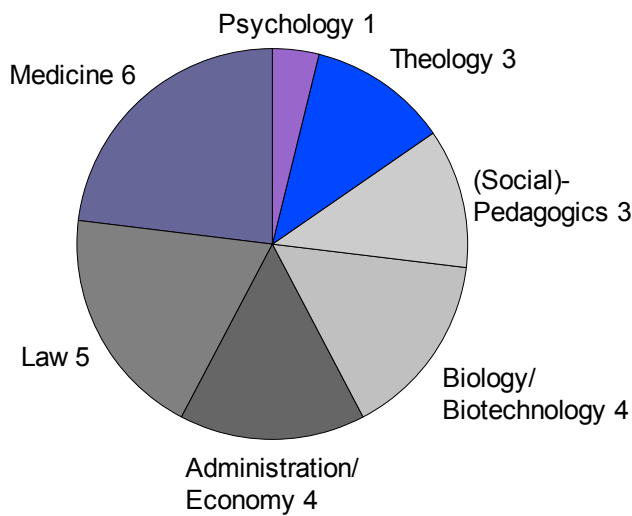
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Administration/ Economy	Medicine	(Social)- Pedagogics	Biology/ Biotechnology	Law
4	3	3	2	1

When we put them together, it looks like this:

Figure 4: Politicians and Experts in the Parliamentary Commission



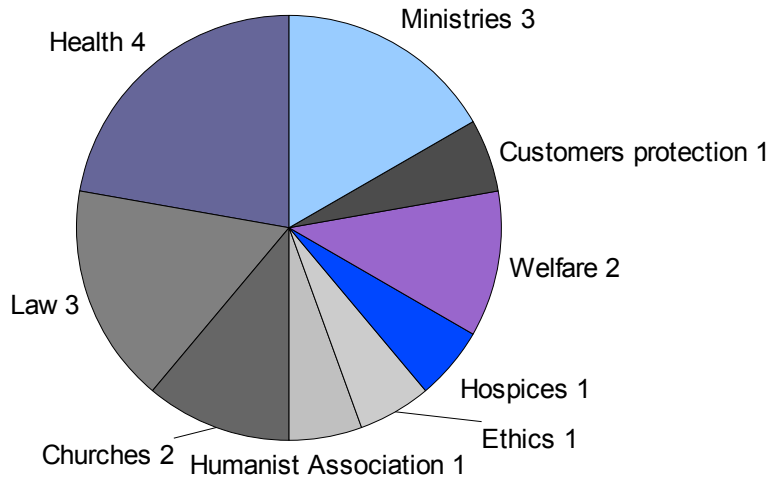
Medicine	Law	Administration/ Economy	Biology/ Biotechnology	(Social)- Pedagogics	Theology	Psychology
6	5	4	4	3	3	1

In contrast to the parliamentary commission, the governmental commission consisted of stakeholders. There were nine representatives of various interest groups like the hospices movement, consumer protection, welfare, two representatives for the conference of federal ministers for justice and the conference of federal ministers for health. Also there were three individually chosen experts: two physicians (Palliative care) and one medical ethicist, the chair, who was a former judge of the of Federal Court of Justice, and three representatives from diverse ministries (Ministry of Justice; Ministry of Health; Ministry of Women, Elderly People, Families and Youth). These ministry representatives were not allowed to vote in the end, they only took part in the deliberation process and reported to their ministries.

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Figure 5: Experts in the governmental commission



Health	Law	Churches	Humanist Association	Ethics	Hospices	Welfare	Customers protection	Ministries
4	3	2	1	1	1	2	1	3

I grouped the members of this commission a bit, but still you can see, this is definitely a mode 2 commission. But here, too, the biggest part of representatives comes from the health section and the law section. In contrast to the other commission, however, they were representatives of associations, not only representatives for their disciplines.

5 How People get in those Commissions

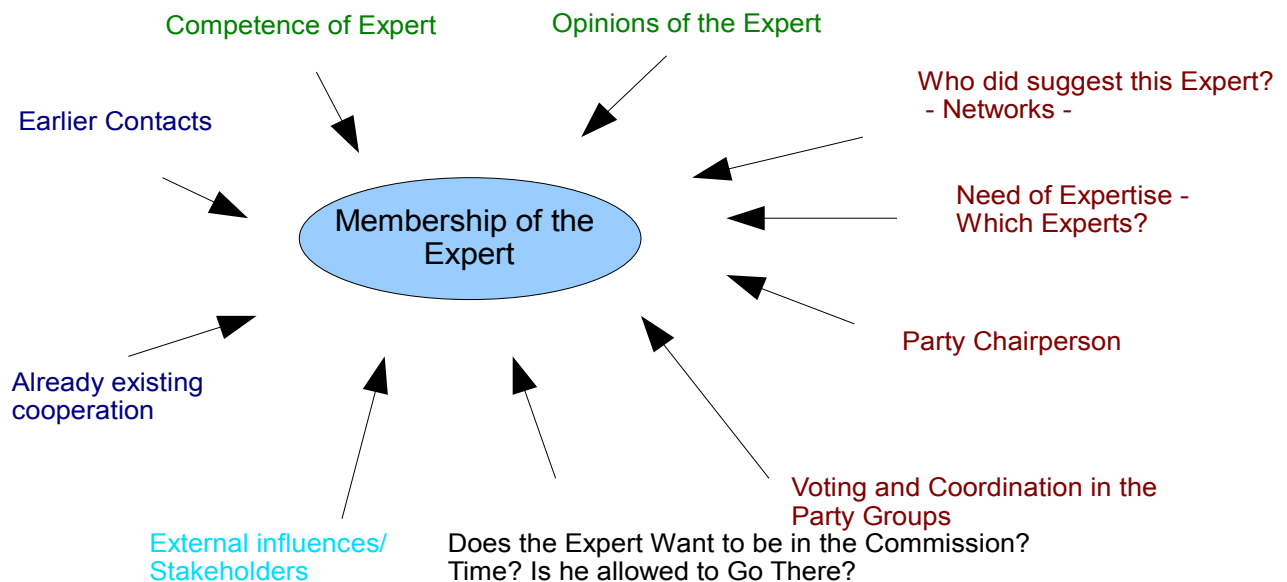
I also looked closer at the way how people got their appointment to those commissions. Because of time constraints, I will only show you one diagram about the appointment of the experts to the parliamentary commission:

I made 29 interviews with members of both commissions, about 16 with members from the parliamentary commission. In these interviews, I got great interview sequences about the appointment procedure and put some of them in the diagram below. (I did not distinguish between the distinct political parties because this is about showing the diverse influences in the whole political process)

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Figure 6: Influences on the Experts' Membership



You can see that there are different levels of influences. The green written represents the potential experts' expertise and conviction, e.g. a conservative party like the CDU would certainly not appoint an expert who thinks positive about euthanasia or physician assisted suicide.

The blue shows earlier or already existing collaboration with the experts.

The red letters show the influences inside the particular parties. Each party discussed what expertise they would need², and they arranged it inside their party groups. In some cases, the party chairperson also got involved.

Also, it was important which politician did suggest an expert. Some decisions were therefore not about the expertise and competence of the suggested expert but rather about the person who had recommended him.

Of course, there were also influences from the outside, like some concerns of interest groups or the interest of the appointed expert or his time schedule.

² This was actually only important for the bigger parties, the SPD and the CDU, because they appointed 10 experts whereas the FDP appointed only one expert and the Green party two experts (This was proportional to their seats in the Parliament)

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It is also very interesting to look at the politicians in the commission and how they got there. Or how the experts got in the commission of the Ministry of Justice. Unfortunately, there is not enough time to do so. But this should already be enough at this place to show, how contingent the process actually is.

6 Conclusions

I wanted to show that special problems need special ways to find solutions - and ethics commissions seem to provide such solutions. The fact, however, that we had even two commissions at the same time, shows perfectly well the complexity of the process. It demonstrates that there are different ways to find such answers. (And it is obsolete that there would have been many other possibilities to appoint experts).

I wanted to show especially, that commissions develop specific logics. Therefore I pointed out that the one commission started to talk about advance directives because the other commission was installed, and I illustrated how the experts came in the parliamentary commission.

Because ethics commissions are important for our societies, it is crucial to look closer at their (internal) logics, the circumstances, the distinct contexts and situations of such commissions because it gives an impression of the contingency in the process.

Literature

Gibbons, Michael et.al. (1994): The New Production of Knowledge. The Dynamics of Science and Research in Contemporary Societies

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