Applied Ethics

Perspectives from Asia and Beyond

Edited by Kohji Ishihara and Shunzo Majima

Contents

Preface

This anthology is the final summation of the International Applied Ethics Conference "Applied Ethics: The Second International Conference in Sapporo" held at Hokkaido University on November 22-25, 2007. This conference was held by the Center for Applied Ethics and Philosophy (CEAP) and its Graduate Program in Applied Ethics (GPAE), Graduate School of Letters, Hokkaido University.

The purpose of this anthology is to collect the works of applied ethics written from different perspectives. Some essays promote Japanese perspectives, others are written from other perspectives of different countries, and yet others take analytical approaches in the fields of applied ethics. Accordingly, this anthology is divided into three parts. Part I consists of essays written primarily from Japanese perspectives. Part II presents essays written primarily from Asian and Western perspectives, and those drawn on cases from Asian and other countries. Part III is a selection of essays that focuses on various fields of applied ethics.

It is our hope that this anthology will be considered to be part of the achievement that has been greatly supported by the new generation of applied ethics scholars, who are striving to deliver their original ideas and arguments to Asia and beyond. It is also our hope that this anthology contributes to further development of research in applied ethics in Japan, Asia and around the world.

June 2008
Kohji Ishihara and Shunzo Majima

Acknowledgments

Contributors (Asterisks indicate editors.)

Maria Dolores HERVAS ARMERO is a PhD Candidate at the Graduate School of Laws, Department of Philosophy of Law and Department of International Law, University of Valencia, Spain. She is also a visiting researcher at the Graduate School of Letters, Hokkaido University. She is a legal practitioner and works as a member of the Bioethics Section in the Bar Association of Valencia.

Wan-ling CHOU is a PhD student of the Department of Philosophy of National Central University, Taiwan, ROC. She has assisted in research projects such as the ELSI of stem cell research, Taiwan Biobank Project and others. Her main research interests are bioethics, ethics of science and technology including genetic and neuroethics. Her publications include 'Liberalism and Confucianism on Genetic Justice' and others.

Tamami FUKUSHI, PhD, is Researcher at the Research Institute of Science and Technology for Society (RISTEX), Japan Science and Technology Agency (JST). She was a neurophysiologist in human/non-human primates' motor control research field, and started neuroethics research in 2005. She is an international editorial board member of the academic Journal *Neuroethics* published by Springer.

Saku HARA, PhD, studied German literature and philosophy of science in Japan and Germany. In 2006 he received a PhD on the subject: Rational Animals – A Neurophilosophical Theory of Rational Agency. He is now engaged in the "Neuroliteracy Project" as program researcher at University of Tokyo.

*Kohji Ishihara, PhD, is Associate Professor at the Department of History and Philosophy of Science, Graduate School of Arts and Sciences, University of Tokyo. His research fields are philosophy and ethics of technology and phenomenology. He is currently engaged in the Global COE program "international philosophical education and research center on co-existence" run by University of Tokyo Center for Philosophy (UTCP). He was Associate Professor at the Graduate School of Letters, Hokkaido University (until March 2008).

Hidekazu KANEMITSU is Assistant Professor at Kanazawa Institute of Technology (KIT) and Researcher at the Applied Ethics Center for Engineering and Science (ACES). At KIT, he takes charge of Science and Engineering Ethics Education. He received a B.A. in philosophy and M.A. in philosophy from Hokkaido University, Japan.

Gladius KULOTHUNGAN is Senior Lecturer at the Centre for Institutional Studies, the University of East London, United Kingdom. He researches and teaches Social Entrepreneurship and works with third and public sector organisations on organisational development issues. His research interests include responses to global injustice and normative theories of institutions.

Masatoshi KURIYAMA is a PhD student of Graduate School of letters, Hokkaido University. He studies ancient philosophy, especially of Aristotle. His research interest also covers media ethics, and he is now working on objective reporting in journalism.

Shui Chuen LEE is Professor and Director of The Graduate Institute of Philosophy of National Central University, Taiwan ROC. He is chief PI of the various projects of the National Project of Human Genome Medicine since 1998 and has been working on ethical issues related to the Human Genome Project. He is the founder and editor of *The Newsletter of Applied Ethics* (1997, in Chinese) and a founding member and president (2006-2008) of the Taiwan Bioethics Association. He has published three books *Philosophical Explorations of Contemporary Neo-Confucianism* (1993), *Hume* (1993) and *Confucian Bioethics* (1999)

in Chinese and edited the book *The Family, Medical Decision-Making, and Biotechnology: Critical Reflections on Asian Moral Perspectives* (Springer, 2007), and more than a hundred articles in journals and book chapters both in Chinese and English. His interest covers applied ethics, bioethics as well as Chinese philosophies and Kant.

*Shunzo MAJIMA is Associate Professor in Applied Ethics and Deputy Director of the Center for Applied Ethics and Philosophy, Graduate School of Letters, Hokkaido University. He specializes in philosophy and ethics of war. His publications include 'War and Technology: A Critical Investigation', *Journal of the Graduate School of Letters* Vol. 3 (Sapporo: Graduate School of Letters, Hokkaido University, 2008), pp. 87-98.

Yoshihiro, MASUDA is a Ph.D. student at the Graduate School of Economics and Business Administration, Hokkaido University. He graduated from National Defense Academy, and received his first master's degree in Si Chuan University, Cheng do, China. His major is Transition Economics and Evolutionary Economics.

Geoffrey ROCHE, PhD, completed his doctoral degree (a thesis on the philosophy of the Marquis de Sade) at the University of Auckland Department of Philosophy in 2005. From 2006 until 2007 he lived in Tokyo, teaching ethics and critical thinking at Lakeland College (Japan Campus) in Shinjuku, and Philosophy of Law at Waseda University. Dr. Roche now works as an analyst in Wellington, New Zealand. His philosophical interests include the aesthetics of industrial design, the ethics of neurological technologies, in particular pharmacology, and the intellectual roots of Nazism in German thought.

Osamu SAKURA, PhD, is Professor of the Interfaculty Initiative in Information Studies, University of Tokyo. His research fields are science studies and public communication of science. His major publications count many books (in Japanese) including "*Evolution as a Tool of Thought*" (2002) and "*Philosophical Aspects of Global Environmental Problems*" (1992), while several times of TV appearance as a science interpreter.

Takeshi SATO is a PhD candidate in Ethics, at the Graduate School of Letters, Hokkaido University, Hokkaido. He specializes in metaethics and preference utilitarianism. He is interested in developing a framework of human enhancements study using such ethical theories.

Anton Luis SEVILLA holds a master's degree in philosophy from the Ateneo de Manila University in the Philippines, where he teaches classes on ethics and Zen Buddhism. He does integrative and comparative research on the thought of the Kyoto School of Philosophy, Zen Buddhism, Berdyaev and Heidegger, among others.

Kazuyuki SUNAGA is Specially Appointed Associate Professor of Institute of Undergraduate Programs and Courses (IUPC) at Niigata University. He received PhD in philosophy from Hokkaido University, Japan. His main research interests are philosophy of mathematics (Frege), ethics of science and technology, and philosophy of higher education.

Koji TACHIBANA is a PhD student of the Department of History and Philosophy of Science, Graduate School of Arts and Sciences, University of Tokyo, and is Research Fellow of the Japan Society for the Promotion of Science. He specializes in ancient Greek Philosophy (Aristotle's ethics), and is interested in STS (science, technology and society), neuroethics, engineering ethics, and education.

Akira TSURUSHIMA is a doctoral student of religious studies and Indian philosophy at Hokkaido University. He is concerned with the relationship of theology and Christian ethics (particularly Christian

bioethics and medical ethics).

Tetsu UENO is Research Fellow of the Japan Society for the Promotion of Science. He is currently researching the effective teaching methods of professional ethics education in the Department of Philosophy of Education at Hiroshima University. His recent publications include (2008) 'Guidance and Noninterference', *An Encyclopedia of Applied Ethics* (Tokyo, Maruzen), p.466f., and (2007) 'On Problems and Views Concerning the Methodology of Professional Ethics Education for Nurses Based on Case Studies', *Annals of the Japanese Association for Philosophical and Ethical Research in Medicine*, 25, pp.91-98.

Tomohiko YARA, PhD, is Associate Professor of Philosophy and Ethics at the Nagano College of Nursing, specializing in medical and caring ethics, philosophy of communication, and phenomenology.

Applied Ethics: Perspectives from Asia and Beyond

Introduction

This collection of essays is concerned with research in applied ethics. Since the birth of applied ethics as a subfield of ethics in 1970s, the area and scope of research in applied ethics have dramatically broadened. Indeed, its scope and the number of research fields have increased in accordance to social change. Research started in the field of bio-medical ethics, then spread to business and environmental ethics, and now almost all areas of humanities, social and natural sciences could potentially become a subject of research in this field.

The purpose of this book is to collect the works of applied ethics written from a wide variety of perspectives on various subjects. Some essays promote Japanese perspectives, others are written from other perspectives of different countries, and yet others focus on newly emerging fields of applied ethics.

Accordingly, this anthology is divided into three parts. Part I of this book consists of four essays primarily written from Japanese perspectives. In Chapter 1, Kazuyuki Sunaga investigates problems surrounding general education in the Japanese higher education system. Sunaga argues that instilling morality cannot be achieved through the current system of general education at Japanese universities. In Chapter 2, Masatoshi Kuriyama examines the theory of objective reporting, which has widely been accepted in the US, UK and post-Second World War Japan, in order to clarify its meaning and implications in the Japanese context. By using Thomas Nagel's concept of objectivity, Kuriyama argues that objective reporting can be regarded as a useful criterion to evaluate news reporting. Tetsu Ueno's chapter reports on the current situation of science and technology communication in Hiroshima City. Ueno investigates the difficulties in Hiroshima City government administration-led discussions on science and technology and finds the cause for these difficulties in the fact that the negative effects of science are often overemphasized in these discussions. In the last chapter of this section, Koji Tachibana investigates the relationship between moral education and public participation in contemporary Japan. Tachibana concludes by arguing that public participation can be seen from the viewpoint of moral activity, and that moral education can introduce public participation into its curriculum without infringing on the separation between moral education and public participation.

Part II presents essays written primarily from Asian and Western perspectives. The first two chapters examine bio-medical issues from the perspective of Confucian ethics in the Taiwanese context. Shui Chuen Lee's chapter contemplates an appropriate trust relationship and applies it to the case of biobanking in Taiwan. Wan-Ling Chou examines the grounds for individual and family consents in Western and Asian societies, and considers the reasonableness of family consent and its workability in actual practice. In Chapter 7, Anton Sevilla explores the relationship between ethical creativity and the task of awakening to True Self by examining Nicolai Berdyaev's notion of creative ethics, and then elaborating the three stages of self in Masao Abe's model of awakening. He concludes by arguing that creative ethics are only possible on the basis of a radical transformation of the notion of selfhood, akin to that elaborated in Zen Buddhism. Yoshihiro Masuda considers the roles and functions of norms in transitional economic systems. By comparing the cases of Russia and China, Masuda argues that fairness in anonymous market interactions is one of the keys to success in attaining high economic performance in transitional economic systems. In Chapter 9, Akira Tsurushima analyses two mainstream concepts in bioethics and environmental ethics, namely, "Stewardship" and "Co-Creator," which are often used as means to understand human nature in relation to God and the rest of nature. Closely illustrating the historical background of these two concepts, Tsurushima concludes by arguing that the concept of Co-Creator is not sufficient as an alternative to the concept of Stewardship in order to avoid anthropocentrism.

The last two chapters of Part II are concerned with issues in bio-medical ethics in France and Spain. Tomohiko Yara's chapter examines the case of the HIV crisis in France's blood supply system in order to assess the precautionary principle. By considering the importance and the limitation of public participation in regard to the precautionary principle, Yara argues that risk communication for decision

making is necessary as an additional measure for making up for the shortcoming of the principle. In Chapter 11, Dolores Armero examines regulations for genetic information in Spain from legal and jurisprudential perspectives. Armero argues that the achievement of suitable regulations for genetic information is a clear goal in the current Spanish legal system, primarily because fundamental rights can be affected by the data that such information provides.

In Part III of this book, we seek to expand our scope of research fields in applied ethics, by bringing in a selection of cutting-edge research essays in various fields of applied ethics. In Chapter 12, Hidekazu Kanemitsu explores methodological questions in applied ethics by critically assessing the agent-centered approach proposed by Caroline Whitbeck. Kanemitsu finds the shortcoming of Whitbeck's approach in that it overemphasizes practical aspects when considering ethical problems. He concludes by arguing that normative sources for evaluating moral design need to be taken into account. In Chapter 13, Geoffrey Roche scrutinizes the Disability Rights Critique, which constitutes a cluster of arguments against genetic testing for serious disorders. By critically examining these arguments, Roche concludes by arguing that wide genetic screening programs can be justified by the principles of autonomy and community wellbeing. Takeshi Sato's chapter is concerned with ethical aspects of enhancement by considering a series of pros and cons about this issue. Sato's finding is not only that the following five sets of topics, namely, (1) nature, value and happiness, (2) authenticity and identity, (3) liberty and autonomy, (4) politics and religion, and (5) inequity and injustice, are points of contention between proponents and opponents of the use of enhancement technologies, but also that neither the proponents nor opponents can develop decisive arguments against each other. In Chapter 15, Tamami Fukushi and Osamu Sakura introduce one of the urgent ethical, legal and social issues in neuroscience: neuro-modulation. Fukushi and Sakura discuss the safety, efficacy, and ethics of brain stimulation in clinical and non-clinical scenes, by focusing on stimulation procedures, such as deep brain stimulation (DBS) and transcranial magnetic stimulation (TMS). Saku Hara's chapter deals with the ethical issue of legal regulations on the distribution and broadcasting of violent images by mass media. Critically examining Suzan Hurley's conception of autonomy, Hara proposes an alternative concept of autonomy and argues that the protection of media violence is unjustifiable on the grounds that "the principle of respect for audience's autonomy is overridden by the principle of non-maleficence." In Chapter 17, Shunzo Majima discusses ethical issues of civilian protection in armed conflict. Majima critically examines how the protection of civilians is envisaged in the framework of just war theory, which is currently the dominant framework for the ethics of war and peace, and argues that the lack of accounting for restorative justice for civilian victims is one of the most serious limitations of just war theory. He concludes by arguing that some kind of measure for restorative justice is indispensable if an attack against military targets cannot avoid causing civilian casualties. Gladius Kulothungan's chapter is concerned with ethical issues concerning social enterprises. Kulothungun argues that social entrepreneurs' work with moral imperatives and their innovative enterprises – offering solutions to social problems – is undergirded by an ethical motivation. He also argues that there is emerging a new form of ethical institutions in social enterprises which contribute to people's freedom and build the 'capabilities' which Martha Nussbaum proposes.

Part I
Perspectives from Japan

Chapter 1

General Education and Morality in Japanese Universities

Kazuyuki SUNAGA

1. Introduction

In Japan, following the deregulation of the University Chartering Standard[i] in 1991, even though many universities have attempted to reconstruct their curriculums so as to enhance *Kyoyo* (教養)[ii] education, this very type of education has become severely depleted. In order for institutions of higher education to cater to the needs of society, it is necessary to reconstruct and redesign the existing model of general education. However, while arguments concerning *Kyoyo* are being actively conducted in many universities, the definition of *Kyoyo* contained therein is subjective. Therefore, the diversity and vagueness of the *Kyoyo* concept is problematic. For example, in "Liberal Arts Education in the New Age," a report by the Central Council for Education dated February 21, 2002 (pp. 3–5), enumerates several capabilities such as "the power of positioning and controlling the self in relation with society," and "an understanding of traditional culture." In certain research books on education or in the educational aims of some universities, it is supposed that the *Kyoyo* concept includes various capabilities such as morality, media literacy, the ability to pursue one's own ends, subject, and humanity.

However, even though it may be accepted that *Kyoyo* refers to the integration of such capabilities, their relation to one another remains unclear. Moreover, although it is generally expressed in educational communities in Japan that *Kyoyo* education contributes to building character or developing morality, the reasons for this are not clear. *Kyoyo* is an amalgam of the capabilities that we must possess if we want to be human beings who follow social norms; however, whether or not this amalgam is a coherent concept is still unknown. If the relationships between these contents of the *Kyoyo* concept are ambiguous, it becomes difficult to construct a systematic and structured curriculum; moreover, it also becomes difficult to expect this curriculum to have an adequately strong educational effect.

My estimation of *Kyoyo* education in Japanese universities is as follows: the *Kyoyo* concept has become a kind of a chimera, compounded by circumstances such that the relationships between many of its concrete components are ambiguous. The Japan Association of National Universities has pointed out that *Kyoyo* education in Japanese universities has become impoverished (The Japan Association of National Universities 2006, pp. 107–111). Such impoverishment has resulted from this very confusion surrounding the *Kyoyo* concept. Therefore, this essay will attempt to accomplish the following: (1) analyze the confusion surrounding the *Kyoyo* concept and (2) study the notion that *Kyoyo* engenders morality, "the dogma of *Kyoyo*," and discuss whether this dogma should be maintained in relation to the ambiguity between *Kyoyo* and morality.

2. The three types of *Kyoyo* education

The concept of Kyoyo stems from the ancient Greek *paideia* and the ancient Roman *artes liberales*, and has been ramified to various meanings. Herein, I omit historical references and focus solely on outlining the ramified *Kyoyo* concepts that exist today. They are roughly classified as follows: the *Bildung* concept (*Bildung* is a German word that signifies education or the cultivation of a quality), which is based on Humboldt's concept[iii] and aims at building character through research, and the "Liberal Arts" concept, which is well-known in the United States. Furthermore, this "Liberal Arts" type contains two styles. One is the classics-oriented style, which aims at increasing common fundamental knowledge and enriching humanity through the study of the classics (books considered to be definitive in their field), and the other is the integrated style, which extensively teaches several disciplines with the purpose of developing a

faculty of thought or judgment rather than promoting mastering one particular field of study. In this essay, the latter is referred to as the "liberal-arts type" of education and the former, the "classics-oriented type" of education. Although the liberal-arts type does not have any direct relation with morality, the *Bildung* type and the classics-oriented style share the cultivation of humanity as one of their important targets. However, their methods completely differ from each other, and ambiguity exists with respect to the reason for which they cultivate humanity and morality in students.

For example, in the *Bildung*-type education, every student is granted individual academic freedom and is expected to confront academic truth, similar to the way researchers pursue truth. The solitary activity of investigating truth is judged by objective facts; therefore, it demands humility and modesty in a student. This approach can be justified on the basis that a student not only gains the power to think logically but also to cultivate morality by undergoing travails to ascertain truth. However, unless we presume that there is a connection between exhibiting humility in the knowledge of truth and exhibiting humility before others, the conclusion that the solitary investigation of truth contributes to bettering a student's morality cannot be affirmatively deduced. In fact, when we tried to investigate whether or not a definite improvement in morality had occurred among German students who were given *freedom* based on Humboldt's idea, we found evidence of a duel culture (When he studied in Germany, Ogai Mori reported that he was extremely surprised to witness more than ten times the number of duels in a day.), alcohol culture, and other characteristic student cultures; however, we were unable to obtain affirmative proof of the students' improved morality.

With regard to the classics-oriented style of education, the situation appears to be slightly better. Since reading experience is considered almost akin to life experience, consensus on whether or not reading affects humanity can be easily obtained. However, the problem is rooted in the insufficiency of explanations regarding more precise mechanisms. For example, Yo Takeuchi, who is an authority on *Kyoyo* in Japan, admitted that when a student confessed to him that "the idea of carrying out character building by reading is incomprehensible," he was deeply shocked (Takeuchi 2003, 237). Since the relationship between reading and character building could have appeared obvious to him, he refrained from directly replying to this confession. Allan Bloom, a famous advocate of the classics-oriented style of education, stated that we can figuratively touch the humanity of an essential being by reading great books (Bloom 1987, 380). However, unless it is clarified as to what kind of change, improvement, or mechanism is intended by the practice of perusing classics, it must be stated that the classics-oriented style of education is insufficient as the foundation on which to build an effective general education curriculum.

3. The Japanese *Kyoyo* concept[iv]

Among the three types of education mentioned earlier, which type does *Kyoyo* education in Japanese universities resemble? Before the end of the Second World War, "being a person with *Kyoyo*" implied being a person who was well-acquainted with many of the classical writings. However, reading the classics was not necessarily a component of the curriculum in Japanese institutions of higher education. *Kyoyo* was regarded as a kind of cultural capital that functioned in a manner similar to the functioning of economic capital, even though it was not an economic activity in itself. Generally, the students of the old system of high schools comprised of the elite, who voluntarily read the classics to enhance their academic, social, and moral status. At that point of time, *Kyoyo* served as a criterion of differentiation, and was only the prerogative of the elite. However, it was clear that *Kyoyo* was part of the classics-oriented style.

In the post-war period, the situation became more puzzling. The Japanese educational reforms under American occupation were carried out by modeling the educational system that prevailed in the United States; moreover, it was presupposed that Japanese universities, as new institutions of the post-war period, would first need to emphasize general education (*ippan Kyoyo*) before venturing into specialized education. It should be noted that this new general education (*ippan Kyoyo*) was neither the earlier general education of pre-war Japan (pre-war Japanese *ippan Kyoiku*) nor liberal education. The general education of pre-war Japan was designed for students of the old system of high school and those enrolled

in university preparatory courses to acquire the fundamental knowledge required for university education. Thus, it can be regarded as basic education.

From the beginning, the liberal education imparted in American colleges appertained to liberal arts and enjoyed its own history. Since this type of education was intended for a small number of students, the tuition fees were generally high; moreover, it assumed the form of an education system for the privileged. On the other hand, with the popularization of universities in the 20th century, the newer general education of the US prospered. This type of education included three subjects at the core of its curriculum: human science, social science, and natural science. Further, in this respect, it differed from both the liberal-arts and the classics-oriented education types.

Universities in Japan attempted to introduce a curriculum based on the 20th century general education system in the US. The development of this type of general education was first modeled after Harvard University's course structure; however, it was hastily introduced in Japan without sufficient critical examination or theoretical backing. The aim of this general education, by its very nature, was to cultivate good citizenship; however, this concept failed to adequately permeate the Japanese education system. Moreover, general education of this type was designed to be a comprehensive form of education. In other words, it was not a preparatory form of education, even though under the old system of high schools and university preparatory courses in pre-war Japan, as I have already mentioned, general education (pre-war Japanese *ippan Kyoiku*) implied a system that aimed to equip students with the fundamental knowledge required for university education. The general education of pre-war Japan and the general education of the 20th USA were intermingled, even though they both pertained to completely different concepts. As a result, the general education offered in Japanese universities was differentiated from specialized education and was positioned as a form of preparatory education, which is received in the first two years of university education. In addition to this confusion, namely, that it was named *ippan Kyoyo* instead of *ippan Kyoiku*, accelerated misunderstanding (hence, 20th century US general education is called *ippan Kyoyo* in contemporary Japan). In fact, this perplexing naming induced a misconception that the general education offered by Japanese universities in the post-war era contributed to personal moral training, which had been an objective of pre-war *Kyoyo* education.

Due to such intricacies and complications, post-WWII *Kyoyo* education has been rendered a half-baked concept. Therefore, while *Kyoyo* education was expected to accomplish many goals—teaching the extensive knowledge required for living in society, the cultivation of humanity, and preparation for specialized education—the situation was now such that none of these goals could be fully achieved because of the misunderstanding surrounding the concept of general education.

4. The enervation of *Kyoyo* education

On account of the existing historical background, what was referred to as general education (*ippan Kyoyo*) in Japanese universities caused confusion with regard to its inability to contribute toward realizing its expected functions. Subsequent to the 1991 deregulation, the stipulation on the classification of the subjects of general and specialized education was abolished. This was not an instance of disregard toward general education; instead, it was intended to enable each university to improve its existing situation, wherein general education was being separated from specialized education and the structural relationship of these curriculums was weak. Therefore, deregulation appeared to offer the opportunity to build and enrich the original curriculum of general education with greater flexibility. However, the prevalent state of confusion was not resolved through deregulation. Many universities used this opportunity to upgrade their curriculums with regard to specialized fields, while the curriculums pertaining to general education were inevitably weakened. In 2004, Japan's national universities were incorporated. At that point, the budget of the national universities began witnessing a decrease, which resulted in each university being compelled to reduce its staff strength. This situation further aggravated the deteriorating state of general education. Currently, the social needs of *Kyoyo* are witnessing a steady increase. However, uncertainty still exists with regard to what *Kyoyo* stands for and the kind of general education that Japanese universities should aspire to proffer. In order to overcome this disorientation, each university is currently

attempting to reconstruct its existing system of general education after reflecting on the kind of *Kyoyo* that society needs.

Although the 2002 Report of the Central Council for Education should have been issued and in response, a new recognition and redefinition of *Kyoyo* should have been created in each educational facility, a state of confusion still prevails. I will roughly enumerate the knowledge and abilities defined by each university and the abilities that are supposed to constitute the new *Kyoyo*. This involves the foundation of a specialized field of study, which includes fundamental knowledge (knowledge that should be shared), the capability to pursue study in a particular subject, the power to position and control the self in relation to society, an understanding of traditional culture, an understanding of different cultures, an understanding of others, communication skills, media literacy, technology literacy, morality, a profound understanding of humanity, and so on. However, this encompasses a rather wide range of capabilities. It would be impossible to imagine a coherent *Kyoyo* concept as a monolith that can unify all of these forms of knowledge and abilities. Although many universities mention humanity or morality among their educational goals, such ethical education is not necessarily provided as part of their regular curriculums, except in the case of faculties that impart moral education as a specialty (e.g., bioethics in the department of medicine or engineering ethics in the department of engineering[v]). As previously stated, the relation between *Kyoyo* and morality remains ambiguous; therefore, I would like to first analyze whether the dogma of *Kyoyo* can be sustained**.**

5. Change and development

The assertions that the concept of *Kyoyo* is not fixed and that societal changes usher in modifications in its contents is almost unanimously accepted. However, even though the contents of *Kyoyo* change over time, this does not imply that *Kyoyo* has progressed or developed. On the other hand, it is believed that the discipline of any given field progresses with the passage of time. What is the origin of this difference? For a proper answer, it would be more pertinent to ask why it is supposed that the discipline of any specialized field progresses with time, rather than ask why *Kyoyo* has not progressed with time. Tetsuro Sato states the following in his paper "Beyond the Concept of Scientific 'Knowledge'."

> Knowledge which makes it a fundamental mission to progress continuously like modern technology belongs to the third kind. As already stated, this kind of knowledge is saved, and transmitted and accumulated with the contents same as a principle. But you have to notice the process of this preservation and transfer, and accumulation is not realized on its own. If the case of modern technology is taken for an example, only the group of the specialist who received advanced training has the capability to inherit the knowledge. Moreover, inside the group of such a scientist and engineer, in order to secure the objectivity of knowledge, and cooperation nature, various rules about the research method and the research subject are defined. (Sato 2000, 18)

In other words, scientific knowledge with the same contents can be shared and accumulated because it has a fixed standard and format. Moreover, according to Sato, such standardization of knowledge has occurred in recent times.

> When we compare the concept of the knowledge before formation of modern science with the concept of scientific knowledge, the difference which was most conspicuous is as follows: the scientific knowledge can have subdivided fixed "contents" respectively, its contends can be separated from the human being, it can be saved, and can be used for anyone. But the concept of traditional "knowledge" has expressed man's mental state or capability like "wisdom" and "virtue." (Sato 2000, 20)

Objective knowledge, which is reified and externalized, provides some explanations as a technical knowledge model. Practical disciplines represented by the fields of engineering or medicine, for example,

share the feature of possessing a common range of knowledge that has the same contents regardless of each individual's character, values, or belief system. In any particular field of study, an objective standard index of a scholastic evaluation or a degree conferment can be formed, to some extent, because of this feature. That is, the superiority or inferiority of knowledge or capability can be measured in these fields; moreover, this superiority or inferiority is unrelated to the goodness or badness of an individual character.

On the other hand, Sato states that philosophical knowledge cannot be shared or transmitted with the same contents. Since it is not necessarily normalized along the lines of a common form or in a particular format, neither can the extension of philosophical knowledge be specified nor can the amount of knowledge be correctly evaluated. Philosophical knowledge appears to be intricately connected with multifarious individual characters, experiences, life views, and belief systems; therefore, it cannot exist once it is separated from the individual. In reference to anteroposterior relationships, knowledge that is immanent in an individual is more fundamental and primitive than knowledge that is considered to be observable and objective. This is because observable knowledge and capability are the only compositional entities that are, under some fixed standard, produced by abstracting and eliminating the knowledge and capability that were originally internalized in the individual. Since the knowledge of practical disciplines eliminates the properties that are related to the individual character and conception of life, it is thought that anyone with some amount of intellect can acquire this type of knowledge if he/she decides to do so.

It is certain that the knowledge that is intricately connected with an individual's experiences or character cannot necessarily be transmitted to others who do not share the same experiences or character. Moreover, since this type of knowledge is intricately connected to the individual's experiences and character, it affects the individual's character and life itself. As for such knowledge, its real value is not appreciated because of its information value; instead, its value is appreciated when it is reflected in a person's life and character. Therefore, possessing this kind of knowledge is essentially equated with having a "good life."

By thinking along these lines, the similarity between philosophical knowledge and *Kyoyo* becomes clear. Knowledge once existed in a form that was intricately connected with character or morality; therefore, there was no substantial difference between possessing outstanding knowledge and possessing outstanding character and morality. However, there were no strictly causal relationships that implied that receiving *Kyoyo* education would cultivate humanity and morality.

> […] If knowledge or learning is a way which results in improvement and completion of humanity, it means that to put on learning is to become a true man with wisdom, so it is difficult as well as becoming a very virtuous human being. Such a knowledge that a person with wisdom has is acquired by training and cultivating of character for a long time, and others cannot inherit it as it is. Therefore it cannot become a foundation of continuous progress. If a certain person actually tries to find out the way which becomes a person with wisdom, the easiest method will be studying the past wise men's speech and behavior as a model. Hence, it is not so surprising that the learning from ancient times which aims at individual improvement and completion is making an ancient human being's way of life into a model almost without exception. (Sato 2000, 23)

I regard *Kyoyo* as this kind of knowledge because it shares the important element of being unseparable from humanity and morality. Therefore, education that concerns knowledge being abstracted from an individual character and subsequently being transmitted as objective information is entirely different from *Kyoyo* education. Hence, different models or schemes of educational practice should be adopted because they concern different types of knowledge. With regard to the academic knowledge of a specialized field of study, an "attainment-target type" of education is now widely accepted. In this style, objectively observable attainment targets are first established, and then, using an objective index, an estimation of whether or not a student's knowledge and capability have reached the desired level is conducted. "Assurance of students' quality" is the buzzword in many Japanese universities. In practical

disciplines, training for such an objective type of knowledge and capability constitutes the main task. It is easy to understand the reason why this type of education is required and, in fact, why it produces results. However, with regard to *Kyoyo* knowledge, there is no guarantee that imparting education through such a model yields significant results. First of all, if *Kyoyo* knowledge is at all concerned with individual character, it is necessary to characterize desirable personalities and form objective indexes in order to appraise the extent to which this true. However, it is clear that constructing such indexes is not practically possible because of the complexity involved in the process.

6. Conclusion

Such reification is applied not only to knowledge but also to capabilities. Capability first reveals itself in each individual depending on multifarious factors such as experience, character, perception, and environment. Therefore, it is difficult to imagine that completely different individuals share the exact same capabilities. However, various "capabilities" are invented by the higher-education community, and those "capabilities" are considered to refer to some personal traits that an individual can acquire regardless of the accompanying situations and circumstances (e.g., academic capability to meet the requirements that bachelor's degree holders must satisfy (学士力), enhanced and cultivated human qualities (人間力), and the ability to educate others (教育力)[vi]). From the perspective of higher education, it is believed that providing training in these capabilities is a task that is obligated by our society; however, it is clear that these capabilities cannot be measured by objective indexes. It appears to me that not only the *Kyoyo* concept but also many of these capabilities are being "chimera-rized" because the relations between many of their concrete contents are unknown and whether or not they are at all coherent remains unclear.

The "chimera-rization" of the *Kyoyo* concept is attributable not only to the failure to understand the relations between many of the elements of the concept but also the fallacy that *Kyoyo* knowledge is similar to knowledge in a specialized field. The latter cause is a more fundamental reason for the chimera-rization. Undoubtedly, there exists an educational model where quality can be guaranteed by executing a plan-do-check-act (PDCA) cycle, concrete needs can be determined, and attainment targets can be set. However, this type of model can only be significant on the condition that a common standard exists with regard to the knowledge contained in various specialized fields. As for *Kyoyo* knowledge, which should serve as the foundation of technical knowledge, there are no apparent grounds that indicate that this kind of educational model will function appropriately.

In this chapter, I have described the confusion surrounding *Kyoyo* education in contemporary Japanese universities. This confusion was the result of historical circumstances whereby several concepts of different origins were haphazardly combined and the general education of post-war Japan (*ippan Kyoyo*) and pre-war Japan (*ippan Kyoiku*) and liberal education were intermingled, the result of which was chaos. However, the confusion surrounding the *Kyoyo* concept cannot be resolved by merely unraveling a notional error. This is because the current model of university education is designed such that it provides efficient enough external knowledge training that it can be separated from the individual; however, *Kyoyo* knowledge constitutes a different kind of knowledge. The dogma of *Kyoyo* lacks sufficient verification, and it is inappropriate to expect that *Kyoyo* education being imparted in contemporary universities will improve morality. However, a concrete reason for the emergence of misunderstanding is that the original *Kyoyo* concept was organically related to individual character and personality.

If the models and ideas of different disciplines are applied to *Kyoyo* education, it would create distortions. Therefore, it is necessary to determine the approach that should be adopted, i.e., whether we should devise a new curriculum for cultivating *Kyoyo*, considering the fact that it is essentially different from reified knowledge, or we should limit learning, as the foundation of technical knowledge, to a findamental level. The chimera-rization of the *Kyoyo* concept was the outcome of overextending the technical knowledge training model. However, in all probability, the view that knowledge and capability concerning *Kyoyo* that any kind of individual can acquire, regardless of his/her personality, values, and

life experiences, is unsubstantiated. Therefore, if we were to assimilate everything that would not function if it was separated from an individual and constitute "capability" from these collected entities and enumerate them like an *à la carte* menu, it would still not indicate that the concrete aim of *Kyoyo* education has been defined.

References

Bloom, A. 1987. *The Closing of the American Mind*, Simon & Schuster Inc.

Eigen, M., Gadamer, H.-G., Harbermas. J., Lepenies. W., Lübbe, H., Meyer-Abich. K. M., 1988. *Die Idee der Universität*. Springer-Verlag

Horkheimer, M. 1991. *Begriff der Bildung*, Sansyusya

Kaneko, M. 2007. *Education Power of University*, Chikumashinyo

Karibe, T. 2007. *Chainging 'Kyo-yo'*, NTT Press (Japanese)

Kinukawa, M. (ed.) 2002. *ICU: All about "Liberal Arts,"* Toshindo (Japanese)

Kinukawa, M. 2006. *The Thought of University Education: The Design for Undergraduate Education*, Toshindo (Japanese)

Kuroha, R. 1993. *The Development of University Policy of Postwar*, Tamagawa Univ. Press (Japanese)

Noddings, N. 2002. Educating Moral People: A Caring Alternative to Character Education, Teachers College Press

Nussbaun M. C.1997. Cultivating Humanity: A Classical Defense of Reform in Liberal Education, Harvard Univ. Press

Ochi, M. (ed.) 2005. *The Liberal Arts and the "Liberalization" of Universities*, Akashisyoten (Japanese)

Sakai, A. 1986. 'The Second Report of the Provisional Council on Education Reform and the Reform of University Education', *The Report of the Department of General Education, Chiba University*, A-19, pp. 135–166 (Japanese)

Sakai, A. 1989. 'The Coherence of Undergraduate Education and the Identity of General Education', *The Report of the Department of General Education, Chiba University*, A-22, pp. 1–37 (Japanese)

Sato, T. 2000. *Science and Philosophy –Challenging the Myths of Knowledge*, Syunjusya (Japanese)

Takeuchi, Y. 2003. *The Ruin of the Kyo-yo-ism*, tyukoshinsyo (Japanese)

The Central Council for Education 2002. "Liberal Arts Education in the New Age," the Report of the Central Council for Education, February 21, 2002 (Japanese)

The Japan Association of National Universities 2006. "The Actual Condition Survey Report in General Education of National Universities corporation," 2006 (Japanese)

Tsuchimochi, Gary H. 2006. *Higher Education Reform Policy in Postwar Japan*, Tamagawa Univ. Press (Japanese)

Tsutsui, K. 2000. *Pursuit of New Kyo-yo*, Tyuokoronshinsya (Japanese)

Ushiogi, M. 2007. Was Humboltd's Idea a Myth?: Dialogue with the Paletschek Hypothesis, *"Daigaku Ronshu" Research in Higher Education*, Research Institute for Higher Education, Hiroshima University, No. 37, pp. 171–187 (Japanese)

---

[i] The 1991 deregulation in Japan largely revised the university chartering standard; it abolished the stipulation about the classification of general education and specialized education subjects. Due to this deregulation, national universities could have had the opportunity to flexibly build and enrich their original curriculums. However, allowing the reconstruction and redistribution of specialized and general education subjects somewhat freely simply resulted in many universities strengthening only their specialized education subjects. This inevitably weakened general education subjects.

[ii] This is a Japanese word that mainly implies "culture"; however, among its various meanings, it occasionally refers to "general education" or "liberal education." It is difficult to translate this word into a single English word without committing to a particular viewpoint; therefore, I mention this word in Japanese.

[iii] According to Humboldt's idea, students themselves perform character building by participating in cutting-edge research with their professors. Cf. Ushiogi 2007.

[iv] The contents of this section are largely undertaken in Chapter 5 of Tsuchimochi 2006. I learned a great deal from this book about the history of Japan's higher education policy.

[v] If professionals such as doctors and engineers are unethical, the risk of litigation may increase. Therefore, the motivation to develop morality has also been clarified for students aiming at specialist professions; moreover, it is not at all surprising that ethical education is earnestly carried out by these faculties.

On the other hand, for an ordinary student who does not endeavor to enter a specialist profession, the advantage of improving his/her morality is unclear. Therefore, for an ordinary student, there is no particular reason to choose a university that offers ethical education as part of its curriculum. Although many universities emphasize the improvement of morality as an educational policy, this policy might only serve as a means of pleasing society by meeting its requirements. To the best of my knowledge, there are actually very few universities that eagerly provide ethical education to ordinary students.

[vi] The new concepts of "competence" and "capability" have been invented and defined in close succession in contemporary

Japanese education. However, there are some significant doubts about whether or not individuals can actually acquire "capabilities." First, although the concept of "capability" may be intuitively understood, its content is too ambiguous, and it is not a concept that is accompanied by measurable criteria (Cf. Kaneko 2007, 142). Second, if we term various attributes "capabilities", we would take these "capabilities" for somethings that exist not within relationships but within ourselves. However, humanity is perhaps not a "capability" that an individual can master by training alone.

Chapter 2

Is "Objective Reporting" part of Media Ethics? : A Philosophical Inquest

Masatoshi KURIYAMA

Introduction

In journalism in the US, UK and post-Second World War Japan, the theory of "objective reporting" has been widely accepted as an ideal of news reporting that supports liberal principles of freedom, which appeared first in the nineteenth century. This theory is a principal basis for the modern concept of freedom of expression that the libertarians "struggled" to establish. The Commission on Freedom of the Press (1947) also pointed out "the press must identify fact as fact and opinion as opinion."

When the Commission proposed this theory as one of the requirements for the modern press, it had already been criticized because objective reporting "neglects to tell the whole truth and that it fails to give the reader a sufficient basis for evaluating the news in terms of social goals" (Siebert 1956, 61). Recent studies have a lot of criticism of objective reporting, for example, that objective reporting never gives the reader much chance to catch up, or it has a tendency of "avoiding moral praise or condemnation" (Cohen-Almagor 2001, 72).

In Japan, many commentators are often critical of the theory of objective reporting, mainly because of a noticeable historical ground that the SCAP (Supreme Commander for the Allied Powers) encouraged (in fact, enforced) Japanese publishers to accept this theory.

The purpose of this essay is to discuss whether or not the theory of objective reporting can be considered a part of media ethics. Firstly, we will survey the historical and theoretical bases of the concept of objectivity (Section 1). Secondly, we will assess critical views on objective reporting (Sections 2 and 3). Finally, in order to demonstrate that objective reporting can be considered a part of journalist ethics, we will clarify and critically examine the concept of objectivity (Sections 4 and 5).

1. History and traditional understanding of objective reporting

It is widely accepted that the concept of objective reporting was born in the nineteenth century in the United States when most newspapers were still partisan. There are two different views on its origin. One view is that the theory of objective reporting was credited first by the news agencies such as the Associated Press (AP). For example, Fred S. Siebert says, "its origin in America may be traced to the growth of cooperative news-gathering associations" (Siebert 1956, 60). Contrary to Siebert's argument, Michael Schudson and Dan Schiller have a negative view of objective reporting and argue that in the nineteenth century objective reporting had not yet become the norm of journalist and news reporting (Schudson 1978, 4; Schiller 1981, 4).

The other claim is that it was born with the emergence of the "penny press." Frank Luther Mott points out that the creed of the penny press is "The great common people should have a realistic view of the contemporary scene" and it can be considered as a requirement of objective reporting (Mott 1962, 242). However, Mott's argument is not unanimously accepted either. For example, Makoto Tsuruki and Jeremy Iggers suggest that the journalists of the penny papers used "impartiality" rather than "objectivity" and their own interest was not in exploring the ethical implications of the concept (Iggers 1999, 59; Tsuruki 1999, 20).

Serious arguments about objectivity and objective reporting arose in the twentieth century. Joseph Pulitzer's famous creed "accuracy, accuracy, accuracy!" (Mott 1962, 440; Emery 1962, 374) and Walter Lippmann's "objectivism" as the application of scientific method to journalism can be considered as two of the earliest criteria of objective reporting (Lippmann 1960, 67; Iggers 1999, 62-63). *Canons of*

Journalism (1922)*1 of American Society of Newspaper Editors (ASNE) has in the statement "truthfulness" and "impartiality", which are part of the concept of objective reporting.

The most famous reference to "responsibility" of the press is of the Commission on Freedom of the Press. Theodore Peterson cited that the report *A Free and Responsible Press* (1947) asserted five requirements of the press of contemporary society. The first requirement is that the press must provide "a truthful, comprehensive, and intelligent account of the day's events in a context which gives them meaning" and "the press must identify fact as fact and opinion as opinion" (Peterson 1956, 87). The second requirement, the press must "serve as a forum for the exchange of comment and criticism," and third requirement is that the press should project "a representative picture of the constituent groups in society" (89-91). The fourth requirement is that the press is responsible for "the presentation and clarification of the goals and values of the society," and the fifth is that the press must provide "full access to the day's intelligence" (91).

Pulitzer already referred to "moral responsibility" in the *North American Review* (1904). However, since then, objective reporting theory has developed with the social responsibility theory of the press. Peterson points out that these theories and canons of journalism had implicitly been based on the idea that "man is primarily a rational creature" and that "the newspaper is chiefly an instrument of enlightenment making its appeal to the critical sense of the reader" (86), and that objective reporting theory provides a "philosophical foundation" because "by separating news and comment, by presenting more than one side, the press was expediting the self-righting process; it was making it easier for the rational reader to discover truth" (88).

Although the statement of the Commission was widely accepted in American and British journalism, there was already a criticism of objective reporting. Siebert and Peterson mentioned a "spurious objectivity" (88) and, in general, objective reporting "neglects to tell the whole truth" (Siebert 1956, 61). In the 1960s objectivity theory came under widespread attack to the extent that saying "Objectivity is dead" (Iggers 1999, 91), which is a similar expression to "Journalism is dead."

2. Criticism of Objectivity

In this section we will look at "criticism" of object reporting briefly. We can focus on the following seven points of view against media objectivity. First, as we mentioned above, (1) objective reporting fails to tell the whole truth and to give the reader a sufficient basis for evaluating the news. (2) This criticism raised a tendency to accept "interpretive reporting" theory that Curtis D. MacDougall had already advocated. The interpretative reporter "starting with what the facts are, goes on to show what the facts mean" (MacDougall 1964:p.191).

Journalists in the field mention the third criticism that (3) complete objectivity cannot be sustained in practice. As mass media companies became huge and highly organized, (4) objective reporting functions as a "strategic ritual" to defend journalists and mass media companies against criticism toward them (Tuchman 1972, 678).

The fifth point is that (5) the crisis of social consensus supported criticism of objectivity theory by "new journalism" (Wolfe 1973). (6) Advocating journalism again became popular with the emergence of "public journalism." Davis Merritt, who is one of the most famous advocates of public journalism, argues critical views of objective reporting such as "separation" of fact and opinion or "balance" of two or more distinct standpoints (Merritt 1998, 23-25).

Finally, (7) objective reporting was criticized from an ethical point of view. Raphael Cohen-Almagor says "objectivity is not an end itself, that on certain matters objectivity in the sense of prescribing moral neutrality is a false idea" (Cohen-Almagor 2001, 86).

3. Criticism of Objectivity in Japan

In this section, we will discuss criticism of objectivity in the Japanese context. After World War II Japanese publishers announced in their "Press Code" (1946) that the principle of journalism is to report the facts (truth) precisely what they are, and that news reporters should never add their opinion to their

articles. Objective reporting then became the norm of Japanese journalists but many commentators disliked it.

There are six main criticisms that are often mentioned by commentators in the Japanese context. The most frequent argument is that (j1) news reporting is "essentially subjective." And objective reporting is a mere camouflage of its subjectivity or misunderstanding of reporting. It should be acquired only by journalist's "subjective" efforts (Ono 1947, 176; Arai 1972, 235-236; Honda 1984, 20). The corresponding argument of subjectivity is that the reporting of objective fact *inevitably* includes its reporter's "subjective" view (Koyama 1969, 215).

Further, Mitsunobu Sugiyama points out that (j2) objective reporters may have a tendency to neglect their own judgments and easily "join the majority." He also raises a controversial point that journalists should make a commitment to the "value", which is no less than returning to partisan journalism (Sugiyama 1986, 38). Yujiro Chiba claims that (j3) "neutral" reporting may diminish an incentive to watchdog journalism; and as a consequence lead to biased reporting which could serve a government party and political powers (Chiba 1955, 178-179).

Other commentators claim that Japanese journalism "lacks" its objectivity. Kenichi Asano warns that (j4) Japanese news reporters often blame a suspect as if he or she were already "guilty" of the crime that he or she is alleged to have committed (Asano 1988, 33). Hiroshi Fujita argues (j5) many Japanese reporters neglect to clear the news source, that is, they neglect their "responsibility" of the press that news contents must be accurate (Fujita 1986, 12ff.). Toshio Hara points out (j6) Japanese journalism often falls into "announcement (of government) -journalism," and the fact is partly based on journalists' misunderstanding of the concept of objectivity (Hara 1986, 33ff.).

4. Objectivity - of what sort?

As we observed, there is a large amount of criticism against objective reporting. It seems necessary, however, to examine the meaning of the concept of "objectivity" in detail. Because the concept of "objectivity" can be understood in different ways such as truth, impartiality, neutrality, balance and non-partisan. In order to clarify the meaning of objectivity, let us briefly consider J. Westerstahl's tree of objectivity (1983), which is quoted by Denis McQuail and Yutaka Oishi (McQuail 2000, 173; Oishi 1999, 81).
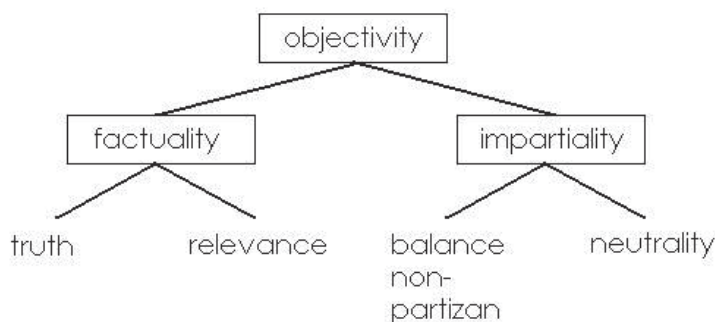
Westerstahl (1983), modified by Oishi (1999)

The concept of objectivity consists of two larger parts, factuality and impartiality, and again these two consist of four sub-categories: truth, relevance, balance, non-partisan and neutrality. *Truth* is often considered as the central meaning of objectivity or is used synonymously with objectivity. It is difficult, however, to tell that what sort of fact is "the whole truth," which is enough to provide readers with a clear understanding of events and facts. The Commission on Freedom of the Press already said that "a truthful,

comprehensive account of the news is not enough, it is now necessary to report *the truth about the fact*" (Peterson 1956, 88). The second criterion of *relevance* is more problematic. McQuail points out that it relates to the "process of selection" of each reporter rather than to the form of presentation (McQuail 2000, 173-174).

The third criterion of *balance* concerns when man reports on opposite groups such as political, ideological and racial ones. But when there are more than two opposite groups, must one refer to all of the groups? When reporters belong to one of the referred groups, how can they evaluate another group impartially? The fourth criterion, *neutrality*, has the same problem as balance. We are such political beings (Aristotle), and neutrality in a strict sense may perhaps be an illusion.

5. Objectivity --- a revised meaning

There are many difficulties of objectivity as a criterion to judge what news report is really "objective." But these difficulties *do not mean* that the criterion for news reporting is useless. The reason we need a criterion for objectivity is that it works as a useful instrument for moral evaluation of act. Thomas Nagel says:

> Objectivity is a method of understanding. It is *beliefs* and *attitudes* that are objective in the primary sense. Only derivatively do we call objective the truths that can be arrived at in this way. To acquire a *more objective* understanding of some aspect of life or the world, we *step back* from our initial view of it and form a *new conception* which has that view and its relation to the world as its object. In other words, we place ourselves in the world that it is to be understood. (Nagel 1986, 4. Stress is added.)

This passage suggests that Nagel radically views objectivity as "beliefs" and "attitudes" in a primary sense. He also emphasizes that it is important that we "step back" from our initial view to acquire "more objective" understanding, because reflection helps us form a "new conception." Nagel's argument suggests that every objective understanding requires reflective thinking.

Indeed in science, objectivity is considered to be a methodology indispensable for impartial yet effective scientific investigations and experiments. If objectivity is the case in science, then what would be considered objective methods in news reporting?

From a methodological point of view, it is assumed that objectivity in reporting is not so solid as it is in science. Rather, the theory of objective reporting refers to a method of self-reflection. We can obtain a critical view of objective reporting, such as "Is the report true and accurate?" "Is it balanced?" and we can evaluate the reporting by using these criteria and say that "It lacks objectivity." For example, if the news report has only the government's viewpoint on some political issues, the report may be criticized as being "biased" and neglecting to tell the "whole truth," because it lacks a "sufficient" objectivity. The news reporting needs to provide an informed account of the background of the issue, or it needs to cover opposite viewpoints. The reason for this is obvious: It should be as objective as possible.

Conclusion

The concept of objectivity may still be regarded as a useful criterion to evaluate news reporting, provided a "revised" meaning of "objective" and objectivity is used. The method of objective reporting is the method of self-reflection. We can use four sub-categories of the concept of objectivity, that is truth, relevance, balance and neutrality, by which we evaluate the reporting whether it is objective or not. As well, certain issues need to be resolved. We must evaluate the above-mentioned criticism (in Sections 2 and 3), by referring to the four criteria, which are truth, relevance, balance and neutrality. *2 Further, the "revised" concept of objectivity has received considerable criticism from a Weberian perspective. It is a promising direction for further research to explore Weber's notions of "objectivity and subjectivity" and "value and fact" (Weber 1904), because Weber's notions have a meaningful effect on "objective reporting"; contributing to journalistic ethics. *3

Endnotes

*1 It was revised and renamed "Statement of Principles" in 1975.

*2 Some commentators accept the concept of objectivity as a whole, but often criticize one of four subordinate criteria. For example, Cohen-Almagor criticizes "moral neutrality" (Cohen-Almagor 2001, 70ff.) and Merritt criticizes "balance" and "separation of facts from values" (Merritt 1998, 24ff.).

*3 The importance of Weber's arguments and notions are pointed out by Schudson (Schudson 1990, 1ff.).

References

Arai, N. 1972. *Shinbun-Sengoshi*: Seibundo (Japanese).

Asano, K. 1988. "Mada Kyakkan Hodo ga Tarinai", *Gengo Seikatsu* 434: Chikuma Shobo (Japanese), pp. 30-41.

Chiba, Y. (ed.) 1955. *Shinbun*: Yuhikaku (Japanese).

Cohen-Almagor, R 2001. *Speech, Media, and ethics The Limits of Free Expression*: Palgrave Macmillan.

Emery, E. 1962. *The Press and America 2nd ed.*: Prentice-Hall.

Fujita, H. 1986. "Mazu Joho Kaiji no Doryoku wo", *Shinbun kenkyu* 429: Nihon Shinbun Kyokai (Japanese), pp. 10-15.

Hara, T. 1986. "Kyakkan Hodo wo Toinaosu", *Shinbun kenkyu* 423: Nihon Shinbun Kyokai (Japanese), pp. 33-38

Honda, K. 1984. *Jijitsu Toha Nanika*: Asahi Shinbun Sha (Japanese).

Iggers, J. 1999. *Good News, Bad News: Journalism Ethics and the Public Interest*: Westview Press.

Koyama, E. 1969. *Shinbun Gaku Genri*: Dobunkan (Japanese).

Lippmann, W. 1960. *Public Opinion*: Macmillan.

MacDougall, C. D. 1964. *The Press and its Problems*: WM. C. Brown Company Publishers.

McQuail, D. 2000. *McQuail's Mass Communication Theory 4th ed.*: SAGE Publications.

Merritt, D. 1998. *Public Journalism and Public Life: Why Telling the News Is Not Enough 2nd ed.*: Lawrence Erlbaum Associates.

Mott, F. L. 1962. *American Journalism*: Macmillan.

Nagel, T. 1986. *The View from Nowhere*: Oxford University Press.

Oishi, Y. 1999. *Journalism to Media Gensetsu*: Keiso Shobo (Japanese).

Ono, H. 1947. *Shinbun Genron*: Tokyodo (Japanese).

Peterson, T. 1956. "The Social Responsibility Theory", *Four Theories of the Press*: University of Illinois Press, pp. 73-103.

Schiller. D. 1981. *Objectivity and the News*: University of Pennsylvania Press.

Schudson, M. 1978. *Discovering the News*: Basic Books.

Schudson, M. 1990. *Origins of the Ideal of Objectivity in the Professions*: Garland Publishing.

Siebert, F. S. 1956. "The Libertarian Theory," *Four Theories of the Press*: University of Illinois Press, pp. 39-71.

Sugiyama, M. 1986. "Kachi Zentei to Kyakkannsei", *Shinbun kenkyu* 425: Nihon Shinbun Kyokai (Japanese), pp. 36-39.

Tsuruki, M. (ed.) 1999. *Kyakkan Hodo --- Mo Hitotsuno Journalism Ron*: Seibundo (Japanese).

Tuchman, G. 1972. "Objectivity as Strategic Ritual. An Examination of Newsmen's Notions of Objectivity," *American Journal of Sociology* 77, No.4.

Weber, M. 1904. "Die >>Objektivität<< sozialwissenschaftlicher und Sozialpolitischer Erkenntnis," *Gesammelte Aufsätze zur Wissenschaftslehre*: J.C.B. Mohr, 1951, pp.146-214.

Wolfe, T. 1973. *New Journalism*: Harper & Row.

Chapter 3

Science Communication in Hiroshima

Tetsu UENO

1. Introduction

It is not easy in today's Japan to provide the public with an opportunity to discuss the ideal relationship between science and technology and society with respect to the negative effects of science and technology on society. The objective of this report is to introduce the case of Hiroshima City, where the administration, together with volunteers, takes the initiative in discussing with members of the public the negative effects of science.

This report presents the current situation of science communication in Japan, an example of which is the science cafes held in various parts of Japan. According to the Japan Science and Technology Agency (JST), there were 377 science cafe events from March 2007 to March 2008, but only 0.53% of them directly dealt with ethical problems regarding the negative side of science. Interestingly, the rate of local government -led science cafes was a mere 4.51%.

The report then investigates the difficulties in administration-led discussions on science that directly deal with the subtle ethical problems of science. In my opinion, the difficulties might stem from the changes in scientific policy by the Japanese government as well as national concern over the apathy of children toward science.

Last, the Hiroshima City example is presented as being converse to the above-mentioned trend regarding scientific communication in Japan. It may be possible to conduct events, which are sometimes difficult to stage, if a mayor is continuously committed to monitoring the negative side of science, if a local government employs citizen volunteers with scientific knowledge as the city's science policy staffers, and if a local government maintains a proper distance from business.

2. Current Situation and Analysis of Science Cafes in Japan

Science communication at the grassroots level in Japan has become popular over the past four years. In particular, a number of science cafes, which are intended to provide an opportunity for citizens and scientists to talk about science and technology over a cup of coffee, have been held in various parts of the country. According to the JST, there were 377 science cafe events from March 2007 to March 2008 in Japan.

Science cafe events held during this period are classified by subject and organizer as follows (Japan Science and Technology Agency, 2008).

Subjects included: 1) Medical treatment and health (13.52%);
2) Environment (12.73%);
3) Space (9.28%);
4) Life sciences (7.95%), Plant, animal, insect and dinosaur (7.95%);
5) Robot and high technologies (6.10%);
6) Safe foods (5.57%);
7) Nanotechnology (3.71%);
8) Art (3.45%);
9) Disaster (3.00%);
10) Psychology (2.92%);
11) New energy (2.90%);
12) Neuroscience (2.39%);

13) Mathematics and physics theory (2.12%), Experiment (2.12%);

14) Geography (1.86%);

15) Better life (1.59%), Information technology (1.59%), Science education (1.59%);

16) Story of the Antarctic Continent (1.32%);

17) Theory of time (1.06%), Electricity and communication (1.06%);

18) Science journalism (0.80%), Pseudoscience (0.80%);

19) Archeology and history study (0.53%), Magnet and sand (0.53%), Risk communication (0.53%), Bioethics and science and technology ethics (0.53%);

20) International cooperation (0.26%), Sports (0.26%).

The organizers included: 1) University (30.77%);

2) Company and laboratory (9.81%), Group by scientists (9.81%);

3) NPO (8.75%);

4) JST (7.16%);

5) Bookstore (6.37%), University with an NPO (6.37%);

6) Local government (4.51%);

7) Academic society (3.45%);

8) Local government with a university (3.18%), Library and museum (3.18%);

9) The Ministry of Education, Science and Culture (2.65%);

10) The National Museum of Emerging Science and Innovation (Kagaku-Mirai kan) (2.12%);

11) Local government with a company (1.51%);

12) NPO with academic society and association (0.20%), University with a company (0.20%).

The above data show that the characteristics of recent science cafes in Japan seldom include ethical problems in science and technology as a subject. In fact, 0.53 % of the science cafes dealt with the ethical considerations involving recombination of informative genes or alternative medicine. As well, there may be a reluctance on behalf of local governments to host such a café as only 4.51 % of the science cafes were organized solely by local governments.

Ascertaining the exact reason why a city government might be reluctant to host a cafe is not easy, for the situation can be quite complex. However, based on my experience in the promotion of science communication, the negativity stems from the following two points: the change in scientific policy by the Japanese government and national concern over children's apathy toward science.

First, let us address the change in the scientific policy in Japan, which is aimed at the comprehensive and organized development of measures to promote science and technology based on the Science and Technology Basic Law, and the 15-year program under the Science and Technology Basic Plan that has been operating since 1996 and which consists of three, five-year terms, with a total budget of 59.2 trillion yen. In 2004, when the first science cafe was held, measures to promote science-related topics were based on the 2nd Science and Technology Basic Plan (FY2001 - FY2005). Current measures are based on the 3rd Science and Technology Basic Plan (FY2006 - FY2010). It should be noted here that there was a policy change between the 2nd and the 3rd Plan, as experts have already pointed out (Kuwabara, 2006 and Hyodo, 2007). The 2nd term focused on science and technology for society, in the society, and the new relationship between society and science and technology, which has both positive and negative impacts. In order to pursue that, interactive communication was appreciated and citizens' participation in scientific policymaking was encouraged. The present and 3rd term of the plan focuses on science and technology that is supported by society and the people, and the benefits of science and technology. It emphasizes the development of science and technology and aims at informing citizens of the results of research in order to gain support. The 3rd Plan is more associated with technological developments by experts with a unilateral imposition of knowledge rather than with interactive communication as advocated under the 2nd Plan.

The second topic involves the nation's concern with children's scientific apathy. In Hiroshima

Prefecture, 12 corporations and two research institutes (the Museum and the Fisheries and Ocean Technology Center) have been conducting delivery lectures at elementary schools since October 2007. These corporations are participating in the scheme because they seek to raise the status of a technology-oriented nation and enhance its children's interest in science in accordance with the Ministry of Economy, Trade and Industry. It seems to be successful as far as I have been able to gather from media reports. On a nationwide basis, too, leading companies have prepared experience-based science centers for the public. Among these are Sony's ExploraScience in Daiba, Tokyo and NTT's Intercommunication Center in Shinjuku, Tokyo. Both of these centers were established so that people could become familiar with science and have an enjoyable encounter with science, thus hopefully increasing the number of science-savvy students.

Based on these analyses, it makes sense that a debate on the negative aspects of science, particularly, topics which are not positive or exciting tend to be avoided. In addition, it can be understood that an administration would be hesitant about holding an event that focuses on the negative side of science as it would like to maintain a good relationship with high-tech businesses, which extol the virtues of scientific advancement.

Given these circumstances, Hiroshima is a rare example of an administration that dares to focus on the negative aspects of science. The case of Hiroshima City is explained in the following section.

3. Stringent Measures for Science and Technology Policy in Hiroshima City and Details of Their Enactment

The characteristics of the Hiroshima City case are that it met the three conditions stated in the Introduction: the mayor expressed his continuous commitment to monitoring the negative side of science, a local government employed citizen volunteers with scientific knowledge as the city's science policy staffers, and the government maintained an appropriate distance from business. Compared to other cities or groups involving scientific communication, Hiroshima is an exception to the rule.

After 2001, Hiroshima City's administration implemented various stringent policies in an attempt to enhance science and technology communications based on an STS recommendation. *The Outline of the Science and Technology Policy in Hiroshima City*, which was ratified in June 2003, was founded on the following two premises: first, Hiroshima, which had urged the world to abolish nuclear weapons, wished to become a model city and the pioneer of employing science and technology for the sake of humanity; second, Hiroshima, which experienced the worst usage of science and technology—an atomic bomb—felt that it had a responsibility to clarify which elements of science and technology are truly necessary for society. As one of the measures to achieve these objectives, "The Counselors for Science and Technology by Citizens of Hiroshima City (CSTH)" were introduced in November 2005 as a board of advisers to guide citizens on the best means of utilizing science and technology.

The inspiration for the enactment of *The Outline of the Science and Technology Policy in Hiroshima City* dates back to *The Peace Declaration 2000*. The Mayor of Hiroshima City, Tadatoshi Akiba, stated that nuclear weapons and global environmental destruction were products of science and technology. At the final peace memorial ceremony of the 20th century, he declared that Hiroshima would become a model city for utilizing science and technology for the sake of humanity. Based on this declaration, beginning in 2001, a questionnaire survey concerning the Hiroshima "citizens' recognition and needs for science and technology" was administered to 8,000 respondents, and a hearing survey was dispensed to professionals.

The Outline of the Science and Technology Policy in Hiroshima City was subsequently reconciled in June 2003 through the following processes: the examination of the idea was outlined in October 2002, the symposium of science and technology was conducted in Hiroshima in January 2003 to hear the citizens' opinions regarding the original outline. The public's comments on the original outline idea were collected via mail and facsimile in February 2003, and the final outline was discussed in March 2003.

In this outline, the basic philosophy includes the following three points (Hiroshima City project bureau of general affairs, 2003): "Hiroshima is a city with symbolic significance for science and

technology"; "Hiroshima's citizens have known fear from the use of science and technology to inflict harm as well as the benefits from the positive use of science and technology"; thus, "Hiroshima could become a model city for aiming science and technology in the appropriate direction." To realize these basic philosophies, the following five points have been proposed.

    1) Promoting consensus building on the use of science and technology.

    2) Promoting information transmission from Hiroshima to the world.

    3) Promoting future research and energy development.

    4) Promoting a special district plan concerning research and development.

    5) Enhancing facilities to study science and technology and constructing the network.

In particular, the original objective of science and technology policy in Hiroshima City was to declare the necessity of training community members as mediators of science and technology industries and citizens.

4. Details of the Foundation and Actual Activities of CSTH

To effectively train "specialists to facilitate bringing scientists, engineers, and citizens together to discuss the ideal path for science in the future, and to establish a positive proposal for the administration of science and technology," the first CSTH conference was held in February 2004.

CSTH is defined as the exemplification of promoting communication between citizens and science and technology experts from a neutral standpoint by offering citizens access to information on the more obscure matters of science and technology, by plainly and comprehensively explaining these matters, and by informing researchers and industries of the demands of citizens concerning science and technology (Conference for 'The Counselors for Science and Technology by Citizens of Hiroshima City,' 2005). Their main roles are "understanding citizens' needs," "consultation," "enlightenment," "dissemination," "liaison and coordination," and "supporting activities in local areas."

In October 2005, Hiroshima City advertised CSTH as the first occasion that a domestic government-designated major city assembled volunteer citizens who were knowledgeable about and involved in science and technology. The members consisted of 24 men and women, 25 to 80 years of age, with the following occupations: scientists, technologists, engineers, electronic engineers, pharmacists, doctors, science teachers, NPO staff, university professors, etc. Therefore, they were affiliated with various fields such as engineering, aerospace engineering, science education, life science, the ethics of science and technology, etc.

CSTH offered 83 courses and obtained the participation of approximately 1,900 citizens in total from November 2005 to July 2007. The breakdown of the content of the activities was as follows (Hiroshima City bureau of economic affairs, 2007):

    1) Medical treatment consultations (responsible drinking, guidance on how to quit smoking, etc.) (20%);

    2) Science experiments on children (17%);

    3) Explanations of telecommunication equipment (Internet and ground-based digital broadcasting) (10%);

    4) Consultations on aging (anti-aging) (7%);

    5) Stories of scientific experiences (a story of the South Pole and the secret story of a new product) (6%), food safety measures (BSE and gene recombination food) (6%), science and physics theories (6%), science education (6%), natural disaster measures (6%);

    6) Nuclear power generation and hydrogen energy relations (5%), bioethics (5%);

    7) Space (4%);

    8) Communication theories (2%).

5. Science Communication based on STS

As was previously mentioned, most of the courses related to science and technology (more than 60 per year, held in public halls in Hiroshima City) were educational courses concerning knowledge of science

and technology. Moreover, the course that almost reached full enrolment and maintained the highest attendance rate was one that explained the most effective ways to take medicine and introduced the latest space and astronomy technologies. The courses related to the ethics of science and technology—for example, questions of right and wrong in gene recombination and alternative medicine—did not even achieve 11% attendance.

However, the CSTH is obligated to respond to all of requests about science and technology from every citizen even if a requested activity is not what they want to do. In fact, the CSTH must respond to requests which are different from their basic policy, for example, a non-smoking guidance in junior high schools and health counseling for elderly persons. Because the CSTH is supported directly by the administration of Hiroshima City and acts on the public's behalf, it cannot prioritize citizens' needs. Therefore, the CSTH has held Science Cafes and has allowed the Citizens' Assembly to do exactly what it wants to do.

Science Cafes and the Citizens' Assembly, in which people with a high interest in science and technology participate, have been making positive efforts to cover subjects that would help them consider a preferable relationship between science and society, based on the understanding of the hazards of science and technology.

"Science café Hiroshima" has been held by the CSTH and the administration of Hiroshima City since December 2006 (Ueno, 2007). Featuring various activities, the themes of "Science café Hiroshima" are determined by the results of the questionnaire surveys submitted at every café and its usual activities. The themes that have now been adopted are as follows: 1) "What can we achieve through genetic research?"; 2) "Travels of the explorer 'Hayabusa'"; 3) "Communications, now and in the future"; 4) "The future role of hydrogen in energy"; 5) "Virtual space travel and starry skies seen through the telescope"; 6) "Deep sea exploration by the dive boat 'Shinkai 6500'"; 7) "Bird flu problem"; and 8) "Light rail transit as the superior traffic system of the 21st century."

All the science cafes, except the fifth one, referred to and included debate of the negative aspects of science that affect society. The first science cafe discussed the pros and cons of genetically-modified foods. The second dealt with the bright and future vision of space exploration together with the discussion of technical failures in a mission that was reported to have succeeded, and wasteful spending in space observation. In the third, the good and bad aspects of information technology on human life were examined. In the fourth, the potential and limits of hydrogen energy together with the possibility and limit of atomic energy was discussed. The sixth science cafe raised concerns about the difficulty of developing an infallible earthquake prediction system. The seventh event pointed out the failure in national policy in treating a new strain of influenza. And the eighth discussed sustainability, focusing on improvement of the metropolitan traffic system.

In addition, some members of CSTH are connected to the "Citizen's Conference to Discuss Science and Technology," which is a technological assessment type of conference that provides opportunities for citizens to independently participate in the planning and decision making processes regarding science and technology policy. The theme of the citizens' conference in the 2006 fiscal year was "Eating habits and health," and the 2007 theme was "Relations between children and electronic media." About 10 citizens participated each year, and the conference was conducted over four days.

For its part, the citizens' assembly is a strategic move for the future consensus conference. Periodic meetings of the consensus conference in which a "scientific layperson" tries to evaluate science and technology after discussing it with scientists will be feasible after analyzing the results of a citizens' assembly.

Another feature of the Hiroshima City's case is collaboration with universities, and the way research funding of universities is utilized for these scientific communication trials. Collaboration with business and corporate donations can net plenty of money, but it may risk neutrality and objectivity. Hiroshima City reached an agreement with the Tokyo Institute of Technology in December 2006, and signed a contract to provide survey results on citizens' needs, to work together in obtaining know-how related to science cafes, and to provide financial assistance.

6. Conclusion

What supported the unique scientific communication in Hiroshima was the mayor's leadership and beliefs and the participation of researchers in liberal arts. Regarding the first element, the mayor is a graduate of MIT and belonged to the Social Democratic Party of Japan. As for the latter, the city employed staff from the liberal arts' field who also have scientific knowledge by way of compensating for the lack of science communicators. Training science communicators who have expertise both in science and communication is crucial for the smooth promotion of scientific communication with citizens, and Hiroshima City will have to establish a training center for science communicators. But involving staffers from the liberal arts field with some knowledge of science may be effective as a temporary measure.

Discussing the negative aspects of technology in a debate on science tends to be avoided by corporations that profit from technology and by the national government that intends to produce leading scientists such as Nobel Prize-winners, so these discussions for the public have to date been held by NPOs and universities as isolated events. The Hiroshima case, however, proved that the administration can take the lead in providing opportunities to debate the preferred relationship between science and society with the understanding of the negative effects that science has on society, meeting the needs of business and the national government.

References

Conference for 'The Counselors for Science and Technology by Citizens of Hiroshima City' (2005), Hiroshima shi kagaku gijutsu minsei iin kenkyu kai houkoku sho (Report of the Conference for 'The Counselors for Science and Technology by Citizens of Hiroshima City'), 6-7.

Hiroshima City bureau of economic affairs (2007), Kagaku gijutsu shimin kaunseraa no kouza nado katsudou no joukyou kongo no yotei (Activities of CSTH). Available online at: http://www.city.hiroshima.jp/www/contents/0000000000000/1162886240304/index.html, accessed 20 March 2008.

Hiroshima City project bureau of general affairs (2003), Hiroshima City Science and Technology Policy. Available online at: http://www.city.hiroshima.jp/kikaku/kikaku/ct/kagakugijutsu-eng_top.html, accessed 20 March 2008.

Hyodo, T. (2007) Dai 3 ki kagaku gijutsu kihon keikaku to jinzai ikusei inobeishon seisaku juushi eno michisuji (The Third Science and Technology Basic Plan and Process to Emphasizing Human Resource Development Policy and Innovation Policy), *Journal of Japanese Scientist*, 476, 42-47.

Japan Science and Technology Agency (2008) Saiensu kafe annai (Information on Science Café). Available online at: http://scienceportal.jp/contents/guide, accessed 20 March 2008.

Kuwabara, M. (2006) Kagaku gijutsu jinzai ni okeru sho mondai (Problems of Human Resource to Science and Technology), *The Proceedings of the 5th Conference of the Japanese Society for Science and Technology Studies*, 245-248.

Ueno, T. (2007) Kagaku gijutsu shimin kaunseraa ni yoru saiensu kafe Hiroshima (The Science Café Hiroshima by 'The Counselors for Science and Technology by Citizens of Hiroshima City'), *Journal of Japanese Scientist*, 478, 50.

Chapter 4

An Inquiry into the Relationship between Public Participation and Moral Education in Contemporary Japan: Who decides your way of life?

Koji TACHIBANA

1. Introduction: A relationship between public participation and political education

In Europe, political education in schools has had a bad reputation for a long time, on account of being "associated with the educational policies of the former regimes as something akin to indoctrination" (Ross 2003: 17). But it is getting increasingly popular again "through various forms of 'rebranding' as civics education, citizenship education, or political literacy," (Ross 2003: 17) (see, for example, the 1998 United Kingdom governmental report, "Education for Citizenship and the Teaching of Democracy in Schools: Final report of the Advisory Group on Citizenship"; Heater1999: 175, Crick 2002: 113ff.). Since, as Davies and Thorpe point out, "[c]itizenship is centrally about participation," citizenship education is concerned mainly with promoting public participation in political affairs (e.g., voting) (Heater 1999, Lévy and Ross (eds.) 2003, Davies and Thorpe 2003: 42). Here we can see a "citizenship education as a democratic impulse" (Crick 2002: 92).

In Japan as well, public participation has been increasing. The jury system and participatory technology assessment (TA) have become especially animated topics recently, and are expected to become more so in the near future. Some scholars argue that in Japan, citizenship education is needed to encourage citizens' *political* participation (e.g., Kodama 2003). However, owing to Japanese militarism in the pre-World War II period, political content has been excluded from the current Japanese education system. Thus, under present conditions, the current education system cannot deal positively with increasing public participation.

In both Europe and Japan, it is natural that scholars discuss public participation from the viewpoint of politics, because such concepts as "public participation," "citizenship (education)," and "citizen" have been discussed in politics for a long time. For example, Aristotle, the godfather of these theoretical concepts, discusses them in his *Politics* (not in his *Ethics*), and Machiavelli revives them as "civic humanism" in the context of *politics* (not *ethics*) (Pocock 1975). Nevertheless, these are highly complex and ambiguous concepts. As Derek Heater points out, "the study of citizenship is consequently not just topical, but a large, variegated, ever-changing subject," and it is difficult to define "citizen" (Keane 1998: 17ff., Heater1999: 180). In this sense, "[c]itizenship and political education are necessarily contentious areas" (Ross and Lévy 2003: 9). Moreover the Japanese word and concept "citizen (*Shimin*)" has its own etymological and historical ambiguity (Saeki 1997, Takabatake 2001, Okano 2003, Inaba 2008: 9f.).

Accordingly, there seems to be room to consider some *non*political aspects of these concepts. In this essay, I will discuss the relationship between public participation and *moral* education in contemporary Japan. If my argument succeeds, public participation in Japan can be discussed from the viewpoint of morality and moral education, and the moral education system can therefore introduce public participation into the curriculum without thereby opening themselves to the accusation that they are introducing political indoctrination into schools.

This essay is structured as follows. Firstly, I will survey some of the main features of the Japanese moral education system and its history (section 2). Secondly, I will take the following two types of public participation as case studies: the jury system (section 3) and participatory TA (section 4). Although they started independently, I will show that they have a moral aspect in common, i.e., *deciding citizens' way of life by themselves*. To make this point clear, focusing on the concept of civic virtue, I will discuss the

moral aspect of public participation in more detail (section 5). I will conclude with a discussion of the relationship between public participation and moral education (section 6).

2. Moral Education in Japan[1]

In 1872, the Meiji government set up the first modern Japanese moral education system "establishing oneself (*Shushin*)." In 1890, the government published the *Imperial Rescript on Education (Kyouiku chokugo)* in the name of Meiji Emperor and the system began to take on a political hue, i.e., *citizenship* education for the Great Empire of Japan (see Maruyama 1946). In 1945, after the end of World War II, this system was banned by the occupying General Headquarters (GHQ), because the GHQ regarded the system as the educational basis of Japanese militarism. As a result, in 1947, neither the Fundamental Law of Education nor the School Education Law contained moral education as a proper subject. Since then, political contents has been excluded from the education system.

When "Moral Education Classes (*Doutoku no jikan*)" appeared as a quasi-subject in 1958, many teachers opposed the classes because they were afraid that they might revive militarism. In 1963, when it was noticed that regular subjects (e.g., maths) were often taught in the times allotted to Moral Education, the Central Council for Education (CCE) ordered schools to carry out moral education more thoroughly. During the 1970s-1980s, juvenile delinquency and classroom disintegration became an issue of public concern, and the substance of these classes shifted from moral emotions to moral practices. At the same time, in the Courses of Study in junior high school, the injunction to "make students more deeply aware of the [good] way of life as human beings," appeared. In 1996, the CCE began promoting "Zest for Living (*Ikiru chikara*)" as the motto of moral education. This phrase has appeared in the Courses of Study since 1998. Its explicit features are as follows[2]:

  (1) Zest for Living means "the power to survive in a highly changeable contemporary society by making self-motivated judgments and actions." Related to this,
  (2) The aim of Moral Education Classes is "to increase awareness of moral values and *the [good] way of life as human beings*" (Chapter 3 of the Courses of Study). The guideline explains it as "the education of *moral practices to live well*." (My italics.)

But many teachers, parents, and scholars have disputed the current system because it does not seem effective; students (i.e., citizens of the future) do not seem demonstrably different and thus cannot have acquired the Zest. Therefore, the Government began contemplating a drastic change in the system. The then Prime Minister, Shinzo Abe, instituted the Educational Rebuilding Council (ERC) in 2006. The ERC noted that "it is necessary to promote reforms of the fundamentals of education and rebuild education by building an education system that is appropriate to Japan in the 21st century." [3]

The ERC has so far published four reports. In the second report on June 1, 2007, "Education Rebuilding by Society as a Whole: A Further Step toward the Rebuilding of the Public Education System and the Reconstruction of the Basis for a New Era of Education," it says that "the national government should make Moral Virtue Education a new proper-subject, different from conventional subjects, and enrich its content" so that "children come to appreciate the preciousness of life, *understand themselves and others*, develop a sense of self-affirmation, recognize the significance of working, and *realize their own role within society*" (my italics). This report recommends changing Moral Education Classes as a quasi-subject into "Moral Virtue Education (*Tokuiku*)" as a proper-subject. Two weeks later (June 16, 2007), the Cabinet adopted the recommendation, and the ERC has repeated this recommendation in the third report (December 25, 2007) and in the final report (January 31, 2008).[4]

But it has been strongly opposed by the CCE. Although its opposition is based on many (technical) reasons, the postwar principle of the separation of moral education and politics plays a significant part. Masakazu Yamazaki, the chairman of the CCE, declares a similar opposition in his latest book (Yamazaki 2007: 170ff.). Although the Ministry of Education, Culture, Sports, Science and Technology (MEXT) finally rejected the recommendations of the ERC, it did decide three things: (1) to establish a new

Committee on Growth and Moral Education of Children, (2) to arrange Promoting Teachers of Moral Education in schools, and (3) to insert "a sense of patriotism" as one aim of moral education in the new revised Courses of Study.

The problems of the quasi-/proper-subject and of patriotism thus became political. But, as we have seen, it is problematic for the education system to have political content. To make the moral education system effective, I think we should rather *re*think what moral education should be. In other words, we should *re*think what the Zest for Living, i.e., the power to survive for the good life is. In the following sections, I will show that public participation contributes to such a power.

3. Jury System in Japan

In this section, I will focus on the Japanese jury system, i.e., "*Saiban-in seido*." This system has its origin in July, 1999.[5] The then Prime Minister, Keizo Obuchi, established the Justice System Reform Council as a part of a deregulation policy. In 2001, the Act of Promotion of Justice System Reform was passed, and the Committee of Justice System Reform was constituted in the Cabinet. On March 19, 2002, the Plan of Justice System Reform was adopted by the Cabinet. It states that "[the Government will] introduce a new system (so-called 'jury system') so that citizens can positively participate in courts." And during the 159th Congress in 2004, the Act of Jury System (AJS; Act No. 63 of 2004), i.e., the main legal foundation of the system, was enacted. On April 15, 2008, the Cabinet decided to enforce the system on May 21, 2009. The Supreme Court describes several explicit features of the system (The Supreme Court 2007):

(1) 9 persons (i.e., 3 judges and 6 jurors) judge whether the accused is guilty or not guilty and what kind of penalty the person has to pay.
(2) Reflecting the citizens' common sense, citizens are expected to trust in the justice system more than before.
(3) Judgments in trials are essentially the same sort of judgments that citizens make in their daily life.
(4) Citizens are encouraged to offer their opinions freely.

This shows that the main explicit feature of the system is that citizens, as citizens, participate in court and reflect their common sense in it (Tanase 2003: 13). Although the institutional structures of jury systems differ from country to country (see Maruta 2004: 72, 74-97, 112, Nishimura 2005), they share this feature.

But scholars and lawyers have called attention to problems with the system, e.g., the unreliability of jurors (Kim 2007), jury nullification (The Justice System Reform Council 2000, Tanase 2003: 13-14),[6] the limitation of cases,[7] inequality between citizens and judges (Okawara 2007, Maruta 2006, Iemoto 2006), and citizens' general unwillingness to participate in the system (Nishino 2007). Although all of these problems are important, the last one seems critical to the success of the jury system. For, if citizens do not welcome the system, it is far less likely to work well. On this point, a 2005 poll showed that 70.0 percent of citizens were at that time unwilling to take on the role of juror (The Government of Japan 2005). Another poll shows that 82.4 percent of citizens are unwilling to do so (The Supreme Court 2008).

The Government asks such unwilling citizens to be positive more. The request is expressed in "IV: Establishment of the Foundation of Citizens" in the final report of the Justice System Reform Council "The Justice System Supporting Japan in the 21st Century" (June 12, 2001)[8]:

Citizens need to emerge from their extraordinary dependent attitude upon this country. This attitude is based on a consciousness that they are governed, passive subjects. Therefore, citizens need to establish in themselves *a sense of public-mindedness* and increase *their positive attitude toward public affairs*. (My italics.)

The "sense of public-mindedness" and the "positive attitude toward public affairs" are surely useful for promoting public participation in the justice system, i.e., the jury system.

It is worth asking why, in spite of citizens' unwillingness to participate, the Government promotes citizens' participation in the justice system so strongly. Alistair Ross answers "these initiatives are being made when there is a very real decline in understanding, sympathy and trust in politicians and political institution" because they "are rightly afraid that without popular endorsement [...], they lack authority: getting people to [...] believe in the systems." Therefore, "[p]oliticians are concerned that [...] people should participate in political processes" (Ross 2003: 23-25).

The Japanese justice system seems to be in the same circumstances. For, as polls show, only 7.6 percent of citizens have confidence in the current courts, and 58.6 percent are discontent with its long-term trial performance (The Government of Japan 2005).[9] Another poll shows that citizens do not consider judges to have common sense (JFBA 1999: 293, 296). Moreover, as is well known, conviction rate in the criminal procedures in Japan is said to be *99.9 percent* (see Johnson 2002: 214-218). This rate is literally too high to be trusted.[10] As exemplified in a recently popular movie entitled "*This is a false accusation, I'm innocent*" (2007), citizens are generally anxious about the problem of false accusations.[11] These data seem to symbolically show the reason why the Government needs to establish the system. Hiroyuki Tsuji, who was the member of the Committee of Justice System Reform, explains the significance as follows:

> The significance of the jury system is that citizens come to understand and endorse the justice system more deeply, and the justice system gets a firmer foundation for citizens. This must be achieved by encouraging them to widely participate in court processes and ensuring that court procedure reflects citizens' sense more closely. (Tsuji 2005: 65)

The first sentence also appears in the beginning of the AJS itself (Article 1 in Chapter I). And the second sentence can be seen several times in the process of compiling it (see Tsuji 2005: 98ff, 349). Therefore, as the Government repeatedly insists on the importance of the jury system, it is clear that they regard the system as a device to gain citizens' trust in the justice system and political institutions (see Morigiwa (ed.) 2005: 340ff.). In this sense, the jury system is undoubtedly a political device for the Government.

But is the jury system only such a device? As Judith Shklar says, "[a] trial, the supreme legalistic act, like all political acts, does not take place in a vacuum. It is part of a whole complex of other institutions, habits, and beliefs" (Shklar 1986: 144). Therefore, "law and legalistic morality [are] not separate entities but a single continuum" (Shklar 1986: 109), and some legal decisions are also moral decisions (Lee 1986). In this sense, laws can be seen as a device to accomplish moral ends (Kaufmann 1997: Chapter 14). And we can truly view "Moralische Überzeugungen und ethische Kriterien als Grundlagen des Rechts" (DBRÖ 2002: 19ff.).

This way of thinking is compatible with natural law theory. Although I will not join in the debate between natural law theory and legal positivism, I will sketch out the moral aspects of the jury system. On this point, an insight of Alexis de Tocqueville is helpful:

> To regard the jury simply as a judicial institution would be to take a notably narrow view, for if the jury has a great influence on the outcome of a trial; it has an even greater influence on *the fate of society itself*. (de Tocqueville 2004: 313; my italics.)

De Tocqueville reveals the essence of the jury system in general (see also Kodama 2003: 173-174). The jury system is not merely an institution of the justice system, but also affects the direction of society and ourselves; it literally decides our own *fate*. "Thus the jury system really places control of society in the hands of people, or of that class" (de Tocqueville 2004: 314).[12] Here, we can understand that participating in the justice system means *participating in deciding our way of life.* I think this point itself could be accepted even by legal positivists, because to decide a legal matter in this sense is not necessarily to decide a moral matter. Nevertheless the jury system has a moral aspect. That is because deciding one's own way of life is one of the most important moral activities. In this sense, the jury system is a moral activity, i.e., citizens' participation in deciding their own way of life. In the next section, I will examine another type of

public participation, i.e., participatory TA.

4. Participatory Technology Assessment in Japan

To consider public participation in technology, we first have to think about the relationship between science-technology and society in the 21st century. On one hand, we all know that we cannot live without technology. This means that technology has become an important part of our "Lebensform" (Winner 1986). In that sense, our society is *technologized*. On the other hand, we all know also that technology, involved in the market mechanism in a sense, has become a big business all over the world. This means that technology cannot be independent of society (Feenberg 2001, Murata 2006). In that sense, technology is *socialized*. These two aspects of the relationship are the defining features of the 21st century (Kobayashi 2002).

From the viewpoint of *technologized society*, technological accidents have a big impact on our daily life (e.g., nuclear accidents, BSE accidents). To avoid these kinds of accidents, engineering ethics is concerned with "preventive ethics," which deals with how to manage the risk of technologies that have not been completely developed yet (Ihde 1999). From the viewpoint of *socialized technology* however, engineers are under pressure to put their products on the market as soon as possible. But, "since technologies in progress cause many accidents that engineers cannot predict beforehand, they can hardly set the criteria for controlling these technologies" (Murata 2006: 4, see also Weinberg 1972). Hence, as Charles Perrow calls these accidents "normal accidents" (Perrow 1999), the most important task of preventive ethics is to find a way of avoiding normal accidents (Murata 2006: 28).

Moreover, in addition to this narrow task, engineering ethics (including preventive ethics) has another wide task, which is based on both technologized society and socialized technology. That is the assessment of ELSI (ethical, legal, social issues/implications) of science-technology, e.g., neuroethics concerned with ELSI of brain science and neuroscience (see Tachibana 2008).[13] Even if normal accidents might not happen luckily, this task would almost always happen. To accomplish these tasks, the participatory TA attracts scholars' attention. Although it has some types, e.g., science cafés, scenario workshops, citizens' juries, and consensus conferences, I will focus on the last one on this section.

A consensus conference, now about twenty years old, is a relatively young system. Since the Royal Society in the 17th century, lectures on science-technology have been given by scientists (i.e., professionals) to enlighten citizens (i.e., amateurs). This enlightenment is called PA (public acceptance of science-technology) or PUS (public understanding of science-technology). [14] In the 1960s, a new notion, Technology Assessment (TA), was born. This was intended to alert citizens to the dangers of technology as well as the merits. In the 1970s in the U.S., the Office of Technology Assessment (OTA) was established, and the National Institutes of Health (NIH) started a new decision-making process, the Consensus Development Conference (CDC). But the CDC was still a variation on the PA and PUS, and therefore not a participatory one, because it was intended to build a consensus among professionals about complex medical technology.

In 1987, however, the Danish Board of Technology (DBT) invented a new style of consensus conference by involving lay citizens into the CDC. This is a consensus conference as participatory TA. Following Denmark's footsteps, various countries (mainly in Europe) have established consensus conferences by degrees (Joss and Durant (eds.) 1995). In Japan, the first consensus conference was held in 1998. Tadashi Kobayashi and Yukio Wakamatsu, who conducted the conference, say that nobody knew its name, and scholars laughed at the experiment at that time (Kobayashi 2007a: 68, see also Wakamatsu 1999, 2005). But now, many scholars pay attention to this system. Notwithstanding it is still a very young system in Japan, a consensus conference has since been held about ten times.

Although the styles of the management differ from country to country (see Joss and Durant (eds.) 1995, Kobayashi 2007a: 212-216), as far as they are *participatory* TA, the main explicit feature is in common, i.e., citizens, as citizens, participate in technology and reflect their ordinary sense in it. And, in Japan, many practical and theoretical attempts have been made to revise participatory TA (e.g., Fujigaki 2002, 2007a, Kobayashi 2007b). In a practical example, since 2005, the MEXT in the Government has

established a program to train the "science communicator," i.e., the intermediary between citizens and scientists.[15] And, the JST/RISTEX in the Government has promoted participatory TA strongly (e.g., the latest program "the interaction between science-technology and society" has started in 2008).[16]

Why does the Government promote participatory TA strongly? We can get a clue in a large amount of polled data from 2004. For example, citizens were asked the following question:

What do you think about the following opinion? "Science and technology developments are going to increasingly impact the daily life of the public in the future, making participation by the public—not just specialists such as researchers and administrative officials—in the formation of science and technology policy even more necessary." (The Government of Japan 2004: 127)

To this question, 71.7 percent of citizens agreed with the need for public participation in science-technology policy. And another poll says that 65.1 percent of citizens feel dissatisfied with the insufficiency of their information of science-technology, and that 69.6 percent of citizens feel that the progress of science technology is too rapid for them to follow (The Government of Japan 2008).

The Government explains its reasoning as follows:

To get citizens to understand and support science-technology more, [...] it is also necessary that citizens participate in science-technology positively. Therefore, the Government reinforces the policy that promotes citizens' participation in science-technology. (The Government of Japan 2006: 43; my italics.)

The Government thinks that participatory TA is useful to get citizens' support for science-technology (see also The Government of Japan 2004: 131-132, 2006: 41). The Science Council of Japan, that is the most authoritative academic society in Japan, also states almost the same thing (The Science Council of Japan 2006: 1-3). Some scholars who study consensus conferences have noticed such a political motive of the Government:

[A consensus conference as participatory TA] is seen to be important because, [...] science and technology cannot be expected to flourish for the benefit of humankind without a basis of public understanding and public support. (Joss and Durant 1995: 9)

From this viewpoint, the role of participatory TA is as follows: citizens participate in assessing the risk of the technology in question to give their support to promote the technology. In this sense, for the Government, participatory TA is undoubtedly a political device.

But, is it only such a political device? When 71.7 percent of citizens agree with the need for participatory TA, a fear of socialized technology seems to be behind this high percentage. The other polled data says that 77.1 percent of citizens are anxious about the abuse and the misuse of science-technology (The Government of Japan 2008). These data show that, in a technologized society, citizens are forced to risk their life to some degree. In other words, citizens feel that current technologies expose them to danger, i.e., "normal accidents" (e.g., BSE accidents). This seems to be the main reason why citizens participate in it positively (see Kobayashi 2007a, Sugiyama 2007, Watanabe, T. 2007).

As we have seen, a consensus conference is an arena where citizens, *as* citizens, participate in public affairs. Kobayashi says that, in consensus conferences, citizens can give various perspectives on the technology in question, which professionals tend to miss (Kobayashi 2007a: 213). That is because citizens think about the technology in terms of *their daily life*. And that is because they are afraid that the technology *might* destroy their daily life. In other words, citizens try to reveal the kind of risk that is acceptable for *their daily life, i.e., their society* (see Ishihara 2005). It means that they assess what kinds of risks they regard as the important ones. In this sense, participatory TA serves citizens as an arena where they consider, discuss, and decide for themselves what kind of life they want to have. This is exactly a

moral issue. Sir Robert May and the third report of Select Committee on Science and Technology in the United Kingdom say as follows:

> There are real social and environmental choices to be made [...]. They are not about safety as such, but about much larger questions of *what kind of a world we want to live in*. (May 1999, Select Committee on Science and Technology 2000: 2.51; my italics.)

Also in Japan, Kobayashi repeatedly emphasizes the same thing, i.e., the consensus conference is an arena where citizens participate in *deciding their way of life* (Kobayashi 2007a: 7, 60, 238-239, 244-245, Kobayashi 2007c).

Therefore, just as in the case of the jury system, participatory TA also can be seen as a moral activity because the participation means deciding their way of life. In the next section, I will examine the moral aspect of public participations in detail.

5. Public Participation as Civic Virtue: Its moral aspects and political aspects

In the previous sections, I examined two types of public participation in contemporary Japan: the jury system and participatory TA. It is almost certain that both of them will increase more and more in the near future. Although I characterize their political aspects as devices to gain citizens' trust, public participation undoubtedly has other political aspects. For, as is well known, public participation in general is regarded as the ideal of democracy, i.e., the civilian control of society. To say nothing of the jury system, participatory TA is also called "democratic rationalization" (Feenberg 2001), "deliberative democracy" (Kobayashi 2004: 355), and "risk communication as a component of democracy itself" (Ishihara 2005). In that sense, public participation is a political activity. Therefore, one might ask, whether it is really a *moral* activity or not, even if public participation is concerned with "deciding one's way of life." In this section, I will give two reasons to show that "deciding one's way of life" through public participation is a moral activity.

Firstly, the concept of "deciding one's way of life" has already been partly discussed as "self-determination" or "autonomy" in the context of bio*ethics* (e.g., Brody and Engelhardt (eds.) 1987, DBRÖ 2002). Against paternalistic medical treatment by doctors, there is a discussion of the concept of self-determination, which has focused on the achievement of a sufficient quality of life (QOL) for patients (Maeda 1998). The point of this discussion is that it is not only the doctor (i.e., professional) but also the patient (i.e., amateur) who participates, and sometimes has priority in deciding the treatment plan because the decision is about *his/her* life. This has almost the same structure as public participations in section 3 and 4. That is, in both cases, amateurs, as well as professionals, participate in the decision-making processes because the results are highly concerned with their way of life. In this sense, equally for self-determination in bioethics, public participation has a moral/ethical aspect, i.e., self-determination.

Despite this similarity, there seems to be a difference between self-determination in bioethics and in public participation. On one hand, the former could be originally treated not as bio-medical-*politics* but as bio-medical-*ethics*, because this concept has been used for the QOL for the patient as a *private* person.[17] But, on the other hand, the latter needs to be concerned with *others*. In that sense, *public* participation cannot be treated only as a *private* issue, and therefore self-determination through public participation is properly "deciding *our* way of life." Although this does not disprove that public participation has a moral aspect as self-determination, it does give one reason why self-determination in public participation has been discussed in the context of politics for a long time.

To clarify the moral aspects characteristic of self-determination in public participation, I need to consider the relationship between its political aspects and moral aspects. Secondly therefore, I will survey two philosophers' views: John Mackie and Aristotle. Mackie says as follows:

> In any case, the two [i.e., politics and ethics] cannot be kept apart. It would make no sense to confine moral thinking to private life and to set up some quite independent principles to determine political

values and decisions. [...] The choice of political goals belongs to morality in the broad sense: it goes with views about *the good life for man*. (Mackie 1977: 235-236; my italics.)

As he says, regardless of private or public, when we think about what the good life is, the thought is a moral/ethical one. In this sense, we can say with Mackie that public participation is in the context of "morality in the broad sense" because "deciding *our* way of life" is concerned with what the good life is.

When Aristotle calls his *Ethics* "political science, in one sense of that term (*politikê tis*)" (*Nicomachean Ethics* I2), he also brings out this point.[18] Moreover, when he uses the concept of "civic virtue (*politikê aretê*)," he considers in great detail the relationship between the moral/ethical aspects and the political aspects of public participation. Although it is difficult to understand the relationship between his *Ethics* and *Politics*, we can make use of his concept for our end.

Civic virtue is, simply speaking, the evaluative word of public participation. As he explains this concept in *Politics* III4, we can discern the two conditions for evaluation as follows:

(A) Whether citizens, as citizens, participate in public affairs.
(B) Whether citizens have a common object or "common interest (*to koinêi sumpheron*)."

We have already discussed (A) repeatedly in this essay as the main feature of public participation. Aristotle defines a "citizen (*politês*)" as the person who "shares in the administration of justice and in offices (*metechein kriseôs kai archês*)" (*Politics* III1), and argues that citizens should participate in "some deliberative and judicial functions (*tou bouleuesthai kai krinein metechein autous*)" because "some understand one part, and some another, and among them they understand the whole" (*Politics* III11). This thought is partly based on his (and ancient Greek philosophers') reliance on "speech (*logos*)." He says "the power of speech is intended to set forth the expedient and inexpedient, and therefore likewise the just and the unjust (*kai to dikaion kai to adikon*)" (*Politics* I2). Connecting "citizens" with the plural meanings of "Justice (*krisis* / *dikê* / *dikaion* / *dikaiosunê*),"[19] public participation is defined as citizens' participation in political affairs, i.e., the justice system and offices to discuss and practice what is just. Although ancient Greek people did not regard technology as an issue of public concern, we must do because we are in a technologized society. In this sense, we can add participatory TA to that definition. Here we can see the political condition of public participation.

On (B), Aristotle means "the salvation of the community" by "a common interest." Someone might think thereby that (B) also indicates that public participation and civic virtue are political concepts. But, Aristotle explains the end of "community (*koinônia*)" or "state (*polis*)" as follows: "the end of the state is the good life (*to eu zên*)" and the state is "for the sake of a perfect and self-sufficing life" (*Politics* III9, VII8, VII13). To care about "common interest," i.e., so-called "common good (*to koinon agathon*)," he emphasizes the role of "civic love (*politikê philia*)" (*Politics* III6). Civic love is caring about others and is more fundamental than egoism (see Collins 2002).[20] Connecting such a civic love with the notion of "unanimity (*homonoia*)," Aristotle says "unanimity seems, then, to be civic love [...] for it is concerned with things that are to our interest and have *an influence on our life* (*ta eis ton bion êkonta*)" (*Nicomachean Ethics* IX6; my italics). Accordingly, civic love is an attitude to reach the unanimity of citizens' way of life by caring about others (see Hamaoka 2004). Therefore, public participation as civic virtue is concerned with caring about others and what the good life of us is. Since trying to achieve "the good life (*to eu zên*)" is exactly the subject of ethics (see *Nicomachean Ethics*), civic love can be seen as the moral condition of public participation.

Here, based on the viewpoint of civic virtue, we can see the reasons why public participation is both political and moral activity. (I) Firstly, the end of public participation is to decide our good way of life by discussing and caring about it (see Nussbaum 2002). (II) Secondly, to discuss what the good life is, we have to participate in the political arena. (III) Thirdly, to reach the unanimity, we need to care about others.

Although public participation is necessarily concerned with others, because of (I) and (III), it has moral aspects as well as political ones. Moreover, we would emasculate the real value of public

participation if we dismiss these two components. We can now correctly understand that public participation is a moral activity as well as political one. In the next section, I will conclude my discussion. I will discuss a relationship between public participation and moral education in contemporary Japan.

6. Conclusion: A relationship between public participation and moral education

In this essay, I have tried to reveal a relationship between public participation and moral education in contemporary Japan. Firstly, I surveyed the Japanese moral education system (section 2), whose motto is *Zest for Living*, i.e., the power of living well in this society. But public controversy is focused on political issues, e.g., the quasi-/proper-subject problem and the teaching of patriotism. I indicated that we had to *re*think what living well and the good life should mean in contemporary Japan. Towards this end, secondly, I examined two types of public participation: the jury system (section 3) and participatory Technology Assessment (section 4). Although they are normally regarded as different activities (Kobayashi 2004: 318-319, see also Tanase 2003: 4), the Government regards them together as useful devices to gain citizens' trust and support. In addition, I revealed that they had another similar aspect, i.e., *citizens' participation in deciding their way of life.* I classified this aspect as moral one because deciding one's way of life by oneself is a highly moral activity. Thirdly, to elaborate on its morality, I focused on the two concepts, i.e., "self-determination / autonomy" and "civic virtue." Although public participation is *mainly* a *political* activity, focusing on these concepts allows us to see the two moral aspects characteristic of public participation: (α) considering, discussing and deciding what the good life is, and (β) caring about others. In these two meanings, public participation is *also* a *moral* activity.

Understanding public participation in this way, I make two proposals:

(1) <u>Toward the Japanese moral education system:</u> *we can rethink moral education from the viewpoint of public participation.*[21] If Japanese moral education is concerned with "the good way of life as human beings" and *Zest for Living*, if public participation is also concerned with what the good life is, and if science-technology, the justice system, and other public issues have a direct and considerable influence on our daily life, then a class dealing with public participation in general should be part of the Japanese moral education curriculum.[22] Now we can justly say that public participation is a "moral practice to live well" and requires citizens to "understand themselves and others" (remember the explicit features mentioned in section 2).

(2) <u>Toward current research into public participation:</u> *we can rethink public participation from the viewpoint of moral activity.* Until now, public participation has been investigated mainly in its political aspects even when scholars focus on civic virtue (see Winner 1992). But as I show, since public participation is also a moral activity, public participation can be discussed in the context of ethics (see Ladd 1991, Tachibana 2007). We should locate public participation in the broader context than ever, since it is expected to increase more in the near future.

Some political scientists, who are committed on republicanism, also have been interested in a moral/ethical foundation for democracy.[23] From the viewpoint of political science and political philosophy, one might categorize my discussion as "Aristotelian civic republicanism" (Kymlicka 2002: 294ff, Makino 2007, see also Usui 2006: 259). Although I would not oppose such a categorization, it is important to add that is *not* my point. My point is rather to rethink *concretely* the relationship between the Japanese moral education system and public participation. In my view, the point of educating children to become interested in public participation is neither educating them to become interested in politics nor in voting, but rather educating them to become interested in their way of life and in deciding it. In this sense, not as a *political* activity but as a *moral* activity, public participation can be adopted in Japanese moral education.[24]

To conclude, it is worth adding a few words about Japanese moral education as *citizenship* education. When we think about citizenship education, "[w]e must beware of not simply becoming involved in a drive to increase voter turnout" (Davies and Thorpe 2003: 42). I think this warning is important when we

think about the meaning of citizenship education in contemporary Japan. On one hand, as we have already seen in section 3 and 4, the Government promotes public participation to gain citizens' trust and support. For this end, the Government tries to encourage in citizens a sense of public-mindedness and of patriotism. If moral education is promoted for this end, then it will not be moral education at all but rather *political* education. And the implications of "public-mindedness" and "a sense of patriotism" will take on a dangerous tone. It is not difficult to forecast that the moral education system could be easily exploited as political education in this sense.

On the other hand, if we can understand public participation as I have discussed, "public-mindedness" and "a sense of patriotism" only mean "civic virtue" in the sense of this essay. This indicates that giving citizens' trust and support in the Government is *not* a necessary condition of public participation. In this sense, voting might not have to be done as an expression of citizens' trust and support in the Government, but rather as *an expression of civic virtue*, i.e., citizens' participation in deciding their way of life. This seems important when we notice that citizenship education as political education can *also* bring the same results (e.g., increase of voter turnout) successfully. But the correspondence should not be *the purpose* but only be *the outcome*. When we think about the relationship between public participation, moral education, and citizenship education, we should not disregard this point.

In this sense, the citizens' unwillingness to participate in the jury system in section 3 might not be devastating. The main reasons for their unwillingness are "the heavy responsibility of judging others" (75.5 percent) and "an anxiety about being amateurs" (64.4 percent) (The Supreme Court 2008: 16). It might indicate that citizens have a strong sense of responsibility (The Supreme Court 2008: 24). In this sense, public participation can be seen as "political participation derived from *non*political motives" or "*un*willing political participation" (see Maruyama 1961: 172-173). A reluctant political actor is not thereby a bad one, and may even be desirable because it might be one way of avoiding populism.[25, 26, 27]

References

Abiko, K., Tanimoto, M. (eds.) 2004. *Introduction to Public Philosophy (Koukyotetsugaku wo manabuhito no tameni)*, Kyoto: Sekaishisosha. (Japanese)

An Investigation and Reporting Commission in Japan Federation of Bar Associations (IRC-JFBA) (ed.) 2006. *Jury System for having made citizens come to life (Shimin ga ikiru saiban-in seido ni mukete)*, Tokyo: Gendaijinbunsha. (Japanese)

Arendt, H. 1958. *The Human Condition*, Chicago: University of Chicago Press.

Barnes, J. (ed.) 1984/1985. *The Complete Works of Aristotle*, vol.I and vol.II, Princeton: Princeton University Press.

Brody, B.A., Engelhardt, H.T. Jr. (eds.) 1987. *Bioethics: Readings & Cases*, Englewood Cliffs: Prentice-Hall.

Chiba, S. 1995. *The Horizon of Radical Democracy: Freedom, differences, and common goods (Radical Democracy no chihei: Jiyu, sai, kyoutu-zen)*, Tokyo: Shinpyousha. (Japanese)

Collins, S. D. 2002. "Justice and the Dilemma of Moral Virtue in Aristotle's Nicomachean Ethics," in Tessitore (ed.) 2002, 105-129.

Cooper J. M. 1999. "Political Animals and Civic Friendship," in his 1999. *Reason and Emotion*, Princeton: Princeton University Press, 356-377.

Crick, B. 2002. *Democracy: a very short introduction*, Oxford: Oxford University Press.

Davies, I., Thorpe, T. 2003. "Thinking and acting as citizens," in Lévy and Ross (eds.) 2003, 34-52.

Deutscher Bundestag Referat Öffentlichkeit (DBRÖ) (Hg.) 2002. *Schlussbericht der Enquete-Kommission "Recht und Ethik der modernen Medizin,"* Berlin. (http://dip.bundestag.de/btd/14/090/1409020.pdf) (German)

Feenberg, A. 2001. "Democratic Rationalization: Technology, Power and Freedom (Minshuteki na gourika: gijutsu, kenryoku, jiyuu)," translated by Naoe, K., *Shisou* 926, 32-57. (Japanese) (This is the revised version of 1992. "Substantive Rationalization: Technology, Power and Democracy," *Inquiry*, Sep./Dec., 301-322.)

Fujigaki, Y. 2002. "Scientific Rationality and Social Rationality: Borders of their Validities (Kagakuteki gourisei to shakaiteki gourisei: datousei kyoukai)," in Kobayashi (ed.) 2002, 35-54. (Japanese)

————— 2007a. "Knowledge, Power and Politics (Chishiki, kenryoku, seiji)," in Kobayashi, S. *et al.* (eds.) 2007, 139-152. (Japanese)

───────── 2007b. "What is Useful Knowledge for Society? (Shakai ni yakudatsu chisiki towa)," in Kobayashi, S. *et al.* (eds.) 2007, 153-163. (Japanese)

Hamaoka, T. 2004. "How to Educate People for Good Citizens (Ikanisite yokishimin wo sodateruka)," in Abiko *et al.*(eds.) 2004, 214-228. (Japanese)

Heater, D. 1999. *What is Citizenship?*, Cambridge: Polity Press.

Iemoto, M. 2006. "What I Studied by the Practices of Criminal Court in N.Y.: To realize Jury System kept the Principles of Criminal Court in Mind (New York shu keijisaiban jitsumu kara mananda koto)," in IRC-JFBA (ed.) 2006, 68-75. (Japanese)

Ihde, D. 1999. "Technology and Prognostic Predicaments," *AI & Society* 13, 44-51.

Inaba, S. 2008. *On 'Publicness'('Koukyousei' ron)*, Tokyo: NTT Press. (Japanese)

Inoue, M. 2004. "A New Image of Science Journalist is Desired (Motomerareru atarasii kagaku-journalist zou)," in JASTJ (ed.) 2004, 154-165. (Japanese)

Ishihara, K. 2005. "Risk Assessment and Risk Cognition in Technology (Kagaku gijutsu no risk hyoka to risk ninchi)," in Nitta *et al*. (eds.) 2005, 174-194. (Japanese)

Japan Federation of Bar Associations (JFBA) (ed.) 1999. *Courts that are familiar to Citizens (Shimin ni mijika na saibansho e)*, Tokyo: Nippon-Hyouronsha. (Japanese)

Japan Federation of Bar Associations (JFBA) (ed.) 2005. *Judicial Reform: the Justice for Citizens (Shihou kaikaku: Shimin no tameno shihou wo mezashite)*, Tokyo: Nippon-Hyouronsha. (Japanese)

Japanese Association of Science & Technology Journalists (JASTJ) (ed.) 2004. *The World of Science Journalism (Kagaku-journalism no sekai)*, Tokyo: Kagakudojin. (Japanese)

Johnson, D. T. 2002. *The Japanese Way of Justice: prosecuting crime in Japan*, New York: Oxford University Press.

Joss, S., Durant, J. (eds.) 1995. *Public Participation in Science: The Role of Consensus Conferences in Europe*, London: Trustees of the Science Museum.

Joss, S., Durant, J. 1995. "Introduction," in Joss and Durant (eds.) 1995, 9-13.

Kato, H., Kamo, N. (eds.) 1998. *Introduction to Bioethics (Seimeirinrigaku wo manabu hitono tameni)*, Kyoto: Sekaishisousha. (Japanese)

Kaufmann, A. 1997. *Rechtsphilosophie*, München. (this is the 2nd. ed. of his *Gründprobleme der Rechtsphilosophie* (1994)) (German)

Keane, J. 1998. *Civil Society: Old Images, New Visions*, Cambridge: Polity Press.

Kim, S. 2007. "Demonstration Research on the Decision-Making Process of Jury: An Analysis of the First Moot Trial by Jury (Baisin-in no ishikettei ni kansuru jisshoukenkyu)," in Tanase (ed.) 2007, 265-281. (Japanese)

Kobayashi, S., Kobayashi, T., Fujigaki, Y. (eds.) 2007. *Introduction to Social Technology (Shakaigijutsu gairon)*, Tokyo: The Open University of Japan Press. (Japanese)

Kobayashi, T. (ed.) 2002. *Science Technology for Public (Koukyou no tameno kagakugijutsu)*, Tokyo: Tamagawa University Press. (Japanese)

───────── 2002. "Science-Technology and Publicness (Kagaku gijutsu to Koukyousei)," in Kobayashi (ed.) 2002, 13-34. (Japanese)

───────── 2004. *Who Thinks about Science-Technology? : Experiments of Consensus Conferences (Darega kagakugijutsu ni tsuite kangaerunoka: consensus conference to iu jikken)*, Nagoya: Nagoya University Press. (Japanese)

───────── 2007a. *The Time of Trans-Science: Connecting Science Technology with Society (Trans-science no jidai: kagakugijutsu to shakai wo tsunagu)*, Tokyo: NTT Press. (Japanese)

───────── 2007b. "Communication Design of Science-Technology and Society (Kagakugijutu to shakai no communication design)," in Kobayashi, S. *et al.* (eds.) 2007, 80-95. (Japanese)

───────── 2007c. "Lights and Shadows of Consensus Conference (Consensus kaigi no hikari to kage)," *Proceedings of the Society for Risk Analysis Japan Annual Conference* 20, 439-444. (Japanese)

Kodama, S. 2003. *Educational Thought of Citizenship (Citizenship no kyouiku shiso)*, Tokyo: Shirosawasha. (Japanese)

Kotera, S. 2001. "History of Moral Education (Doutokukyouiku no rekishi)," in Kotera and Fujinaga (eds.) 2001, 31-67. (Japanese)

Kotera, S., Fujinaga, H. (eds.) 2001. *Introduction to Moral Education, new edition (Shinban doutokukyouiku wo manabu hitono tameni)*, Kyoto: Sekaishisosha. (Japanese)

Kymlicka, W. 2002. *Contemporary Political Philosophy: An Introduction*, 2nd.ed. Oxford: Oxford University Press.

Ladd, J. 1991. "Bhopal: An Essay on Moral Responsibility and Civic Virtue," *Journal of Social Philosophy* 22: 2, 73-91.

Lee, S. 1986. *Law and morals: Warnock, Gillick, and beyond*, Oxford: Oxford University Press.

Lévy, C. R., Ross, A. (eds.) 2003. *Political Learning and Citizenship Education in Europe*, Stoke on Trent: Trentham Books.

Mackie, J. L. 1977. *Ethics: Inventing Right and Wrong*, New York: Penguin.

Maeda, Y. 1998. "Medical Technology and Bioethics (Iryogijutsu to seimeirinri)," in Kato and Kamo (eds.) 1998, 274-288. (Japanese)

Makino, M. 2007. "Habermas on Citizenship and Civic Virtue (Habermas no citizenship ron)," *Journal of law and political studies* 73, 43-75. (Japanese)

Maruta, T. 2004. *Jury System in Japan (Saiban-in seido)*, Tokyo: Heibonsha. (Japanese)

———— 2006. "Jury System for Activating Citizens: What I Studied by the Practices of Criminal Court in N.Y. (Shimin ga ikiru saiban-in seido ni mukete)," in IRC-JFBA (ed.) 2006, 14-23. (Japanese)

Maruyama, M. 1946. "Logic and pshchology of ultranaturalism (Chou-kokkashugi no ronri to rinri)," reprinted in his 2003. *The Works of Masao Maruyama (Maruyama Masao shu)*, vol.3, Tokyo: Iwanami-shoten, 17-36. (Japanese)

———— 1961. "To be and to do ('dearu'koto to 'suru'koto)," in his 1961. *Ideology in Japan (Nippon no shisou)*, Tokyo: Iwanami-shoten, 153-180. (Japanese)

May, R. 1999. "Genetically Modified Foods, Facts, Worries, Policies and Public Confidence," OST, February. (http://www.berr.gov.uk/dius/science/page15579.html).

Mitani, T., Sato, H., Shiratori, Y., Toishi, I. 2003. *Public Participation in the Justice: Its Past, Present and Future ("Kokumin no shihousanka" no kako, genzai, mirai)*, Hokkaido: Hokkaido University. (Japanese)

Morigiwa, Y. (ed.) 2005. *The Law and Ethics of Jurists (Housou no rinri)*, Nagoya: Nagoya University Press. (Japanese)

Nitta,T., Kurata, N., Ishihara, K. (eds.) 2005. *Introduction to Ethics in Technology (Kagaku gijutsu rinri wo manabu hitono tameni)*, Kyoto: Sekaishisosha. (Japanese)

Murata, J. 2006. *Ethics of Technology (Gijutsu no rinrigaku)*, Tokyo: Maruzen. (Japanese)

Nishino, K. 2007. *The True Form of the Jury System (Saiban-in seido no shoutai)*, Tokyo: Kodansha. (Japanese)

Nishimura, K. 2005. "An outline of the Jury System, Its history, and the Problems (Saiban-in seido no gaiyou to sono seiritsu kei-i oyobi kongo no kadai)," in JFBA (ed.) 2005, 156-182. (Japanese)

Nussbaum, M. C. 2002. "Aristotelian Social Democracy," in Tessitore (ed.) 2002, 47-104.

Okawara, M. 2007. "Making sense of Jury System: Linguistic Analysis for Public Participation (Saiban-in seido no kinouka)," in Tanase (ed.) 2007, 282-296. (Japanese)

Oshitani, Y. 2001. *Investigation into the Process of Establishment of 'Moral Education Classes': A New Development of Moral Education ("Doutoku no jikan" seiritsu katei ni kansuru kenkyu)*, Tokyo: Toyokan-shuppansha. (Japanese)

Okano, Y. 2003. *Citizenship as Politics (Citizenship no seijigaku)*, Tokyo: Hakutakusha. (Japanese)

Perrow, C. 1999. *Normal Accidents: Living with High-Risk Technologies*, Princeton: Princeton University Press.

Pocock, J. G. A. 1975. *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, Princeton: Princeton University Press.

Rasmussen, D. (ed.) 1990. *Universalism vs. Communitarianism: Contemporary debate in ethics*, Massachusetts: The MIT Press.

Rawls, J. 1971. *A Theory of Justice*, Cambridge: Harvard University Press.

Ross, A. 2003. "Children's Political Learning: Concept-based approaches versus Issues-based approaches," in Lévy and Ross (eds.) 2003, 17-33.

Ross, A., Lévy, C. R. 2003. "Introduction: Growing up politically in Europe today," in Lévy and Ross (eds.) 2003, 1-16.

Saeki, K. 1997. *Who is "citizen"? ("Shimin" towa dareka: sengominshushugi wo toinaosu)*, Kyoto: PHP Institute. (Japanese)

Schofield, M. 1999. "Political Friendship and the Ideology of Reciprocity," in his 1999. *Saving The City: Philosopher-Kings and Other Classical Paradigms*, London: Routledge, 82-99.

Select Committee on Science and Technology. 2000. *Science and Technology: Third report*, House of Lord. (http://www.publications.parliament.uk/pa/ld199900/ldselect/ldsctech/38/3801.htm).

Shibata, T. 2004. "How to Educate for Science Journalist (Kagaku journalist wo dou sodateruka)," in JASTJ (ed.) 2004, 142-153. (Japanese)

Shklar, J. N. 1986. *Legalism: an essay on law, morals and political trials*, Cambridge: Harvard University Press. (The first edition was published in 1964.)

Sugiyama, S. 2007. "Comments on the Consensus Conference in Hokkaido (Idenshi kumikae sakumotsu consensus kaigi eno shokan to teigen)," *Japanese Journal of Science Communication* 1, 105-111. (Japanese)

Tachibana, K. 2007. "On the Effectual Operation of Preventive Ethics of Scientific Technology and the Philosopher's Participation: From the View of Case Study and Civic Virtue (Kagakugijutsusha wo taishou to sita yobourinri no koukateki na unyou to tetsugakusha no sanyo ni tsuite)," *Philosophy and the History of Science* 20, 27-39. (Japanese)

————— 2008. "Toward a Good Relationship between Brain Science and Society: STS, Philosophy of Science, and Neuroethics," *The Proceedings of 2nd East Asian STS Student Workshop*, Seoul National University, 2008, 121-133.

Takabatake, M. 2001. "The Problem of 'Civic Society': The Context in Japan ("Shimin shakai" mondai)," *Shiso* 924, 4-23. (Japanese)

Tamiya, H. 1996. *The Code of Criminal Procedure (keiji soshou hou)*, Tokyo: Yuhikaku. (Japanese)

Tanase T. 2003. *Lawsuit Mobilization and Public Participation in the Justice System (soshou douin to shihou sanka)*, Tokyo: Iwanami-shoten. (Japanese)

Tanase, T. (ed.) 2007. *Civil Society and Law: Japanese and Korean Society Transforming (Shiminshakai to hou: henyousuru Nippon to Kankoku no shakai)*, Tokyo: MINERVA-Shobo. (Japanese)

The Government of Japan 2004. "White Paper on Science and Technology 2004: Science and Technology and Society in the Future (Heisei 16 nen ban kagakugijutsu hakusho)," the MEXT. (Japanese)

The Government of Japan 2005. "Opinion Poll on Jury System (Saiban-in seido ni kansuru kokumin no ishikichosa)," An Investigation and Reporting Commission of Opinion Poll, the Cabinet Office. (February, 2005) (Japanese)

The Government of Japan 2006. "The 3rd Basic Plan of Science and Technology (Dai 3 ki kagakugijutsu kihonkeikaku)," the MEXT. (March 28, 2006) (Japanese)

The Government of Japan 2008. "Opinion Poll on Science-Technology and Society (Kagaku gijutsu to shakai ni kansuru yoronchosa)." (since November 29, 2007 to December 9, 2007) (Japanese)

The Justice System Reform Council 2000. "An Report of the Investigation of Jury System in U.S. (Kaigai jitsujou chousa houkoku (U.S.))." (http://www.kantei.go.jp/jp/sihouseido/sonota/kaigai/pdfs/amerika.pdf) (Japanese)

The Science Council of Japan 2006. "Statement: Code of Conduct for Scientists (Seimei: Kagakusha no koudoukihan ni tsuite)." (October 1, 2006) (Japanese)

The Supreme Court 2007. *You Know Easily! Jury System Q&A (Yokuwakaru! saiban-in seido Q&A)*, Tokyo: The Supreme Court. (Japanese)

The Supreme Court 2008. "An report of an Attitude Survey of the Jury System in Japan ('Saiban-in seido ni kansuru ishiki chousa' chousa kekka houkokusho)." (http://www.saibanin.courts.go.jp/topics/08_04_01_isiki_tyousa.html) (Since January7, 2008 to February 4, 2008) (Japanese)

de Tocqueville, A. 2004. *Democracy in America*, translated by Goldhammer, A., New York: The Library of America.

Tessitore, A. (ed.) 2002. *Aristotle and Modern Politics*, Notre Dame: University of Ntore Dame Press.

Tsuji, Y. 2005. *Law of Jury System and Criminal Procedure Law (Saiban-in hou, Keijisosho hou)*, Tokyo: Shojihomu. (Japanese)

Usui, Y. (ed.) 2006. *Development of Citizenship Education (Citizenship kyouiku no tenbou)*, Tokyo: LOOK. (Japanese)

Wakamatsu, Y. 1999. "A Citizens' Conference on Gene Therapy in Japan: A Feasibility Study of the Consensus Conference Method in Japan," *AI & Society* 13, 22-43.

————— 2005. "Public Participation in Science-Technology: Consensus Conferences (Kagakugijutsu heno shimin sanka)," in Nitta *et al.* (eds.) 2005, 239-263. (Japanese)

Watanabe, H. 2007. *The Moral Education in Schools (Gakkou doutoku kyouiku nyumon)*, Tokyo: Toyokan-shuppansha. (Japanese)

Watanabe, T. 2007. "Issues in the GM Ordinance and Consensus Conference in Hokkaido (GM jourei no kadai to Hokkaido ni okeru consensus kaigi no torikumi)," *Japanese Journal of Science Communication* 1, 73-83. (Japanese)

Weinberg, A. M. 1972. "Science and Trans-Science," *Minerva* 10, 209-222.

Winner, L. 1986. *The Whale and the Reactor: A Search for Limits in an Age of High Technology*, Chicago: University of Chicago Press.

————— 1992. "Citizen Virtues in a Technological Order," *Inquiry* 35, 341-362.

Yamazaki, M. 2007. *Education as Civilization (Bunmei to shiteno kyouiku)*, Tokyo: Shinchosha. (Japanese)

---

[1] In this section, Kotera 2001 and Oshitani 2001 helped me.

Part II
Perspectives and Cases
from Asia and Beyond

Chapter 5

What Kinds of Trust do we need for Biobanking and Beyond?

Shui Chuen LEE

Introduction: the dilemma of autonomy and trust

It is very interesting that Onora O'Neill, one of the few pioneers on bioethics and trust quoted the following Confucius saying at the beginning of her lecture [1] :

> Tzu Kung asks about politics. Confucius says, "Enough food, enough weapon, and people trust." Tzu Kung says, "If necessary to forgo one, which of the three goes first?" Confucius says, "Weapon." Tzu Kung says, "If necessary to forgo one of the rest two, which one goes first?" Confucius says, "Food. For people died anyway, but without trust, a government could not stand." (*Analects*, chapter XII, 7)

O'Neill firmly asserted that what Confucius said is still convincing today and she gave a meticulous analysis of what and how we need trust to stand in matters concerning bioethics in general.   There are many passages in the *Analects* that Confucius talked about trust as it is listed together with the other four well-known virtues, *jen*(benevolence)*, yi*(justice)*, li*(ritual)*, chi* (wisdom) as the fifth most important virtue in Confucianism.   The above quotation seems to talk more about a government or a society as a whole, and I would like to supplement it with the following quotation showing that trust is also as basic for a person:

> Confucius says, "A man without trust could not achieve anything. A big truck without leveling log, or a small chariot without the directing hook, will not serve." (*Analects*, chapter II, 22)

Without trust neither the government nor the individual could stand.

The notion of autonomy and its related standard procedure of informed consent is no doubt the most conspicuous and important concept in bioethics.   However, the common form of individual autonomy implies a deep worry of distrust towards others in that it guards against those in charge who may not take the subject's best interest into consideration and thus may not be worthy to trust in one's important personal affairs.   Informed consent is precisely a guarding procedure to guarantee that the information provided for the subject's consideration are trustworthy so that one could make an autonomous and self-determined decision for oneself.   Thus the more we emphasize on individual autonomy, the less we place our trust to the professionals and institutions that take care of our personal interest.   However, trust is on the other hand what lies at the bottom of almost all our personal and social interactions and transactions.   For example, we have to trust what the doctor prescribes, the drugs pharmaceutical company makes without first obtaining the information needed for placing our trust, nor explicitly giving our informed consent.   It seems obvious that when we walk into the doctor's clinic, or in fact in almost every aspect of our daily life, we have more or less placed our trust on what is to come.   So, when we trust, we forfeit our claim to informed consent.

Turning to the subject of biobanking, it is well known that one of the most pertinent factors is the trust of the participants. For, the donation of one's genetic material and release of medical information for the kind of cohort and/or long term research in genetic and environmental interaction in the hands of a biobank needs not only strong altruistic motive but also strong trust in other's management of one's most

important and intimate information.   We seem to have two different kinds of trust. On the one hand we need the trust between two parties, like that between the professionals and the subjects, the physicians and patients, the government and the citizens.   Due to the ethnic and familial sharing of genetic information, we need also another kind of trust between members of a group like parents and children, spouses, family members, and between relatives.   The former lies more on external reasons and the later more on internal relationship.   It seems that in biobanking we need both kinds of trust to make it a success for the operation of recruitment and later deployment of the collected information.   In this essay, I try to give an analysis of the problem of trust in biobanking and try to account the kind or kinds of trust we need for a Taiwan biobank.

1.   Individual Autonomy and Crisis of Trust

Trust is an attitude that grows with intimacy rather than a knowledge relationship.   We usually trust those who join our life as family members, comrades, close friends without much need in knowledge about the following up actions by the trusted party, nor need the assurance of the trustworthiness of other external or institutional structures.   Sometimes it is precisely where there is no information or guaranteeing structure that we place our trust relying only on close relationship. However, in a modern society we have a lot of interactions and transactions with others who are strangers to us and unfortunately that we had heard too many scandals in every quarters of our daily life, both private and public, that we could not retain traditional mutual trust relationship in general.   The spread of mistrust in modern society is natural.   Being unable to build intimate relationship, we have to turn to other requirements to make our trust less risky.   Where the stake is high, we need more supporting elements such as accountability, transparency, tract records before we could lay our trust to others.   The requirement of accountability, though may not guarantee no fraud in play, when back up with a certain social sanction, may be helpful for the establishment of the trustworthiness of what the second party will offer.   Similarly, transparency offers better chance that our choice could meet our goal.   Both could contribute significantly to the trustworthiness of the person or institution involved.   The overlooking of the fulfillment of the duties of the second party by a third independent, just and legitimate party, such as the court, would enhance our trust to such transactions.   Opaqueness and not being accountable to the public make an institute or an individual less trustworthy and hence less trusted by the public.

According to O'Neill's analysis, the present form of individual autonomy is more a claim of rights rather than duties and it works more against trust and thus fuels to the spread of distrust in the modern world. To counter the distrust of authority and professionals, we have the so-called new culture of accountability, which tries to make professionals be responsible to the public and thus protect the subject from the manipulation and exploitation of the authority.   The request of transparency is also a way to make professionals publicly accountable.   However, as O'Neill has noted that such measures are forms of control and leads to more distrust between the parties and are more detrimental to the cultivation and respect for professional integrity.   The trend is to make professional works according to certain formal procedure, measurable in terms of quantity or numbers, which may have nothing to do with the quality of performance.   The result does not lead definitely to the betterment of the subjects or the public in general. It is illuminating to see that the claim for autonomy and informed consent may lead to the contrary of trust and not to the betterment of the subject. [2]

However, O'Neill is certainly right that the dominant form of individual autonomy requests protection of individual's right of self-determination against coercion and deception.   It seems to exclude mutual trust between the subjects and the professionals and public authorities. The further implement of individual autonomy, that is the relying more on external sanctions, the less we have mutual trust and thus most likely cultivate further distrust.   On the other hand, the less we have intimate relationship, the more trust we need to live by.   Without strong trust and having to trust very many of our daily and important affairs to some strangers or institutions, such as water supply, food consumption, medication and others, it turns ours into a risk society.   It is doubtful that the spread of mistrust could be lessened with further proliferation of accountability and transparency.

2. From Principled Autonomy to Ethical Relational Autonomy

O'Neill rightly points out that the concept of individual autonomy has deviated from Kant's very idea of fulfilling our duties which is closely correlated to the claim of our right to self-determination. She criticizes international declarations of human rights that they could not justify themselves without being non-circular. The grounding of them in the good, like that of utilitarianism, fares no better as the goods chosen have to be embedded in certain controversial conceptions of metaphysics. O'Neill argues that obligation gives a better support for rights. According to the common meaning of right, it must incorporate a correlated conception of duty or obligation, [3] which seems largely neglected by fans of individual autonomy. O'Neill points out that the language of right would place ethical thinking and action in terms of personal interest while the language of obligation must take the relationship of the two parties into consideration. She offers a strong argument to support the priority of obligation over rights and argues that the former has at least five advantages over the later:

> The first advantage is that obligations are structurally connected to rights; the second is that their connection to action can be well articulated; third and consequential advantage is that obligations are more readily distinguished and individuated than are rights; the fourth is that the approach is less individualistic than right-based approaches. Finally (and crucially) I believe that we can find better route to the justification of rights, and hence of obligations. [4]

This move lays obligation upon the foundation of Kant's deontological theory. A moral act in Kant's sense is to act from our self-imposed duty, which O'Neill interpreted as choosing to act in accordance with universal principles. Since only universal principles could be adopted by everyone, non-universalizable principle means that the act in accordance to such principle could not be adopted by everybody and thus is not reasonable. Deception is a good example. In deception, the underlying principle could not be adopted by everybody, at least not adoptable by the deceived party, and hence is not a universalizable principle. Deception is not only immoral, it is directly contradictory to trust. Deception destroys our trust to others and the society as a whole.

By using the case of deception, O'Neill tried to show on the one hand that to act morally as what Kant commands is to act according to our self-legislative duties, and on the other hand, she brings out the close relationship between trust and Kantian conception of autonomy. Autonomy gives justification to obligations and hence to rights. Such a kind of autonomy is not individualistic but embedded in our performance of our duty. O'Neill coined the term "principled autonomy" to distinguish it from individual autonomy. She also shows that trust has a deep root in our moral enterprise. Trust is coherent with principled autonomy and could be justified in terms of the later. There would be no dilemma between the two.

Though O'Neill declares that principled autonomy is not individualistic, however, it is still far from being relational in that the informed procedure is still largely individualistic. For, relationship is totally excluded from moral consideration in Kant's conception of autonomy. However, according to Confucianism, our natural close-tie with our family offers us a better understanding of our moral responsibility to each others. We have special responsibility towards our family members whether in terms of benevolence or non-maleficence. In sharing almost everything, family members owe the family as a whole. We need a kind of mutual support and solidarity far exceeding that between two strangers. The impact factors of familial happenings are also far more important and very often unavoidable between family members. The relational responsibility implies a kind of relational autonomy. In line with O'Neill's argument, we land upon the notion of family autonomy or what I would like to call ethical relational autonomy. [5] Furthermore, since we are what we are through intimate relationship, the intimate others, particularly our parents, brothers and sisters, and later our spouse and children, having share part of our intimate life, have become part of our self-identity. The mutual experience shared becomes the mutual part of our common identity. Living under one roof means we

have inextricable common interests and our responsibility to each other could not be lightly released. Thus, our act is no individualistic one but must carry its familial background and responsibility. Inside the family, we talk more of common sharing, caring and responsibility to each other and to the family as a whole. To the outside world, the autonomous act of the individual is but a representation of our family group decisions and rights. Of course, we have responsibilities towards others and the society in return. This is anyway much looser in comparison with family members. The family is closer in another important respect when we come to genetic matters.

3. Genetic Exceptionalism [6] and Familial consent

The rapid development of biotechnology and life sciences brings forth a whole set of new moral problems. It shows further that individualistic way of thinking of autonomy is inadequate. Genetic data reveals how close we are related to each other and genetic information is never something that totally owed by the individual. We share much of our genetic endowment especially those distinctive ethnic characteristic with our fellow members. When we know about our genetic constitution, we also know about the genetic constitution of our relatives. Thus, what we donated contains the same intimate and important information of our related members, especially our brothers and sisters, our parents and children. Hence, there comes the thesis of genetic exceptionalism. It first raises the issue of ethnic consent in genetic research. We usually respect the requirement of obtaining ethnic consent in cases that the ethnic group is a tight and intimately related one. For, the genetic identity of any member of the group is identified with every member of the ethnic group. This fact naturally causes much trouble to the conception of individual autonomy and raises intensive tension between individual and group consents. The fans of individual autonomy usually duck the problem and cut the Gordian knot by relapsing back into the old framework of personal consent, like what we see in most biobanking activities. Some like the UK Biobank simply declares that they would not use the data to do any ethnically related research.

However, it would not erase the problem and difficulties involved. It only abstracts us from our real interrelated human network and we have seen more and more legal cases emerging because of such genetic relatedness. It could not be denied that it is precisely the relatedness and distinctive characteristics of genes and genetic information that pharmacogenetic and biobanking could work on. The information is a shared good within the family. The difficulties with the practical workability of obtaining ethnic consent is no reason to release us from such important obligation to each other, especially within the family. Sliding down with our pragmatic or instrumental treatment is our worth as a human being as well as our solidarity and hence mutual trust.

O'Neill has hinted at the legitimacy of familial kind of consent but unfortunately falls back, because she thinks that:

> It is hard to see how familial consent procedures, or familial rights to the disclosure of relevant information, could be put into practice. If DNA tests required consent from (all possibly at-risk members of) families, individuals might be prevented from having a DNA test that was medically important because one or another relative did not want to learn, or want others to know, potentially threatening information. Equally relatives might learn about DNA test results of which they would have preferred to remain ignorant because one relative chooses to be tested – and someone blurts out the results. And what is to happen when different relatives have different views. [7]

This is a clear statement of the objections to take seriously the relatedness of genetic information and familial consent. O'Neill turns as the fans of individual autonomy to the talk of rights rather than obligations at this juncture.

These are some of the so-called difficulties in following the requirement of family consent, but it is also obvious that they are far from being insurmountable. One of the basic lines we are natural to draw is that donation for research is different from seeking of medical treatment. The latter could not be

deterred by any interest of other related parties.   In other wards, the donation of disease-related genetic material for research outweighs the right-not-to-know of close relatives.   Of course, the result should be kept highly confidential due both to our obligation to the donor and the respect of the privacy of our ethnically related others.   This is by all means a common and professional practice.   There is nothing exceptional with it.   Just like for the protection of the child and its mother, we support the restriction of paternal test.   Rights sometimes need be trumped.   The donation of one's genetic matter for research and related activities need more than individual consent in order to respect the sharing of the genetic information within the group for the stake may be very high.   In collecting genetic information for research, especially in the case of biobanking where following up action clearly exposes the family members of the donor, we need to take more seriously the consent of the family.

4. Intra-familial Trust: intimate relationship

For Confucianism, trust is a reflection of the solidarity of the human family.   We are all in the family. [8] To show a further differentiation of the types of relationship and trust, I would like to draw the line by the circle of family.   Family is taken as an intimately sharing unit.   What shared consist not only our common living means, property and interest.   We share a lot more and much more important things, such as our common life experience, our emotions, our feelings, our responsibilities and ultimately our self–identities.   Here comes our first and most profound foundation of trust.   It is purely an internal relationship.   The most we need and the most we would like to give.   It is through love and care in a family that we give the deepest trust to each other.   We enjoy the safety and security by this bond of strong trust that we not only share without any need of premeditation, we sleep well at night by all means. Sometimes we have the same strong trust between friends, which we like to compare as brotherhood or sisterhood.   Once the trust breaks, so will the relationship and vice versa.   Intimacy underlines such kind of trust, which is the strongest and most cherished relationship we have on earth.

Outside of the family, when we spread ourselves further and further apart, we may enjoy the breadth of our reaches, we have to pay for the less trust we could offer and receive.   In a modern society we are practically meeting and making exchanges with hundreds strangers daily.   We are in fact have to trust the strangers that they would not do anything harmful to us though we seem to have no reason to place any trust to anybody around.   We rely on each other.   Indeed, without trust we could not live together.   To meet this need, we resort to the helps from public institutions to make our trust relies on trustworthiness. We have to utilize public accountability, transparency, contracts, dialogues and communications, very often with sanctions and punishment.   However, we would deem it possible to turn the requirement of trustworthiness into the securing of trust rather than the spread of mistrust.   Informed consent is what we need to safe guard for the sake of investing of our trust to others, not for the breeding of mistrust.   This kind of trust builds around some external relationship, in which we fare with each other in terms of rights and obligations.

In a sense, the external kind of trust is a means to expel the enemy of trust, that is deception, though it is by no means always successful as frauds and scandals are abound.   This kind of trust is conditional. It depends on how much conformity to rules and avowal of sanctions our fellow citizens would like to pay. We have to trust the public institutions, that the courts will uphold our rights and justly enforce others' obligations.   In the end, we seem to have to place our trust to some strangers without any guarantee.   It could only be solved by the solidarity of fellow citizenship, which means that we obtain the kind of intimate relationship of brotherhood and sisterhood kind of feeling together.   We need to be all in a family.   Hence, external trust is embedded in our intimate kind of mutual trust starting from our home.

5. Trust Relationship in situ: The Case of Biobank

Returning to biobanking, what we need not only to make biobanking trustworthy, we have to make it being fully trusted by the participants and the society at large.   In the present controversy in the construction of the Taiwan Biobank, human rightists charged that the research group has already started to solicit donors and collect samples without setting up a well functioning ethical and governing framework

to obtain the donor's consent in the proper way. It reflects distrust from the point of view of human rightists against any such kind of highly frontier scientific explorations, especially when fraudulent practices in collecting samples from the aborigines had been reported time and again. We have to take care of every step to win the trust of the population before such a far-fetched project sets off. A small dose of mistrust will forever hollow the legitimate operation of a biobank. We need some strong internal and external trustworthy components for the ethical operation of the biobank.

An administration body, namely the biobank office, with efficient, confidential proof and responsible management of the genetic data are important constituents to win the trust of the participants and the public. Accountability and transparency help here. The setting up of proper consent procedure, the privacy proof and proper storage of donated materials, the monitoring of research activities and the transparency of administration of the biobank office are measures that need be instilled and standardized for the winning of public trust to the operation of the biobank. Naturally, the most serious charge comes from the ethical side. We have to set up some strong internal and external components for the ethical operation of the biobank. Internally, we need a well trusted ethical committee to follow closely the ethical and reasonableness of each research project. Externally we need a board of ethical governance and place it in the hands of publicly trusted organizations and persons. People sitting on the board must be of reliable scholarship and public reputation. It provides ethical advice for the governance and policy of the biobank, and most important of all serves for independent ethical checks on the management of the biobank. These are for the building up of the trustworthiness of the biobank operation.

When it comes to the collecting of genetic materials, the other kind of trust is needed. When the invitation of donors starts, it should aim at the family level rather than individuals. Invitation for family participation is a first essential step. Donors are in a sense representing a family involvement. Donors should have the support of other family members, and the latter should be involved. Family objections need be seriously dealt with. Better and wider circulation of the method and purpose of biobanking, educational forums, hearings and interactive dialogues will allow not only better understanding of the public, but equally important for intra-familial support for family members to serve as donors. Some countries, such as Sweden, it is said that the consent of the individual is sufficient because there is a strong trust between family members and people believe that family members will not do any harm to each other. It may be taken as a kind of implicit consent of family members for the donor's donation of genetic materials for research.

These are some of the salient elements that need be dealt with in the building of Taiwan Biobank. The operation of a national biobank should bring not disparity between researchers and human rightists, public and familial opposition, but rather a better and entrenched solidarity and trust through out the families and the society at large.

---

[1] Onora O'Neill, *A Question of Trust* (Cambridge: Cambridge University Press), p.3 though O'Neill did not quote the full passage in her book.
[2] *A Question of Trust* and her more articulated presentation in her *Autonomy and Trust in Bioethics* (Cambridge: Cambridge University Press, 2002), especially chapter 6, pp.118-140.
[3] Cf. Alan Gewirth, *Human Rights* (Chicago: University of Chicago Press, 1982).
[4] *Autonomy and Trust in Bioethics*, p.78.
[5] I have given a more detail argument of how we have to move from the Kantian conception of autonomy and feminist proposal of relational autonomy to the Confucian conception of autonomy which I called ethical relational autonomy. By "ethical", I meant to bring out the Confucian emphasis on the intimate relationship between the family members.
[6] By genetic exceptionalism it is usually meant that because of the ethnic character of genetic information, or because one's genetic information reveals also information of the family members, the pattern of consent could not be dealt with in the traditional western conception of individual consent, we need a kind of ethnic or familial consent as an exception to the usual practice of just obtaining consent from the participant.
[7] *Autonomy and Trust in Bioethics*, p.102-3.
[8] In fact, for Confucianism, all living beings are ontologically one and we have different degrees of closeness only.

Chapter 6

Confucian Family Consent vs. Western Individual Consent: An Ethical Analysis

Wan-Ling CHOU

Introduction

Informed consent is presently the universally accepted rule for medical treatments and human experiment. The traditional physician-patient relation was unilateral with the medical professional making decisions for the patient. Doctors usually act paternalistically with authority. After the Second World War, the Nuremburg code first listed informed consent as the basic rule for human experimentation.[i] In 1948, the World Medical Association (WMA) announced the Geneva Declaration and listed formally the will and benefits of the patient as the core value of medical decisions. It started a new type of physician-patient relationship with both parties as equal partners.[ii] Since then the rise of individualism in the west promotes individual consent as the most important common consensus. However, in oriental societies, such as Taiwan, we find that the medical relationship is not just between physician and patient, but also involves the patient's family. The opinions and decisions of family members are as important. In Taiwan, though medical professionals, technology and infrastructure are very much modernized or westernized, medical decisions are usually made with the family as a whole. We have in practice a family kind of consent rather than individual consent. In this essay, I shall first examine the ground of individual and family consents, and argue the reasonableness of family consent and its workability in actual practice. Finally, using the ethical problems in the collecting of genetic samples in biobanking as an example, I will show that why we need family consent in such cases and try to solve some of the tricky problems of conflicts with family consent when the patient and the family have different opinions and interests.

1. Individual Consent vs. Family Consent

Individual consent is currently the morally and legally accepted norm in the west. The individual is regarded as the bearer of rights and the sole decision maker in relation to his or her own treatment. It is no doubt that the emphasis of informed consent has improved the rights and interests of the patient. In traditional physician-patient relationship, because of the disparity of professional know-how between the two parties, patient almost have no say on the treatment of his or her disease and have to comply with the prescription of the physician. In general, patients usually trust their doctors and leave every decision to the later. However, very often the trust was misplaced to the wrong person and the patients suffered. Furthermore, the neglect of the subjective feeling and wishes of the patient would affect the quality of treatment and the curing of diseases. Since the second half of the Twentieth Century, the practice of informed consent has shifted the centre of decision making from the doctor to the patient and has been promoting a kind of fair partnership between physician and patient. It is now ethically required that before the patient consents to the operation or treatment, the doctor has to make sure that the patient understands the relevant information, including the diagnosis, the risk of operation, the probability of success, the diagnosis, and other important information. The patient is then left to make his or her decision freely to sign the consent form. Hence, informed consent is not only an efficient method for the protection of the patient, but also promotes the active participation of the patient in his or her medical decisions. This model is developed and fits into the tempo of the western society. However, it may not be suitable for other types of society such as the oriental ones[iii].

In Taiwan, family relationship is much more intimate than the west and the interdependence of family members builds up not only a closely knitted unit but also a deeply entrenched trust between family members.   When a patient comes to see a doctor, usually there is at least one family member accompanying the patient.   If the sickness goes worse and involves serious treatment problems, the whole family will gather together to make a family decision.   The practice of informed consent in medical matters is usually carried out with the presence of family members and the latter's opinions and supports are critical for medical decisions.   Sometimes, under the request of family members, the doctor tells the family about the diagnosis first, especially in cases of bad news, and decides with the family the best treatment and the best way to tell the patient.   In such cases, it is regarded as justified under the principle of beneficence to avoid undue pressure to the patient, but also said to be fulfilling the respect of the autonomy of the family as a whole.[iv]   The involvement of the family is very helpful because the family knows the possible emotional reaction of the patient and helps the patient to lessen the stress.   In general, the family is usually best in understanding the true wish or choice of the patient and could provide the most needed emotional support for the patient.

The proposal of family consent is not supposed to be in opposition to the individual model.   On the contrary, they are regarded as supplementary.   For instance, in case of operation, the patient's informed consent is required and it is usually done in terms of a family consent with family members signing as witnesses.   Family consent is carried out in the best interest of the patient.   The bringing in of family is recognition of the close relationship and mutual interest of family members.   It is also a respect of the mutual trust within the family.   There are of course cases of conflict of interest between family and the patient and between members of the family.   Abuses do sometimes occur.   Physicians, usually with the help of daily caring nurses and social workers, need to observe such conflicts in order to protect the best interest of the patient from the abuse of family members.   This is an issue that we need to face and solve. We shall come back to this issue after giving a detailed introduction of the Taiwan model of informed consent.

2.   Model of Consent in Taiwan

In Taiwan, the usual practice is a kind of family consent.   We may look at the usual practice of medicine to operation to see how it is carried out.   First of all, family members joining the patient in meeting the physician is a perfectly common happening.   Very often, instead of the patient, it is rather the family member who tells and answers the doctor's questions.   In Taiwan, it is said that when one is sick, the whole family is sick, meaning that every member of the family is deeply involved.   It is not only regarded as an expression of the mutual concern and mutual trust between the family members, it is also enforced by Taiwan medical laws.   Most of the medical Acts that concerns the medical treatment of the patient incorporates a choice for the consent by the patient or family members, and a choice for the doctor to tell the patient or the family.

In Taiwan, the consent form of operation is basically signed by the patient, but the family has important legal rights in participation.   According to section 46 of the Taiwan Medical Law concerning operation and anesthetics, the doctor has to explain the result of diagnosis, the risk and prognosis to "the patient, or his/her legal surrogate, spouse, relatives, or person of intimate relationship," and have to obtain the consent of the patient or family members by signing a consent form.   The "or" in this statement could be interpreted as "done by any one of the parties."   It means that the consent could be obtained legally without the individual consent of the patient though it is rarely done except in cases where the patient is in too unstable a condition.   Item 1 of Section 12 of the Physician Law similarly specifies the obligation of informing "the patient or his or her legal surrogate, spouse, relatives, or person with intimate relationship," the diagnosis, method of treatment, medication, prognosis and possible uncomfortable reactions.   In other words, doctor could tell the family members the results of diagnosis or treatment directly without prior consent of the patient and even without telling the patient at all.   It seems that the legal situation is quite different from the individualistic model of informed consent of the west.

Even in case where the law allows that individual consent of the subject is legally sufficient, family

involvement is encouraged.   For example, in the application for a legal abortion, the pregnant woman has the right to ask and make the decision independently.   However, doctors usually request the consent of the husband by signing on the application form as a witness so as to avoid possible trouble coming from conflicts within the family. The backlash is that the abortion may not be the independent decision of the pregnant woman.

In the usual case of consent for tissue donation, such as blood or gametes, usually no family consent is required and seldom taken into consideration.   However, the post modem donation of organs for transplantation lies absolutely with the decision of the family whether the deceased had made a living will or not.   It is envisaged that in genetic matters, the importance of family consent will be more prominent in Taiwan.   For example, the development of biomedical science and genetic research leads to the need for large quantity of samples of genetic information, such as in cases like the study of the multi-dimensional relation between human genetic constitution and environmental conditions.   This kind of research no doubt brings great impact to medicine as well as national revenues and there is a rigorous global competition going on. Taiwan has also invested a comparative large amount of tax money into genetic research over the years.   For the purpose of this kind of research, we need large samples of blood or other tissue donations.   This kind of donation differs from the traditional ones in that the genetic information carried with the sample belongs not to the donor only; it is what is being shared between the ethnic and the family groups.   It has obviously involved the genetic privacy of other family members and individual consent by the donor seems inadequate to answer the equal rights of family members to the shared genetic information.   Thus, we need to go beyond the individualistic model of consent and consider the proper function of a family model.

3.   Consent Model for Genetic Research: The Case of Biobanking in Taiwan

Due to the family sharing nature of genetic information, we argue that the kind of consent in genetic matters should be family consent so as to protect the rights and interests of family members.   Genetic information concerns not only the privacy and rights of the donor, but also the same benefits of the family members sharing the same genetic constitution.   Furthermore, according to Confucianism, we are more a social unit in terms of family rather than as individuals. It is especially true in a closely knitted society such as Taiwan. Not only that we share genetic constitutions within the family, we have our family experience as part and parcel of our personal identity.   Inside the family we share internal security, mutual support and trust, and our self identity.   Family members are facing the outside world as a single unit, sharing more or less their fate together.   According to the Confucian ideal, the promotion of the sharing and solidarity of the family bears important moral significance for our life because family is where we find our support and trust.   Hence Confucianism argues that family consent is more appropriate in general and in genetic matters in particular.   Furthermore, in the kind of cohort studies of the interactions of genes and environment, the information needed consists the life style, the working condition, the diets and other information about the subject donor.   It means there will be long term following up contacts and hence the family members are easily identified.   Results of the research will be directly interpreted as also what will happen to other members of the same family.   Hence the privacy and interest of family members could not but be deeply involved.   We have all the reason to consider the proper and rightful participation and consent of family members.[v] Thus, family members have strong reasons to interfere or rather participation in the donation of genetic samples for such kind of research.

In fact, how to obtain consent from related family members is not easy, especially in the modern society.   Even in Taiwan, family members become less intimate nowadays because of the modern style of living.   They may not live together and have to work and thus live far away from home.   For extended family, sometime it grows too extended, relatives become no better than ordinary strangers. The busy way of modern life keeps people less in contact even with close family ties.   Hence, the much diffused ethnic kind of connection and consent has to trace too far to be practical.   It is not only impossible to obtain their consent most of the time and is unnecessary as the information one disclosed will hardly reach those living far and unconnected way.   They risk much less exposure of privacy and

interference of their interests.   It is more reasonable and workable to limit the consent to the family members mostly living under one roof, since they are not only genetically connected, they are in the same boat, sharing living costs and expenditure, daily joys and pains together.   For those aborigines that are still living in certain secluded districts with very strong identifiable ethnic traits and living styles, ethnic consent is in place so that the information released will be in the benefit of the whole ethnic group.   It is a way of paying respect to their culture, autonomy and solidarity as a whole.

Our conception of family consent is basically geared to the family members who are living under one roof and usually with strong intimate relationship.   However, very often family members though living under other roofs, they may still share very much family resources, frequent gatherings, making family decisions together, and so on.   In other words, they may still remain very much in the same family and should be taken as one family by all means.   In consideration of the multiplicity of modern family structures, we need to propose a number of standard operation procedures appropriate to each slightly different kinds of family.[vi]   These may not be exhaustive and the various types should be expanded to cover other marginal cases.

We devise different strategies for frontier workers collecting samples for the biobank when there appear conflicts between family members.   In practice, we start with the consent of the individual and encourage our donor to communicate and obtain consent from relevant family members first.   When there are conflicts or disagreements, we try to contact the other relevant family members to make sure they know the purpose and function of the biobank and try to obtain their consent for their family member as donor.   If other relevant family members insist in not giving consent, we propose not to accept the donation with maybe one exception.   The exception is that when the donor carries genetic disease, it provides a strong reason for the inclusion as it may be a way that may lead to a cure of his or her own disease or a cure for the future generations.   In the end, if there are irresolvable conflicts, we may regard the family as dissolved and each return to the state of an independent person without family.

Biobanking needs to provide free opt-out choice in order to protect the basic rights of the donor. However, if family members want to opt-out while the donor insist to remain in, we think it is appropriate to keep the donor's wish while we should informed the family of our decision.   In case the family opts out for the donor when he or she was dead or becoming incompetent, we shall act as what has been laid down in our conditions for joining the biobank, which shall clearly state that such opt-out is

invalid.   The case is closed for the donor when he or she dies and the materials and information will become part of the properties of the biobank.[vii]

4.   The Confucian Conception of Family Consent: Strong and Weak versions of Family Consent

For the explanation and employment of family consent, we have to delineate further two different conceptions of family consent.   The conception of family consent with the family decision as final and overruling unconditionally the donor's subjective wishes is what we called the strong version of family consent.   This conception sets too tight a bondage for the individual and becomes family authoritarian. We opt for a family consent that leaves serious objection of the subject towards family decision as not always overridden and sometimes need be supported.   We call this a weak version of family consent. Our adoption of the weak version has its justification in Confucian conception of morality.

To justify this weak version, let us start with autonomy.   The protection of individual autonomy is what lies behind the model of individual consent and it also supports privacy of the individual.   However, in the case of genetic information, the protection of individual autonomy will impinge upon the privacy of the other family members.   It would make our actions incoherent.   It is a conflict of autonomy and privacy between family members and it shows that what to be consented about is some common good of the family like air and water.   It could not be accounted for as separable properties between family members.   It needs a group decision requiring consensus.   On the other hand, family consent could also be justified in terms of the basic principle of morality.   According to Confucianism, the origin of our morality and moral duty comes from our concern with the sufferings of the others.   Mencius called such concern with the sufferings of others the "unbearable mind of others' suffering", or the moral

consciousness towards the sufferings of others.   Mencius explained what this moral consciousness means by the example in our suddenly seeing an innocent infant about to fall into a deep well, destined to be heavily injured or killed.   We will, in this or similar cases of seeing people hurt badly, feel a deeply disturbing uneasiness in our heart.   We know we have to do something.   It vows to lessen the harm. Following the calling is moral and failing to respond is immoral.   Hence, this moral consciousness defines what is moral and what is not and it is the motivational force moving us to act according to its calling.   This act of our moral mind is autonomous, as it spontaneously surges up and prompts us to act. It is an unconditional command.   It reveals as Kant had shown, that we are free and autonomous in our moral endeavor.   In the case of privacy, it justifies the protection of our and others' privacy, because the inappropriate exposure of one's privacy causes harm to the subject and very often it hurts our sense of dignity.   The content of what is needed to be protect is not important, what is important is the agent's right to retain it as private matters.   However, privacy within the family is very difficult to delineate, since we are too intimate and have too many things sharing.   In fact, we take the family as a single whole without any distinction of rights.   We talk much more of mutual obligations than rights. Obligation brings family members closer together with strong solidarity.   Confucianism regards privacy as part of a person's integrity but does not make it a strong personal right, especially within the family. Confucianism would regard it as an important kind of right in that Confucianism would not like to relegate it totally in the hands of the family or suppressed it under the pressure of family's common good. When there is seemingly irreconcilable conflict within the family, we fall back upon the principle of "*Ching-Chuan*" for a solution.[viii]

The principle of *Ching-Chuan* is an appeal to our original moral distinction and judgment in the moral situation, that is, the moral consciousness that carves out the moral realm.   It decides the priority of the competing moral claims according to its universal point of view and decides which act is moral. In case of family conflict in the participation of biobanking, we face the choice between the respect of the privacy of other family members and the right of the donor to join the donation for research.   In the case of genetic disease, it is backed up by the quest for curing of diseases which is in line with our imperative to avoid hurting and help to prevent hurting anybody.   Thus, the principle rules in favor of the joining of the donor for the relief of genetic disease.

Confucianism lays heavy moral responsibility within the family and a person's duty to the family has first priority, though it extends to the society, the state and ultimate to every living thing on Earth in a continuum.[ix]   To make good of this duty, one has to be a moral person.   The personal moral cultivation is the ground for moral actions and it starts practically within the family circle first which is also the eternal locus of our moral starting point. Personal right is thus not the ultimate goal in our moral enterprise, but Confucianism rejects undue suppression of the individual under the authority in the name of family welfare or common goods.   Protection of the individual and family relation comes side by side. The protection of privacy is thus a weak version, in contrast to the strong version of individual right of privacy.

Similarly, our version of family consent is again a weak one, especially in biobanking.   For, it is inappropriate and causes a number of difficulties if we take the strong version.   First, in practice, strong version of family consent that everyone in the family need to give positive consent may make collecting of samples too difficult to complete, especially when such a large number of samples in cohort studies is needed.   Second, the current legal point of view is basically individualistic in orientation. The strong emphasis on collective consent by the whole family may lead to the suppression of individual self-determination and personal freedom of will. Third, morally speaking, a person's autonomy and thus his or her human dignity should not be subjected to family or ethnic pressure.   A strong version of family consent will amount to the overriding of personal determination to join genetic research as a free and autonomous agent even when the agent has pains caused by the genetic disease.   It would go against the basic Confucian principle of relieving everyone's suffering as one of our most stringent moral duties. Our way out of the possible conflict of family members is rather a moral kind of persuasion, and works towards a restoration of family harmony.   It retains the possibility that an individual may have a strong

reason to join the research.   Such a solution is in fact an expression of the principle of *Ching and Chuan*.

Conclusion

In conclusion, we want to make it clear that family consent will not lead to collectivism or family authoritarianism.   For it is a consideration of mutual concern and mutual benefit of the family and the promotion and protection of family interest and solidarity as a whole.   Nor should it be a hindrance to the kind of genetic research that needs a large sample and long term following up actions.   In case of irreconcilable conflicts, we have to assume that the family is temporarily dissolved and the right returned to the subject himself or herself.   The subject becomes a family in one and his or her consent is final.

---

i "The Nuremburg Code", in Tom L. Beauchamp and LeRoy Walters(ed.) *Contemporary Issues in Bioethics*, Sixth Edition (Belmont: Wadworth-Thomson Learning, 2003)，p.354。

ii Cf. the home page of the World Medical Association: http://www.wma.net/e/policy/c8.htm (last viewed 2007/5/10, the Geneva Declaration was first announced in 1948, but then went through several revisions in 1968, 1983, 1994, 2005 and 2006.

iii By oriental, it is usually used to designate societies different the west and especially those of far east Asian countries including Japan and Korea. The contrast between the two types of societies that I would like to take into consideration here is mainly the kind of family relatedness in contrast to the individualistic way of handling personal matters.   In the following, I take as paradigmatic the Taiwan society as representative of such family relationship especially in medical decision making.

iv Cf. Riuping Fan, 'Self- Determination Vs. Family-Determination: Two Incommensurable Principles of Autonomy' *Bioethics*, vol.11, Numbers 3&4 (1997), pp.309-322 ; and Prof. Shui Chuen Lee, 'On Relational Autonomy: From Feminist Critique to a Confucian Model for Clinical Practice', in Shui Chuen Lee (ed) *The Family, Medical Decision-Making, and Biotechnology: Critical Reflections on Asian Moral Perspectives* (Dordrecht: Springer, Kluwer Academic Publishers, 2007), pp.83-94.

v For a detailed discussion of the two conceptions of informed consent, please consult Professor Shui Chuen Lee's paper "An Ethical Analysis of Informed Consent in Biobanking" (in Chinese), presented in the Conference on "Research and Statistical Investigation of the Opinion of Taiwan Genetic Development," organized by the Center of Humanities and Social Science, Sinica Academia on May 10. 2006.

vi We identified more than nine different kinds of family structures in Taiwan which need to be dealt with slightly differently in obtaining family consents.   Please be referred to Hon Chung Wong's "Summary of the main points in the Practice of Family consent in Taiwan" (2007, first draft, unpublished). It is a document developed by the research group on the ELSI problems of biobank leading by Professor Shui Chuen Lee.

vii Cf. "Summary of the main points in the Practice of Family consent in Taiwan"(2007, first draft).

viii This principle is derived from Mencius argument in handling moral dilemmas. *Ching*(經) means our usual practice following moral principles or rules. *Chuan*(權) means when there is moral dilemma, that is when usual moral rules conflict with each other, the usual moral practice could not solve the problem, then we need to make creative moral judgment anew. We return to our initial moral mind or consciousness of the suffering of others to make the final judgment.   Cf. Professor Shui Chuen Lee's *Confucian Bioethics* (Taipei: Legein Publisher, 1999), pp.82-85.

ix Cf. *The Great Learning*, which is one of the major texts of Confucian ideas and constitutes one of the *Four Books*, and is regarded as carrying the main ideas of Confucius and Mencius.

Chapter 7

True Self as World-Maker: The Foundation for Ethical Creativity in Nicolai Berdyaev and Abe Masao

Anton Luis C. SEVILLA

Introduction

"Creative ethics" is the philosophical study of how a human being lives out his existence in accordance with a good that he constantly creates anew. The notion of creative ethics was articulated by the Russian philosopher Nikolai Berdyaev (Николай Александрович Бердяев), but it is present in the thought of many ethical thinkers; of particular interest to us in this article are the Japanese philosophers Hisamatsu Shin'ichi (久松・真一) and Abe Masao (阿部・正雄).

What follows is an articulation and analysis of the development of the self that is concurrent with and allows for living out creative ethics. We shall explore the notions of freedom and creativity that appear in Berdyaev's thought, alongside the notions of True Self and enlightenment that appear in the thought of Abe Masao. In so doing, we shall endeavor to answer the question: "Why does creative ethics require awakening to True Self?" Conversely, we ask, "Why is True Self fundamentally a creative self?"

In order to answer this two-fold question, we shall begin with an explication of the Berdyaev's idea of "creative ethics." Then, using the thought of Abe, we shall explore the development of self that makes creativity ethics possible. We shall end with the notion of absolute nothingness (絶対無) and its relationship with the movement of creativity.

Background of Philosophers

Before we proceed to a more in depth discussion, I wish to explain briefly why I have chosen these two philosophers. Nikolai Berdyaev is a Russian religious and political philosopher. I believe that Berdyaev's notion of Creative Ethics is a unique contribution to continental philosophy. While "ethics of creativity" (creative work founded on normative ethical values) has become commonplace in contemporary ethics, ethics *founded on creativity* is something that I argue to have been peculiar to Berdyaev's work, a notion that he strongly championed and cogently articulated.

Abe Masao is a Buddhist philosopher and is counted as a member of the Kyoto School of Philosophy. Much like Suzuki Daisetz Teitaro before him, Abe was a leading dialogue partner with the west. While Abe certainly has his own unique ideas, his English works also serve as excellent entry points into Zen Buddhist thought.

Within the limits of my own research, it appears that Berdyaev and Abe do not have any significant relationship, and no detailed comparison appears to have been made thus far. Berdyaev did not do much work on Buddhism, and his brief comments in *The Destiny of Man* may even betray a misunderstanding of the essence of Buddhism. Abe on the other hand does not appear to have made any mention of Berdyaev, whose works have unfortunately fallen into obscurity in our present times.

There is a pressing need for a comparative study and essential analysis of Creative Ethics and Zen Buddhism. As we proceed through this comparative study, I hope it becomes clear that there is a *fundamental* relationship between these two schools of thought and each school of thought can profit greatly from a dialogue with the other.

Let us proceed to the central notions of Berdyaev and Abe in depth.

Creative Ethics in Berdyaev

In *The Destiny of Man*, Berdyaev appeals to the world of ethics, saying:

> As a free being, man is not merely a servant of the moral law, but a creator of new values. Man is called upon to create the good and not only to fulfill it. Creative freedom gives rise to new values. As a free being, a free spirit, man is called to be the creator of new values. The world of values is not a changeless ideal realm rising above man and freedom; it is constantly undergoing change and being created afresh. . . .Hence a system of ethics is needed which interprets moral life as a creative activity. (Berdyaev 1966)

In this section, we shall be articulating this new system of ethics that Berdyaev proposes—creative ethics. But what does it mean to create new values? What does Berdyaev mean by creativity in the first place? What does Berdyaev mean when he characterizes the human being as a free spirit, whose creative freedom allows him to give rise to new values?

The answer to these questions is couched in a myth—a creation myth appropriated and re-spun by Berdyaev—one that will force us to re-think the very vocabulary of being and non-being, God and freedom.

Being *versus* Non-Being

Berdyaev's appropriation of the creation myth is a response to the problem of evil, which is found in the conventional view of the relationship between God, creation and freedom. Berdyaev writes:

> The ordinary theological conception of the creation of the world and the Fall turns it all into a divine comedy, a play that God plays with Himself. . . . Evil is generally said to be due to the abuse of freedom with which God endowed His creatures. But this explanation is purely superficial. The freedom through which the creature succumbs to evil has been given to it by God, i.e. in the last resort is determined by God. Freedom is a fatal gift which dooms man to perdition. (Berdyaev 1966)

Berdyaev asserts that the idea that freedom is a part of the created world of being, for which the creator God is responsible, makes the entire idea of morality ridiculous. Evil arises from freedom. If God is responsible for freedom, if freedom is within the sphere of creation, then God is responsible for evil as well. However, Berdyaev's understanding of the relationship of God, creation and freedom is somewhat different, and this becomes apparent in the following reappropriation of the creation myth:

> The Divine Nothing or the Absolute of the negative theology cannot be the Creator of the world. . . . Out of the Divine Nothing, the *Gottheit* or the *Ungrund*, the Holy Trinity, God the Creator is born. The creation of the world by God the Creator is a secondary act. From this point of view it may be said that freedom is not created by God: it is rooted in the Nothing, in the *Ungrund* from all eternity. Freedom is not determined by God; it is part of the nothing out of which God created the world. The opposition between God the Creator and freedom is secondary: in the primeval mystery of the Divine Nothing this opposition is transcended, for both God and freedom are manifested out of the *Ungrund*. God the Creator cannot be held responsible for freedom which gave rise to evil. Man is the child of God and the child of freedom—of nothing, *το μεον*. (Berdyaev 1966)

In this cosmogony, the abyss is primary. From this, God emerges and creates the world of being out of the inviolate fabric of non-being. Hence, the human belongs to two realms: the realm of God his creator and being, and the realm of non-being, where freedom resides. This non-being is the source of freedom. But non-being is a realm apart from God, and hence one that God cannot be held responsible for.

Our concern here is not the problem of freedom and evil *per se.* We need to make sense of this cosmogony for the purposes of understanding the notion of creative ethics in general, particularly the dynamic of creativity. But in order to carry out such an endeavor, we must first clarify the symbolism of the realms of non-being and being.

In *The Destiny of Man*, the realm of being symbolizes the realm of the palpable and graspable, that which constitutes the meaningfulness of human life. The idea of God, of goodness, of the Trinity, lies at the heart of this realm. Participation in goodness means entering into this realm.

However, meaningfulness is *not* primary in Berdyaev's cosmogony. Prior to the realm of being, the realm of non-being comes first. This realm symbolizes all that lies beyond the meaningfulness of human life. Non-being is tied to notions such as Divine Nothing, *Gottheit*, *Ungrund*, and *το μεον*. Berdyaev will

also speak of pre-rational elements such as elemental passion and natural force as part of this *Ungrund*. (Berdyaev 1966)

Also within this abyss lurk the horrors of existence. Berdyaev says: "God in the aspect of God-the-Son descends into the abyss, into the *Ungrund*, into the depths of freedom out of which springs evil as well as every kind of good." (Berdyaev 1966) Also, he says, "All rebellion against God is a return to non-being which assumes the form of false, illusory being, and is a victory of non-being over the divine light. And it is only then that the nothing which is not evil becomes evil." (Berdyaev 1966) The abyss is prior to good and evil, but it is also the origin of all evil. Non-being is madness, the darkness of chaos, beyond the grip of intellection and meaningful existence.

Creativity and Freedom

In light of these ideas of the realm of being and non-being, what then is creativity? Berdyaev answers, "*Creation means transition from non-being to being through a free act.*" (Berdyaev 1966)

To create means to draw from the darkness of non-being, from the pure reality that is prior to all good and evil, and bring it to the light of being, into the province of meaning and goodness. God's creation is spun from the pure fabric of chaos. It is only upon the canvas of this darkness that light can hope to shine.

The same holds for the human being in his creativity. Although he requires material for his creation as a woodcarver carves out form upon unworked wood or a poet spins meaning from the vast mélange of words and symbolisms, creativity still retains the same dynamic of drawing forth new meaning, beyond norms and mere repetition. For instance, in writing, copying the work previously established as good and touting it as your own is downright plagiarism. Creative writing entails descending into the darkness of one's own previously unarticulated experiences and from there bringing forth new forms of meaning.

This is where we find what Berdyaev truly means by freedom. Freedom is not "free will," arbitrariness, or the capacity to choose what pre-existing meaning one will take as one's own. Freedom for Berdyaev is the capacity to stand before non-being and from the darkness of chaos bring forth new meaning, new light.

Creativity in the Realm of Morality

Having discussed the idea of free creation and its relation to being and non-being as seen in Berdyaev's cosmogony, we return to his appeal for creative ethics: "As a free being, man is not merely a servant of the moral law, but a creator of new values. Man is called upon to create the good and not only to fulfill it. . . . Hence a system of ethics is needed which interprets moral life as a creative activity." (Berdyaev 1966)

Berdyaev's idea of creative ethics is not the ethics of the automaton that follows pre-existing laws or merely tries to make laws to promulgate pre-existing values. Creative ethics is a spiritual act of freedom, one that entails continuous descent into actions, maxims, values, realities which are not yet understood as good, and from there bringing forth new forms of goodness.

For Berdyaev, this creativity lies at the heart of true Christian ethics. One attestation that Berdyaev finds is in "The Parable of Talents," Matthew 25:14-30. Berdyaev interprets this parable in the understanding of morality. He writes, "God created man in his own image and likeness, i.e. made him a creator too, calling him to free spontaneous activity and not to formal obedience to His power. Free creativeness is the creature's answer to the great call of its Creator." (Berdyaev 1966) Formal obedience to pre-existing goodness is *impotent*. Its lack of dynamicity is tantamount to collusion with sin in the changing face of evil. It is in *creating* goodness through one's own spirit and freedom that we are truly able to respond to God's call.

More radically, Christianity itself was founded upon breaking out beyond pre-existing notions of goodness. Jesus of Nazareth's constant association with tax collectors, prostitutes, adulterers, sinners of all kinds—this consists a descent into non-being. "The first shall be the last, and the last, first." (Berdyaev 1966) Is this how goodness was understood when Jesus came to the fore? Certainly not, this was a

revolution from how goodness was then perceived. Berdyaev says, "Christianity was born from this revolution, it has sprung from it." (Berdyaev 1966) Whether Christianity has retained this radically revolutionary character is questionable.

We have discussed the symbolism of being and non-being. We have seen how freedom lies in the capacity to descend into non-being, and how from this freedom, true creativity—making present heretofore nonexistent forms of being—becomes possible. We have briefly drawn out Berdyaev's notion of creative ethics as a free creation of values, one that finds itself deeply inspired by the radically revolutionary character of primordial Christian morality.

However, to say that enacting creative ethics simply entails descending into non-being and fashioning new forms of goodness makes light of the journey toward this ethics. The descent into the realm of non-being, into things that are currently understood as evil, unintelligible, horrid, maddening—such is a frightening task and a truly daunting one. Freedom, the capacity for this descent, does lie within man. It is his birthright. But can we truly say that as human beings, we are able to live out this freedom? What will it take to be able to develop man's faithfulness to his own freedom?

Engaging the Notion of Awakening

The human incapacity to respond to the world from the innermost depths of selfhood is a problem that is clearly discussed in Zen Buddhism. One of the most helpful models in understanding the task of awakening to one's true nature is one presented by Abe Masao. In an introductory piece entitled "Zen is Not a Philosophy, but . . ." Abe presents three stages of the development toward one's innermost self—ego self, no-self and True Self—articulated through his appropriation of a verse by Seigen Ishin. The verse reads:

> Thirty years ago, before I began the study of Zen, I said, 'Mountains are mountains, waters are waters.'
>
> After I got an insight into the truth of Zen through the instruction of a good master, I said, 'Mountains are not mountains, waters are not waters.'
>
> But now, having attained the abode of final rest [that is, Awakening], I say, 'Mountains are really mountains, waters are really waters.' (Abe 1989)

The first stage is the stage of ego self, which is characterized by the first phrase, "Mountains are mountains, waters are waters." In brief, this stage is one of epistemological naiveté and egocentrism. The self believes that what it has grasped of reality is reality as it is. Believing such, the self stands at the center of its existence as the arbiter of meaning, judging reality and what it determines it to be. However, reality is inherently more than, if not opposed to, these objectifications. This brings the ego self a great deal of anguish, resulting from the collision between the abundance of reality and the narrowness of objectified conceptions. As this anguish escalates and culminates into an existential deadlock, one is led to a breakthrough into the second stage.

The second stage of no-self is characterized by the phrase, "Mountains are not mountains, waters are not waters." This stage is characterized by abandoning the objectifying existence of the ego self. This leads to a certain amount of tranquility as one no longer rests upon false assumptions that tend to collide headlong unto reality. But despite this achievement, this stage still fails to fully engage reality. If one has accustomed oneself to dealing with reality through objectifications, then disposing of these can leave one unable to engage reality at all. It would be as if one were walking within a dream. Standing back from a reality that it cannot grasp but cannot merely ignore, the second stage is in need of one final negation.

The third stage is awakening to True Self, the culmination of the journey of Zen Buddhism, characterized by the phrase, "Mountains are really mountains, waters are really waters." The third stage arrives through a radically different standpoint from the first two stages. While ego self relies on objectification and no-self condemns objectification but is left disconnected from reality, True Self engages reality from a standpoint other than objectification. Instead of standing as a subject lording over a world of objects, True Self dwells in harmony the innermost dynamic of its existence—one with reality, continuously taking part in the dynamic unfolding of reality and meaning.

Abe's discussion of the transition from ego self to no-self to True Self takes a largely ontological angle—the changes that occur in how a human being perceives and draws meaning from reality. His discussion is not immediately and overtly ethical. However, towards the end of his article, Abe says: "[The Self-Awakening of Zen] is not an end but the *ground* on which our being and activity must be properly based." (Abe 1989) Despite leaving this line largely undeveloped, this single line brings to the fore an inescapable ethical exigency within the drive toward enlightenment. Moral life and ontological life are seen as inseparable.

Three Stages in Ethical Life

Just as substantive realities are often grasped with respect to ossified notions and prejudices, actions are also made sense of in various ways, one being with respect to its morality. Our capacity to look at actions, especially actions done by us or to us, as "good" or "evil" is fundamental to how we find meaning in a life that we do not merely observe, but carry out and live. If we attempt to see from an ethical frame Abe's stages of development in how a human being stands before reality, we shall find that there is an undeniable relationship between the development toward True Self in Abe and the development toward creative ethics in Berdyaev.

In order to do so, let us begin with the verse of Seigen Ishin, but substituting moral reality for ontological ones, or perhaps the idea of morality itself. One may re-phrase it as such:

Thirty years ago, before I began the study of Zen, I said, 'Good is good, evil is evil.'

After I got an insight into the truth of Zen through the instruction of a good master, I said, 'Good is not good, evil is not evil.'

But now, having attained the abode of final rest [that is, Awakening], I say, 'Good is really good, evil is really evil.'

In what follows, we shall attempt to see the world of ethics and the ideas of Berdyaev from the three-stage framework of Abe. We shall begin with the morality of the ego self and normative ethics of law. Then we shall proceed to the morality of no-self, ethics of redemption, relativism and nihilism. Last, we shall elaborate the notion of True Self and its morality as a creative ethics.

Moral Egoism and Ethics of Law

"Good is good, evil is evil." There is no tautology here. "Rape is rape." The temper of this seemingly tautological statement is readily apparent—it is firm, rigid even, with a clear understanding of the line drawn between good and evil, and on which side an action may lie. This is morality on the side of ego self. Standing at the center of its existence, the ego self dictates, molds, forms, constrains meaning as it wrestles with the world. Inseparable from this is how the self relates with actions and their perceived goodness. As the subject lords over the realm of objects, the ego sits at the highchair of the judge, with each action, event, existence, standing as the accused.

This egocentric morality however is by no means subjectivistic or relativistic—it is moralistic and normative to the core. In order to understand this, we need to peer into a dynamic that hides behind Abe's notion of ego self.

When ego self stands at the center of its own existence as the subject that determines meaning and moral value, this is by no means a display of authentic courage on the part of the ego. Standing at the center allows the ego safety—safety from the maddening insecurity of a direct reckoning with one's incapacity to make sense of reality, its presence and unfolding. Standing at the seemingly exalted position of "subjectivity" is a response out of fear.

The structure of ego self is a structure founded on the fear of the finitude of one's own existence. This manifests itself in many ways—fear of death, isolation, impotence, the incapacity to make sense of reality... [1] Ego self is a response to this fear, an attempt to secure oneself amidst the many faces of one's own finitude. Because of this fear, the naïve subjectivity of ego self bears a two-fold structure.

On one hand, objectificatory existence places the ego self at a position of privilege, where it is able to garner a sense of control, a capacity to make sense of the world from whatever patterns may make

themselves available and from there judge the meaning and moral value of realities and actions. But on the other hand, this privileged position is by no means a courageous fidelity toward one's own encounter with reality—such fidelity would weigh heavily on the frightened ego. The self that stands at the center of its objectified world must disburden the ego of the weight of its finitude.

The disburdening of the ego is revealed in the common understanding of the word "objectivity." Objectivity is naively understood as the universally valid character for a statement. For instance, "One sees that the murder of innocents is undeniably evil." On one hand, the objectivity in this statement lies in that the subject can grasp the reality (of the murder of innocents) as what it is (undeniably evil). On the other hand, the objectivity resides in that *any* "one" can grasp this reality as such. The "subject" of objectification is by no means an irreplaceable, authentic subject. It is a proxy, an anonymous subject, a bearer of a fictitious "universally valid subjectivity."

Hence the self that stands at the center of objectified existence is a proxy for the herd. It draws courage from the prejudices of the rest of the herd in order to make sense of and objectify the complex moral realities before it.[2] This leads to an intensely moralistic character of the ethics of the ego self. It is an act of self-securing. Its rigidity is a scaffold that disburdens the ego of the complexity of moral depth.

In *The Destiny of Man*, Berdyaev refers to this type of ethics as normative, an "ethics of law." He writes, "The ethics of law is the expression of herd morality. It organizes the life of the average man, of the human herd, and leaves altogether out of account the creative human personality which rises about the common level. . . . The herd life for which Heidegger has invented a special category of *das Man* is social in character." (Berdyaev 1966)

In Berdyaev's work, we read that ethics of law is important, in that it has "organizational value." It attempts to protect human beings, to maintain the survival of society and its constituents. It creates a certain amount of uniformity in moral instincts. In short, it produces order. This order is what disburdens the ego self, allows it a certain amount of security from its fear of death and of the complexities of moral life. However, this organization comes at a price—violence. The ethics of law is a stifling ethics. In its rigid clarity, it is quick to condemn evil, and in so doing, may even be evil in itself (though of course, self-justified). It bears the dangerous tendency of the cruel righteousness of transcendental egoism. Berdyaev writes: "People managed to deduce from Christianity the most disgusting morality that has ever been known—the morality of transcendental, heavenly egoism. . . . The righteous fight their way into Paradise over the corpses of their neighbors, less good and righteous than themselves." (Berdyaev 1966)

Just as Abe's notion of ego self bears within it a violent objectification that refuses to let beings be what they are and force fits them into the moulds of the readily intelligible, in morality, ego self is self-righteous and quick to condemn. It oppresses others with swift and cruel judgment. But violence is borne not merely to others but also to oneself. Berdyaev says, "The hard-set crystallized forms of herd life in which the creative fire is almost extinct oppress like a nightmare the creative life of personality." (Berdyaev 1966) While ethics of law disburdens the ego with the scaffolds of herd morality, it also strangles the ego with it. The antagonism of personal creativity and the predeterminations of the law weigh heavily upon the quiet recesses of the innermost self.

This incongruence of the reality (of the self) and its objectification is another parallel between Berdyaev and Abe. In Abe's understanding, the breakthrough beyond the standpoint of ego self becomes possible as one slowly reckons with the incongruity of the objectified world and the reality of the world. This incongruity is most readily manifest in the disparity of what one grasps as the self and the reality of the self.

Abe writes:

‘Who am I?’ This is a natural and inevitable question for the ego-self because it objectifies everything including itself. But with regard to this question we must ask, ‘Who is asking, "who am I"?’ The ego-self may answer, ‘I am asking, "who am I?"’ But in this answer there are two ‘I’s, an ‘I’ which is asking and an ‘I’ which is inquired into. . . . Here ‘I’ am asking about ‘myself’, and ‘myself’ is in this case not the subject but the object of my own asking. This ‘myself’ is not the true

'I' because it is already objectified and an objectified self can never be a living, truly Subjective Self. (Abe 1989)

We see that in the relationship of the ego self to itself, there remains the process of objectification. But as one objectifies oneself, for instance believing, "I am a philosopher, I am an intelligent human being," one may find oneself with a strange awareness that one is always more than these objectifications. This discrepancy is most apparent when one comes face to face with the limits of one's existence, as in encounters with death and the wretchedness of one's own existence. Here, the abundance of reality rebels and tries to break out of the rigid strictures of objectification.

The same movement holds for moral life. Part of one's attempt to grasp the self is in grasping the morality of the self, the intentions of the self, and so on. One may believe oneself to be right, in the eyes of the herd and the law. But still, there may linger a palpable yet silent evil that lurks amidst loud self-justification. One may have been thoroughly condemned, by the law, by others, and even by oneself, yet still find that there is a trace of *the ought* in that which has been condemned to evil. Despite the strictures of the law, there remains *depth*. An unfathomable depth that rebels against the superficies of law, that trembles in the face of its own evil despite its righteousness, and beams with secret holiness despite utter condemnation.

In the face of this incongruity, the moral being is compelled to ask: What is goodness, really? This is what *they* say goodness is, but is this really goodness? Is the idea of goodness even sufficient at all? Perhaps the law is necessary for the very survival of the human race. But there is a need for *more* than the law.

The Ethics of No-Self: Redemption and Nihility

The transition to no-self becomes possible through a complete existential deadlock of the ego self. As it comes to terms with its incapacity to truthfully engage reality by way of its objectifications, the ego self comes face to face with the utter futility of the objectificatory project, making possible the existential leap to the stage of no-self.

"Good is not good, evil is not evil." The ethics of no-self is characterized by the thorough existential realization of the impossibility of grasping the moral value of reality. Finding evil in goodness and goodness in evil, one is compelled to contend with the depth and complexity of moral life. It is not a matter of "gray areas" versus the "black and white" morality of the ego self. It is a matter of seeing the mutual dependence of darkness and light, and the incapacity of truly separating the two. This leads to a breakdown of the pre-existing structure of good and evil and a renunciation of the discrimination and bifurcation that accompanies legalistic morality.

Just as no-self is both an achievement yet at the same time thoroughly incomplete, the ethics of no-self has a positive, liberating aspect and a negative aspect as well. The former is what I term as its redemptive nature, the latter its nihilistic nature.

Berdyaev sees this notion of redemptive ethics as epitomized by radical Christian ethics. In this redemptive ethics, he sees the movement of burning old values and breaking past the hegemony of legalism. This restores the individual from the tyranny of the herd, frees him from the tragedy present in the very distinction between good and evil, and brings him face to face with non-being and the ground of freedom. We shall discuss these facets here.

Berdyaev writes, "The thing that impresses one most in reading the Gospel is the rebellion against pharisaism . . . the denunciation of legalistic morality . . . The Gospel puts sinners and publicans above the Pharisees, the unclean above the clean, those who have not fulfilled the law above those who have fulfilled it, the last above the first . . ." (Berdyaev 1966) The paradoxical inversion symbolizes breaking through the pre-existing understanding of good and evil. Berdyaev quotes Jesus, saying, "'I am [sic] come to send fire on the earth.' In this fire are burnt up all the old, habitual, moral valuations, and new ones are formed." (Berdyaev 1966) Torching the ossified moral objectifications that hinder the ego self from seeing the actuality of moral life, redemptive ethics frees the human being from the suffocating imposition of the herd. No longer does legalistic morality hold sway over the human soul. No longer does

societal condemnation dictate the value of an action. No longer does moral objectification veil the true moral worth of things. The condemned, the judged, the constrained—all are restored to their capacity to see the moral world anew.

In one's private moral life, beneath the anguish of societal imposition and condemnation, lies a deeper problematic brought by normative ethics: the tragedy of the very distinction between good and evil. The myriad of laws, external or internal, become like a minefield. Moral life becomes fraught with the anguish of traversing this minefield, where each step of the way one worries that one will engulfed by the blazing fires of the abyss. But by breaking past these strictures, ethics of redemption brings the human once again before the world beneath the superficial veneer of good versus evil. Ethics of redemption brings man before *non-being*, the chaos prior to the distinction of good and evil, where evil is born, but where new good can come forth as well.

Berdyaev writes, "It is left to man himself in his freedom to find a creative solution of the problems that continually confront him. The Gospel is concerned not so much with teaching us how to solve them as with healing and regenerating the texture of the human soul." (Berdyaev 1966) The ethics of redemption is fundamentally negative in character—burning up old values to make space for the new. Bringing man before the darkness of non-being, redemptive ethics restores man to his freedom, to the openness where creative ethics will become possible.

However, ethics of redemption is not yet the culmination of ethics. Merely negative in character, it merely destroys values and makes space, but builds nothing upon that space. It is concerned with liberating the human being from the fear that keeps him under the tyranny of the herd and away from the abundance of true moral life. But what is one to do with this freedom? Redemptive ethics is not enough, and to remain within it is to risk relativism and sheer moral nihility.

Abe discusses the stage of no-self as being marred by a hidden form of differentiation between differentiation and no-differentiation. In this sense, the ethics of no-self is not yet truly beyond the distinction of good and evil. While redemptive ethics allows the human being to see beyond what is conventionally seen as good or evil, that does not mean that there is no such thing as good and evil. While redemptive ethics breaks through the seeming absolute nature of goodness, such a breakthrough does not render the entire notion of goodness invalid.

To remain within "good is not good, evil is not evil" is to be left with no directionality, no dynamicity, no movement in the face of moral reality. We are left with the following question then: If I cannot grasp absolute goodness, how am I to act?

The Ethics of True Self: Creative Ethics
The second stage breaks past the naiveté for the first stage and courageously reckons with the unattainability of reality as it is in itself. This same courage is mirrored in its ethical life, as it reckons with the complexity of moral life and the discrepancy between the moral valuation of the herd and the true depth of moral life. But despite this courage, the stage of no-self finds itself without any transformative capacity. Unable to grasp (or even pretend to grasp) the absolute good of things, how is such a self to build its life? What determines which actions one will choose, or whether to continue living at all? How do we go on, as beings that live out our lives with choices that shape our existences and the lives of others, if we cannot grasp what it means for an action, a life, to be good?

Abe hints at a possibility of fully engaging reality, of affirming reality, without recourse to the suffocating delusions of egoistic objectification. More than a solution to the inability of no-self to engage reality, this transformation is the *only* way of affirming reality and engaging it in a manner that is truly faithful to both the self and the reality it confronts. Only here in this stage of True Self will mountains be truly mountains, and waters truly waters. Only in this stage will good *truly* be good, and evil *truly* evil.

The breakthrough past the stalemate of no-self to the authentic engagement of True Self can be illustrated in the following movement. Abe writes: "This movement from the realization (A) *that the true Self is unattainable*, to the realization (B) *that the unattainable itself is the true Self* is a crucial turning point." (Abe 1989)

What is the difference between "True Self is unattainable" and "the unattainable is True Self?" Let us briefly run through the three stages of selfhood and the attitude taken toward this True Self. In the first stage, ego self naively believes that "True Self is attainable." It feigns this grasp through myriad constructs, seeking to make sense of its own existence. But as the discrepancy between one's self-understanding and the reality of one's existence becomes glaring, one is led to question the very validity of the attempt to engage reality by grasping it.

As the realization comes forth that objectification is incapable of grasping the reality of the self as it is, one is led to the second stage. No-self courageously admits that "True Self is unattainable." True Self is empty, null. It cannot be grasped by the project of objectification. And it is this very realization that leaves it disconnected from reality.

The third stage says "the unattainable is True Self." This is not merely a play on words. Abe points out the structural difference of the two statements. The first statement, "True Self is unattainable" has "True Self" as its subject and "*un*-attainable" as a negative predicate that speaks of the True Self. This predicate points to us that despite its realization, the attitude of no-self still shares the ego's desire to grasp and attain reality. The only difference is that the "object" clearly defies the tyranny of the subject, a defiance that the subject must concede to.

However, the second statement, "The unattainable is True Self" has "the unattainable" as its subject and "True Self" as its predicate. There is no negativity here. This is because in the third stage, there is no longer the desire (whether delusional or frustrated) to grasp, objectify and contain the reality of the True Self. This unattainable, dynamic, inscrutable reality is *already* my True Self. Why the need to attain it?

According to Abe, the approach of that is made manifest in fidelity to the True Self is not one of a subject attempting to tyrannize reality through objectification. No longer is there a division between the self that grasps and the self that is grasped. All that remains is dwelling, with not a hairbreadth of separation between the self and the reality it encounters.

But what does this mean in the realm of ethics? What does "the unattainable itself is True Self" spell for our desire to grasp a sense of direction for our lives?

The approach of objectification presumes that goodness is an ob-ject, literally, something thrown before us to find and figure out and make sense of. But is absolute good an object? What does it *mean* to be good? Is it acting in accordance to law? Or acting in accordance with a maxim that you can will for all men? Or acting compassionately? We look outside of us, searching for meaning, for a blueprint that will tell us what it means to live well. But in a life that is unrepeatable and unique with circumstances that are contextually and historically one of a kind, can we truly respond to moral reality if we merely look at the norms, abstracting from the immediacy and abundance of the reality before us?

Berdyaev says, "The ethics of creativeness presupposes that the task which confronts man is infinite and the world is not completed." (Berdyaev 1966) The answers are out there—but those are answers to old problems. The problems that face each individual are new problems, new frontiers in moral life. The "perfect world" is not completed, predetermined, waiting to be realized. The perfect world is something that is born, that is striven for, as each individual responds to the moral reality before him from the uniqueness of his own personal existence.

What is goodness? What is the answer to the problem of evil? As Tokusan used to say, "Though you can speak, thirty blows! Though you cannot speak, thirty blows!" (Abe 1989) To articulate the good is delusion, it is to mouth old answers to new problems. This is tantamount to moral plagiarism. Berdyaev says, "Can the idea of the good be the aim of human life and the source of all practical valuations? Moralists are only too ready to base their systems upon the idea of the supreme good . . . But as soon as the idea of the supreme good is put at the basis of ethics, ethics becomes normative and legalistic." (Berdyaev 1966) The idea of the good never amounts to goodness itself—often, it merely suffocates it. But to be unable to articulate the good, that's no answer at all!

Shuzan once said "If you call this a *shippē* [竹篦, bamboo stick], you conflict with the truth; if you don't call it a *shippē*, you run counter to the truth. What, then, will you call it? Speak! Speak!" (Abe 1989) No amount of talking about the stick arrives at the reality of a stick. But when the *shippē* strikes a

drowsy monk's back, the truth of the *shippē* becomes very real indeed. Just as it is living out the meaning of the bamboo stick awakens one to its meaning more authentically than any words will, *it is only in doing the good that there is any real engagement with the good.*

The good is something that happens inseparably from the unique existence of each and every moral being. It is not found *out there*. The good is carried out; it is *lived out* from the innermost ground of one's own existence.

Hence we see that the attitude that True Self and creative ethics take toward reality, including the moral reality of things, is one that is in unison with the unfolding of reality. Only when we see ourselves as one with the happening, the continuous creation of goodness, are we able to truly reckon with reality beyond the delusive desire to objectify it. By doing so, the standpoint has already broken beyond the problem of evil. Berdyaev writes:

> The ethics of creativeness is different from the ethics of redemption: it is concerned in the first place with values and not with salvation. The moral end of life is for it not the salvation of one's soul or the redemption of guilt but creative realization of righteousness and of values which need not belong to the moral order. . . . The ethics of creativeness alone overcomes the negative fixation of the spirit upon struggle with sin and evil and replaces it by the positive, i.e. by the creation of the valuable contents of life. (Berdyaev 1966)

No longer is True Self trying to hold on to goodness while desperately thrashing at the inescapable notion of evil. True Self lives out the happening of goodness. Goodness is only realized through the self, there is no need to subdue it. We also see here that True Self and its morality overcome the fear that lies at the ground of ego self and its normative moral life. Berdyaev writes:

> The ethics of creativeness is concerned with revealing human values and the value of human personality as such, and in doing so it frees man from the unendurable fear for himself and his future—the fear which gives rise to idolatry and superstition. A man whose spirit is occupied with the creation of objective values ceases to be a "trembling creature". (Berdyaev 1966)

No longer is ethics a system that fearfully struggles to perpetuate finite existence—it is an ethics that revels in the particularity and uniqueness afforded by finitude, and from this goes outward and creates the world anew.

"Good is *really* good." This can only be said with honesty, when goodness is *your reality*.

Conclusion: Absolute Nothingness (絶対無) and Infinite Birth

The vision of reality that allows the non-duality of the knower and the known in Zen Buddhism rests upon the foundation of absolute nothingness. Reality is not a rigid, ossified object that stands oppressively over and against the human being. Reality is emptiness—a vast, fecund space for an infinity of interconnections, a realm of radical fluidity wherein the very identity of reality is a *happening*, an event of relation, constantly flowing, constantly coming forth in myriad ways. Does the same not hold for moral life? We speak of morality as if it rests upon inviolable constants, but does morality not bear the same impermanence (Jp. mujou, 無常) that reality bears? Did Jesus face the problem of genetic alteration that we face today? Will anyone ever experience moral reality in the same manner that Abraham did, as he stood with a knife, poised to sacrifice his only son Isaac? Does moral life not wrestle with the ungraspability and impermanence of absolute nothingness as well?

Berdyaev's creative ethics is couched in a different tongue—it is engendered by the vital impulse of Christianity, not Buddhism. Yet in creative ethics, we find the same demands: To courageously face the incongruity of moral objectification and the reality of moral life, break past the idea of goodness and delve into the darkness of the abundance of reality, and from this freedom participate in the happening of reality and create the world anew. The religious discourse of Berdyaev is very different from Zen. His piety seems strange, even to Christians. But Berdyaev says:

> [The theogonic process] takes place in eternity and signifies not the birth of a previously non-existent God, but a divine mystery-play going on in the eternal hidden life of the Deity, *the perpetual birth of God out of the Ungrund.* (Berdyaev 1966)

God is not a static entity to be worshipped. Absolute goodness is not a reality to be sought without. Goodness and meaning are *perpetually born* in the vibrancy of the blazing chaos of reality. It is born in us, as we live out our moral lives. We have faith in a God whose existence rumbles forth through our own unique existence. Is this not the faith, the fidelity of *True* Self? Is this not the play of absolute nothingness?

References

Abe, M. 1989. "Zen Is not a Philosophy, but . . ." in LaFleur, W. (ed.), Zen and Western Thought, Honolulu: University of Hawaii Press.

Berdyaev, N. 1966. The Destiny of Man, New York: Harper & Row.

----

[1] See Hisamatsu Shin'ichi, "Ultimate Crisis and Resurrection," trans. Tokiwa Gishin, *The Eastern Buddhist* VIII, 1 (May 1975): 12-29. [Article on-line]; available from http://www.ne.jp/asahi/fas/soc/writings/hisamatsu/ultimcrisis1e.html; Internet; accessed 15 October 2007.

[2] An extensive discussion is found thesis §2.2, under "They-Self, Egoity and Original Sin." Anton Sevilla, *Surmounting the Strife of the Age of Modern Technology: A Dialogue with Heidegger and Zen Buddhist Thought* (Quezon City, Metro Manila: Ateneo de Manila University, 2007).

Chapter 8

Norm Formation and Ethics in Transition Economies: The Styles of Capital Accumulation through the Diverse Privatization Processes

Yoshihiro MASUDA

Introduction

In the last decade of the 20th century, many socialist countries began to transform their economic systems. This transformation generally involved the introduction of a market system and the change of ownership, and it was called an economic transition; one which could be divided into two reform approaches. One is radical reform which can be referred as a shock therapy or big-ban approach, and the other is gradualism or step-by-step reforms. In the early stages of transition, disputes between economists were primarily concerned with the pace of reform. Commentators who supported the radical approach asserted the superiority of rapid and all-encompassing reform programs based on institutional complementarity, decreasing political capital and the eradication of rent seeking[1]. Although some economists, for example, Kornai[2], pointed out the problems of an institutional vacuum, many of the mainstream economists thought that each agent would immediately adapt to the change in its surroundings. On the contrary, gradualists doubted the political feasibility of the radical approach and paid attention to the reform sequence (of where to begin)[3]. As a result, this discussion may appear fruitless. The reason is that the consequences of reform are too diverse to be attributed to a dichotomy. Many former socialist countries followed the Washington-consensus which the IMF and the World Bank offered conditionally. Whereas, some countries which adopted a radical approach (Eastern Europe and the Baltic states) attained relatively high performance after a year's transformational recession, other countries which also adopted a radical approach (many of the former Soviet-union) are performing relatively poorly even today. A few countries (China and Vietnam) have adopted gradual approaches, and have shown astonishingly high performance in the growth of GDP[4].

Nowadays, many discussions about transition are considered outdated because a large part of Central-Eastern Europe is affiliated with the EU, and Russia and some parts of the CIS (Commonwealth of Independent States) are benefiting from recently rising resource prices (especially, prices of crude oil and natural gas). Consequently, it appears that transition is over. However, is the transition really over? Certainly, Russia has already introduced a market system, but its economy is different from the typical western-standard. Huge monopolistic agents exist and large-scale rent seeking is prevalent as an adaptive economic behavior for each and every individual[5]. When western people visit the transition countries, they may experience inconvenience. It is not due to the absence of a market, but rather because of the ill-developed market economy. "Therapies" have not yet reached completion. Furthermore, they have created other diseases.

Why have the transition countries failed to develop their economies? In mainstream economics, the market system has been thought to be the only system that could attain the optimal resource allocation under certain conditions such as perfect information, decreasing return to scale and private ownership (Stiglitz, J. 1994). Particularly, according to neo-classical assumption, only if each individual can treat his own capital freely, can he pursue profit maximization, and the market's order be spontaneously created. In socialist economies, private property linked to the means of production did not exist, so the main problem was how to allocate the state's property to individuals in the early stages of transition. Many of the former socialist countries have mainly implemented two kinds of drastic privatization. Following the classification by Bennet et al. (2005), one is full-privatization, which means a sell-off to managers and employees, and the other is mass-privatization, which is almost a free transfer to the population through voucher-distribution. In the

meantime China adopted gradualist reforms, which are characterized by the dual-track approach and the creation of special economic zones. This facilitates the coexistence of state-owned enterprises and private enterprises well into the future. Consequently, full-privatization created a high degree of insider control[6], and entrusted a lot of the state's properties to fewer agents[7]. Although mass-privatization was implemented to prevent such concentration, bureaucrats and mafia collected vouchers legally and illegally in many parts of the former Soviet Union[8]. In contrast, China has proceeded with pro-market reform using a form of gradual privatization. We cannot say whether a gradualist's approach is the optimal one or not. We can only find, as an example, semi-privatized (ambiguously defined) TVEs (Township-Village owned Enterprises) with viability in China (Bhaumik & Estrin 2007).

Although a variety of private properties are thought as the natural consequence of capital accumulation[9], extreme concentration of capital will lead to a monopolistic economy, and it will not attain the desired outcome. To some extent, a monopoly may promote innovations[10], but it may also bring about instability in society. Even the libertarians insist that market liberalism encourages equality of opportunity as a norm that enables effective competition. In transition situations, initial capital formations have not assured equality of opportunity (in this point, Russian privatization is similar to original accumulation); a lot of national property has been allocated to only a small portion of vested interest holders. For example, in Russia, numerous cases of asset stripping[11] have been reported (Goldman 2003). These processes resemble violent enclosure more than the consequence of capital accumulation that occurs in orthodox economics. The inequalities, which occur in privatization, not only cause ethical dissatisfaction, but also may substantially distort the market's function. Generally speaking, a market cannot work by itself, because many cases are intended to counter market imperfection, so our market systems must be supplemented by social norms including legal apparatus, morals and values. In standard economics, the most basic presumption, "anonymity" has never been paid much attention. Because the fairness in an anonymous market inevitably implies ethical norms, previous studies have not treated them sufficiently. We focus on the importance of ethical norm (informal institutions) formation in transitions below.

1. Institutions, ethics and privatization

We start this section with the clarification of some terms. First, we define the word "institution" as that which constrains human behavior with stability, in a broader sense[12]. Institutions are usually considered sustainable, because the change of institutions requires considerable expenditure[13]. Furthermore, institutions are divided into formal institutions (in particular, laws and regulations) and informal institutions (for example, norms, conventions and values). Next, norms include social (non-ethical) norms and ethical norms. Social norms ordinarily imply efficiency in economic context. However, ethical norms are often considered from the standpoint of morality (vice and virtue on the whole of humanity)[14]. These two norms interact with each other, and are not necessarily contradictory in our real world. We focus on the ethical norms in a market economy. In an idealized economic model, each economic agent is supposed to interact with other agents randomly. Under this assumption, we expect fair interactions to occur between anonymous agents. However, our real world is not perfectly anonymous, and many discriminated interactions are observed. We suppose that this fairness in anonymity would be an important ethical norm, and a form of lubricating oil in market economy. Although a market could exist and function more or less without the sufficient fairness of anonymity, economic activities may be restricted to a smaller range, because unfairness makes each interaction costly.

Before considering privatization, we would like to mention a brief history of private property rights. Historically, it has been considered that property rights were created after people's revolutions. But, property rights as informal institutions (norms) had existed before that. In the broadest sense, *property* means the possessions and accumulations of tangible and/or intangible useful resources, and *rights* indicate that the possessions and accumulations are socially accepted as a proper rule. The origin of property rights is a new but also an old theme in social science[15]. In the early stages of human societies, many of the properties were regarded as being owned collectively, not because they were in a collectivist utopia as early socialists imagined, but because their societies were too poor to have private property. As societies expanded, laws in

empires had codified ownership, and the legitimacy of laws was exogenously established, but it was still based on traditions (mainly including religious dedication relation, redistribution by the chief of community). Throughout the feudal age, money took the place of land as prolific goods. Orders of the world were secularized, and moral values came to justify accumulations as a form of abstinence[16]. Protestant ethics promoted capital accumulation and promoted the development of capitalism, while a large part of people became the proletariat. Marx and socialists criticized this historical event as exploitations, and said wage-labor induced alienation. By the middle of the twentieth century, half of the world advocated socialism characterized by state ownership and central planning, particularly with the Soviet Union's high rate of economic growth in mind. After almost half a century, those socialist countries have collapsed mainly because of their economic inefficiency and their demand for political democracy.

Since radical privatization, a form of oligarchy (олигархия)[17] has characterized the Russian economy. Oligarch's economic behaviors have been criticized from ethical standpoints. Most critics concentrate on the issues relating to law-abiding[18] and inequality. However, in this essay, we would like to identify the roots of these issues, particularly in reference to the issue of fairness. Privatization by auction could be seen as a kind of exchange between state properties and private properties, however if the majority does not have sufficient capital, the auction mechanism cannot work efficiently. In this sense, the privatization procedure is a purely monetary issue. This type of privatization can provide the state with a higher income, because the state's properties are exchanged for cash. However, it may depress the effective demands in the countries whose capital markets are underdeveloped, and may disturb their economic growth in the long run. Since each vested interest holder cannot maintain his privileges without continual rent seeking[19], this induces the wasting of scarce resources. Furthermore, a few new entrepreneurs can accumulate their capital through the economic growth but at the expense of other people. Therefore, inequality will increase, and although we have not found a clear relationship between inequality and economic growth[20], it is certain that excess inequality will make any society unstable (with increasing crime, poverty and political dissatisfaction). Although voucher type privatization can avert this inequality in the initial stages, through the exchanges, it is reduced to a similar consequence later because vouchers are private properties, which can be substituted for cash easily. Here, the main problem is whether radical privatization promotes rent seeking or deters it.

According to Åslund, rent seeking will disappear under the proper market conditions. Referring to Coase Theorem, Åslund says if private properties are clearly defined, optimal allocation (maximization of the total surplus) can be attained regardless of its initial endowments[21], because each agent can trade his properties for alternative compensation until a desirable consensus is reached. However, here, agents with sufficient capital are the assumption. It has already been mentioned that a large portion of post-socialist people could not obtain sufficient capital. Stiglitz sees this problem from the standpoint of competition and privatization:

> Standard neoclassical theory argues that for a market economy to work well (to be Pareto efficient) there must be both competition and private property (the "Siamese twins" of efficient wealth creation). Both are required, and clearly, if one could wave a magic wand and instantaneously institute both one would presumably do that. The issue however concerns the choices: if one cannot have both should one proceed with privatization alone? (Stiglitz 1999, p5)

As Stiglitz mentioned, many of transition countries have implemented privatization without competition. Therefore, the birth of the oligarch can be explained, based on this process of privatization. In our developed capitalist economies, norms in privatization are codified as laws or many regulations that have been formed throughout history as shown above. When privatization is implemented, anyone can participate in the system of acquiring ownership. Even if the individual has only a little money, he can borrow money from capital markets or banks. None of the laws or regulations prevents an each individual from participating in the system, at least in principle. Large-scale enterprises can be divided into smaller ones, politicians and bureaucrats are supervised not to receive bribes from any institutions. In this situation, the rent from any

monopoly will be reduced, because the rent is attributed only to productivity[22]. However, many former socialist countries implemented radical privatization, in spite of a lack of formal norms. We have already discussed the stability of institutions above. However, shock therapy destroyed previous institutions, and the change of institutions became attainable with relatively little expenditure compared to the total altering of old institutions. It makes rent seeking easier than normal economic activity for each agent, and tends to reproduce rent seeking, because vested interest holders can easily make profits by investing money which is acquired from rent seeking, to the next rent seeking, and enforces crony capitalistic institutions. Consequently, undesirable norms have been fixed in transition countries. Here, we suppose free entry is a necessary condition for fair privatization, because rents are created from insufficient rivalry (competition). The next problem is how the situation was formed initially in post-socialist countries. It will be shown that even the originally correct policy may lead to unintentional and negative consequences.

2. Socialistic legacy and *homo transformaticus*

We human beings behave routinely in our societies, and we recognize a society in terms of culture which is comprised of habits, traditions and values. In other words, routine is, analogously, a kind of phenotype of norms. The men who adapted to capitalist economies are treated as *homo economicus* (one whose motivation is based on getting the maximum benefit and/or profit) in economics. In contrast, most people behave differently in socialist economies. According to Papava (2005 p34-35), they behave as *homo sovieticus* (one who is totally oppressed by and totally dependent on the state). The latter type had been formed through (mainly) Russian history, which has been characterized by Czarism and Communism. Firstly, against the oppression under Czarism, the communist revolution seemed to destroy Czarism on the surface. Despite this, rulers maintained one economic thought, the primacy of social dimensions over individual behavior and motivation[23]. This was conductive to a communist regime, since its totalitarian values made central planning acceptable. Secondly, under a central planning economy, state enterprises that depended on soft budget constraints were not motivated to improve their efficiency. This is not because they were not profit maximizers, but because they maximized their profit by the proposal of underestimated productivity[24] (the padding of performance figures and other distortions of plan fulfillment data). The formation of soft budget constraint syndrome was explained economically, but it also brought up the routines depending on the state. The fusion of the patience with oppression and the dependence on the state leads to *homo sovieticus*.

With the collapse of Socialism and the transition, many economists anticipated that individuals would behave as *homo economicus*. Economic theory says that individuals are motivated to seek benefits/profits and adapt to their surroundings. However, considering the inertia in our routines, individuals might not change their behaviors completely and smoothly. One source of inertia is uncertainty[25] which is related to the ignorance about the market economy[26]. Producers did not know which products consumers would demand, nor did they know which factor suppliers would be trustworthy, because the government centrally planned all production before the reform. Under this uncertain situation, people followed past routines. In short, human routines were also in transition.

> The type of man — one that is in the middle of post-communist transformation — may be referred to as *homo transformaticus*. This is a kind of human that is not yet entirely liberated from the fear of the state and due to a traditional way of life still depends on the state, but in his behavior one can detect the awakening of personal interests and motivation (Papava 2005, p35).

The upstart millionaires who were directors of state-owned enterprises are a typical example. They bought a large number of the vouchers, possessed by employees, at lower prices often obtained through forceful means (typically including the threat of dismissal) from the standpoint of personal interests, many of these directors had no intension to improve the productivity of their enterprises. What they did was nothing but the deprivation of the enterprise's assets. Although these behaviors should be discussed, their harm is limited to the individual's own enterprises, because they need to collect a sufficient share of stock at least formally. We will discuss more serious problems related to inertia below.

In addition to the transformation from pure *homo sovieticus*, there were a large number of people who were contributing to the shadow economy[27], in former socialist countries. Many directors of state-owned enterprises sometimes breached regulations through market-oriented behavior, since their "animal spirit" had been oppressed under their government. We have already mentioned this type of illegality above (Papava calls this type shadow economy "informal economy". This was a usual but illegal activity adapted to central planning). Another and more seriously harmful activity was created by nomenklatura (номенклатура). Even after the privatization, the government was still the largest stockholder. Nomenklatura became a de facto ruler of privatized enterprises as an agent of the government. Taking their positional advantage, they transferred huge assets to the subsidiary companies owned personally, as fast as they could, as if operating in a planed economy characterized by shortage (tenacity for cash). To rule a large-scale enterprise, they only had to take a proper position for a proper period of time. Different from a mere director, nomenklatura knew which state-owned enterprise would be privatized, and besides, they were not to be restricted by the share of stock. Therefore, they preyed on the most valuable sector, the natural resources industry, and soon became upstart billionaires. Just like *homo transformaticus* is not yet *homo economicus*, former deltsi have not transformed into entrepreneurs yet (p36).

These directors and nomenklatura followed previous routines and soon "captured" the state[28]. Once the state is "captured", honest activity observing laws may have little merit. In other words, even though an individual strives to obey the law, his striving will be in vain, because the rule makers can change the structure of the payoff to protect their vested interests. Once this situation has been set up, regulations to control the rule makers can not be instituted spontaneously. Privatization without proper rules results in a "misdeveloped" economy (Lipowski used this word to express the economy that is neither developed economy, nor developing economy), as in some former socialist countries.

Oligarchy and state capture characterized post-socialist economies in the early stage of transition. Therefore, one may think that this is an old issue. Since Putin ruthlessly, replaced some of the old and big oligarchs, the influence of the oligarch certainly seems to have diminished. However, we can also conceive of the powerful state capturing more business. As for Putin's Russia, the state still participates in the market game, and the link between the state and the business is still not transparent[29]. Moreover, Putin has discriminated and punished the oligarch, and his followers have gained enormous wealth collecting rent. Does this not mean it is an autocratic regime? Curiously, many of people have supported him in spite of his forcible political control. In the initial stages of transition, everyone recommended a democratic regime; nevertheless it seems that a majority of the people have begun to hope for a stable but non-democratic regime recently. Putin's term of office will end soon, and it is unpredictable what will happen to the Russian oligarchy. Once an individual has adapted to an abnormal economy, reintroduction of ethical norms may require more effort than was expended during the previous transition from a socialist economy.

Summarizing above, we can assume that there are three characteristics of a misdeveloped economy in a transition country. They are discriminated economic interaction (=dependence on acquaintance), tenacity for cash, and cozy relationship with bureaucrats. Discriminated interaction can be explained as a kind of cooperative response to uncertainty. Suppose with a non-cooperative game, for example the prisoner's dilemma, each agent under uncertainty probably develops kinship institutions, which could change the pay-off structure, and promote cooperative action between fellows (Fig.1).

	C_1	C_2
R_1	3, 3	0, 5
R_2	5, 0	1, 1

	C_1	C_2
R_1	4.5, 4.5	2.5, 5
R_2	5, 2.5	1.5, 1.5

Numerical value is based on Hishleifer (1999)
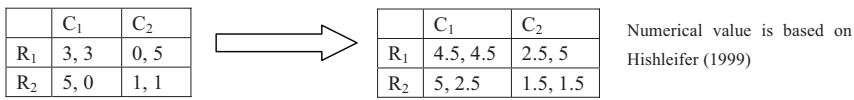
The right-hand table is adjusted by the assistance from fellows (portion of assistance

Fig.1

But this will discourage the expansion of the market[30]. Furthermore, tenacity for cash impedes the development of a credit system, thus narrowing the range of market transactions smaller. Cozy relationship

with bureaucrats obstructs new entries, and also makes the market smaller. In the next section, we will compare the Chinese privatization process with Russian privatization process to identify which factors in the transition procedure have made situations different.

3. The rule in social transition: the carrot and the stick

We mentioned above that Russian economic reform had adopted shock therapy. In contrast to Russian reform, the Chinese transition process was one of gradualism[31]. This gradualism was simply regarded as a slow pace reform program that occurred in the 1990's. Nevertheless, recently, gradualism does not necessarily mean a slow pace to reform[32]. Chinese reform is composed of some conspicuous approaches, and is called a socialist market economy by Chinese government. The main idea of the socialist market economy is the composition of public ownership and a market (Hungary also adopted this idea before 1989 as market socialism). While the Chinese market economy is growing rapidly, it is not clear what exactly public ownership means. In the share of GDP, state-owned enterprises have clearly decreased, as have township-village owned enterprises[33]. The Chinese communist party has maintained its influence by retaining the power to appoint and dismiss the head of regional governments. This means that the former can threaten the latter to adopt any pro-growth policy. If a regional government acted in its own interest, the central government could easily punish it. In other words, compared to the expected payoff gained from economic growth, the expected payoff gained from rent seeking is restricted, for a regional government. After privatization, both of Russia and China transferred their central holdings to the regional governments to create a competitive market (incentives by "carrot")[34], but Russia could not control its regional government without the centripetal force of the communist party[35]. In selling off its state's assets, Chinese regional governments provided relatively fair conditions for free entry to increase economic performance, imposed strict conditions on buyers and monitored their behavior[36], otherwise regional governments may have been punished by the central government (incentives by "stick"). Therefore, it would have been possible that some degree of asset stripping would be restricted in China. In addition, the international value of resources is important factors. Even if Russia imitated the Chinese reform program, it would probably fail. Their expected payoff from rent seeking would still be larger than that derived from economic growth. Before the transition, many economists viewed Russia optimistically because of its resource advantage. As economists began to see it as a "resource curse", the abundant resources, ironically, became one of the reasons for its economic failure.

The central government supervises regional governments, and TVEs could depend on those regional governments[37]. Because of a softness of budget constraints, though TVEs are more efficient than state-owned enterprises as a rule, their performance was not always superior to that of private enterprises. In addition, some degree of rent seeking continued to exist. As debts of TVEs increased, their privatization also proceeded. Furthermore, Chinese radical economists insist on the privatization of large-scale state-owned enterprises, but it may create larger opportunities for rent seeking[38]. We should pay more attention to Chinese future privatization. However, in these decades, each agent seems to have studied pro-market norms. It seems that a sense of fairness and justice has gradually developed. The powerful communist party still does not permit critiques of the state, but the people are spontaneously learning ethical norms at least in their economy.

In addition, a tenacity for real money did not exist in China, because rivalries between regions produced excess goods, which reduced the possibility of any shortage. And the cozy relations with bureaucrats were restricted by "stick" on the economic growth, though corruption existed and would increase with the further privatization of state-owned enterprises. However, discriminated interactions were observed, and these impeded the expansion of economic activities in their initial stage. This corresponded with the debate about the divided Chinese market in the middle of 90's. However, this divided market has been sequentially overcome through the expansion of economic activities and following the government's instructions.

How did the dual-track system work in China? Many neoclassical economists believe that there is an optimal economic system, based on progressive concepts. On the other hand, new-institutional economists emphasize institutional complementarity, and think that there could be many optimal sets of institutions[39]. Both of them tend to assume that the co-existence of planning and a market could provide an unstable

equilibrium, because internal equilibrium would transit easily to other forms of equilibrium. As anticipated, the Chinese economy has clearly reduced the weight of its planning sector, but what is important is the process itself. Although we do not have enough space to examine its economic effect in this essay[40], I shall briefly mention its ethical effect. The co-existence of two systems in China remains causes conflict between each of the interest holders, thus the costs of changing institutions in China were higher than in Russia. The relatively high cost of changing institutions could partly prevent rent-seeking, and make agents prefer to participate in normal economic activities.

4. Conclusion

In this last part, I summarized the formation of fairness in a transition economy. Firstly, uncertainty increased mainly in Russia after radical reform. Subsequently, each agent responded to this uncertainty by discriminating interactions. Secondly, Russia restricted free entry and exit, and reduced anonymity and uncertainty, which simultaneously impeded the smooth development of a market. Finally, the case of China shows the possibility of the state leading formation of fairness as an ethical norm through economic policies.

In economic thought, inefficiencies as a consequence of a lack of incentives would be the main issue of collective ownership. If the word "common" was not clearly defined, common property could mean that which nobody possesses, and as such, people would little incentive to preserve and use resources effectively. Hence, it is natural that the mainstream economics that presupposes the scarcity of all economic resources challenges the feasibility of collective ownership[41]. Recently, many economists are interested in effective mechanism design[42]. Although this fashion is sometimes criticized as constructivism, recent studies differ from previous studies in that they stress institutions. Groups of Economists insist that radical reform depends on institutional complementarity, but it is often ambiguous which complementarity should be considered. In addition to the design of formal institutions, complementarity between social norms and ethical norms has to be considered.

We have insisted that institutional change will affect human routines above. We can also adversely assume that institutional changes may be affected by routines (micro-macro loop). Though we focused on the stickiness of routines in this essay, routines are not eternally fixed behavior patterns. They will change through imitation or learning. The process of imitation or learning, which resembles evolutional process in that it has selection and reproduction mechanism (and we can also see serendipity or innovation as mutation or mating), would be stimulated by some conditions. One of the conditions is the existence of conspicuously successful models. When we imitate other's routines, it is natural that we hope to mimic well-known examples (with its high probability of success). From this standpoint, we can say that whereas shock therapy did not show a proper model, China did for their economic agents by its gradual approach (e.g. special economic zones and TVEs). The changes of routines through learning made people accept new ethical norms in China[43]. Compared to Chinese endogenous change, the concept of market fairness as a new norm which was exogenously given did not have enough affinity with socialist routines in Russia. The failure of Russia could be one of the examples showing how difficult the exogenous institutional design is. We would need to consider this mechanism of institutional change in our following studies.

Finally, what should we call ethical activity in a transition economy? If countries are moving toward a capitalistic market economy, then the answer would be to support a fair attitude in anonymous economic activities where market entry and exit are free. Although other ethical norms (equality, mutual aid and charity) have to be considered, conceivably, the most acceptable ethical criteria in a functional market would be justice or fairness. When the people in transition countries respectively treat each anonymous individual as equal as an acquaintance, we can see a necessary condition for the ideal market economy.

References

Argandoña, A. (2004) "Economic Ethics and Institutional Change", *Journal of Business Ethics*, 53

Arrow, K. (2000) "Economic Transition: Speed and Scope", *Journal of Institutional Theoretical Economics*, 156

Åslund, A. (1991) "Principles of Privatization", in Laszrlo Csaba,ed., *Systemic change and stabilization in Eastern Europe*.

Dartmouth, U.K: Aldershot

――― (2002) *Building Capitalism: The Transformation of the Former Soviet Bloc,* Cambridge University Press

Attali, J. (1988) *Au Propre Et Au Figuré – Une Histoire de la propriété*, Librairie Arthème Fayard. (in Japanese)

Balcerowicz, L. (1995) "The 'socialist calculation debate' and reform discussions in socialist countries", in *Socialism, capitalism, transformation*, pp. 35-50, Budapest: Central European University Press; distributed by Oxford University Press, New York

Bennet, J., Estrin, S. & Maw, J. (2005) "Why did Transition Economies Choose Mass Privatization?", *Journal of the European Economic Association*, 3 (2-3)

Blanchard, O. & Shleifer, A. (2001) "Federalism With and Without Political Centralization: China versus Russia", *IMF Staff Papers*

Bhaumik, S, K. & Estrin, S. (2007) "How transition paths differ: Enterprise performance in Russia and China", *Journal of Development Economics*, 82

Brus, W. & Laski, K. (1989) *From Marx to Market*, Oxford University Press.

Chen, A. (2005) "Assessing China's Economic Performance Since 1978: Material Attainment and Beyond", *Journal of Socio-Economics*, 34

Dewatripont, M. & Roland, G. (1995) "The Design of Reform Package under Uncertainty", *American Economic Review*, 85 (5)

Fei, Z. (2005) *Studies on Contemporary Chinese Economy*, Shinseisya (in Japanese)

Gang, F. & Woo, W, T. (2005) "Sequencing or Parallel Partial Progression: Incoherence Cost and the Optimal Path of Institutional Transition", *Economic Studies*, 1 (in Chinese)

Glaeser, E. & Scheinkman, J. (1996) "The Transition to Free Markets: Where to Begin Privatization", *Journal of Comparative Economics*, 22

Gaddy, C. & Ickes, B. (1998) "Russia's Virtual Economy", *Foreign Affairs*, 77 (5)

Gintis, H. (2007) "The Evolution of Private Property", *Journal of Economic Behavior and Organization*, 64 (1)

Goldman, M. (2003) *The Piratization of Russia.* Routledge

Husain, A. & Sahay, R. (1992) "Does Sequencing of Privatization Matter in reforming Planned Economies?", *IMF Staff Papers*

Katz, B. & Owen, J. (2000) "Choosing between Big-Bang and Gradualist Reforms: An Option price Approach", *Journal of Comparative Economics*

Kornai, J. (1996) "Hardening of the budget constraint under the postsocialist system", *Japan and the World Economy*, 8

Kornai, J., Maskin, E. & Roland, G. (2003) "Understanding the Soft Budget Constraint", *Journal of Economic Literature*, 41

Lau, L., Qian, Y. & Roland, G. (2000) "Reform without Losers: An Interpretation of China's Dual-Track Approach to transition", *Journal of Political Economy*

Lipowski, A. (1998) *Towards Normality. Overcoming the Heritage of Central Planning Economy in Poland in 1990-1994* Warsaw, Adam Smith Research Center, Center for Social and Economic Research.

Malinvaud, E. (1967) "Decentralized procedure for planning," in E. Mlinvaud eds, *Activity Analysis in the Theory of Growth and Planning*, Macmillan, London

Marukawa, T. (2000) "Privatization of small and middle- scale public owned enterprises", *Institute of Chinese Affair*, 54 (4) (in Japanese)

Masuda, Y. (2007) "The possibilities of diverse ownership in reforming China-Nominal socialism or third roads", *The Society of Economic Sociology annual report*, 29 (in Japanese)

Murphy, K., Shleifer, A. & Vishny, R. (1992) "The Transition to A Market Economy: Pitfalls of Partial Reform", *Quarterly Journal of Economics*

Nelson, R. & Winter, S. (1982) *An Evolutionary Theory of Economic Change*, Harvard University Press

Nishibe, M. (1996) *Genealogy of Market Vision*, Toyokeizai-shinpo (in Japanese)

―――― (2007) "The Meaning of Rules and Institutions in Evolutionist Institutional Design", *The Society of Economic Sociology annual report*, 29 (in Japanese)

Nojiri, T. (2006) *An introduction to political economic ethics in transition*, MINELVA-shobou (in Japanese)

Papava, W. (2005) *Necroeconomics*, iUiverse. Inc.

Ryoshin, M., Kim, K, S. & Falcus, M. ed (1999) *Growth, Distribution and Political Change*, Macmillan Press

Stiglitz, J. (1999) "Whither Reform?", *Papers for World Bank Annual Conference*

Ward, B. (1958) "The Firm in Illyria: Market Syndicalism", *American Economic Review*, 48(4)

Tinbergen, J. (1961) "Do communist and Free Economies Show a Converging Pattern,", *Soviet Studies*, 12

_____

Endnote

[1] According to Murphy et al. (1992), a market economy is composed of many institutions, so partial reform will cause frictions in their consistency. Balcerowicz (1995) illustrated that political capital (the degree which people can tolerate the pain from social change) would decrease through the passage of time. Åslund (1991, 2002) stressed on the reproduction of rent seeking which means the rent seeking to obtain money for subsequent rent seeking.

[2] Kornai cautioned against the dangers of an institutional vacuum and serious transformational recession (the bankruptcy of state-owned enterprises based on hardening budget constraints in particular), but he regarded them as *education* necessary for a market economy. (Kornai 1996)

[3] Dewatripont & Roland (1995) illustrated the higher feasibility of a gradual approach by using a two-stage game model, but Katz & Owen (2000) doubted its generality. Husain & Sahay (1992) and Glaeser & Scheinkman (1996) studied the privatization sequence between upstream sectors and downstream sectors. Arrow (2000) mentioned each suitable reformation speed for light industry and heavy industry.

[4] This is a very rough classification. For example, Hungary had proceeded with market-oriented reform for a long period before the introduction of a radical program. Uzbekistan and Turkmenistan are classified as slow pace reformers, but their reforms seem to be rather status quo than gradualism.

[5] While these phenomena are ordinarily treated as imperfect competition by standard economics, almost of all economies are imperfect in the real world. In other words, real markets are working in spite of their imperfections. From this point of view, we can more appreciate competition itself (rivalry) rather than only whether the economy will reach equilibrium or not.

[6] Typical insider controlled enterprises are self-management corporations in former Yugoslavia (Brus & Raski 1989). Their inevitable defects are rooted in their structure, such as that they place a higher priority on insider's individual benefits rather than the benefits of their corporation itself (Ward 1958).

[7] In socialist countries, a large part of the population was in short supply of money, only a few (privileged classes in the government and the agents acting in underground economies) could access cash, especially hard currency which could be exchanged for dollars.

[8] In Central Eastern Europe, many of the former national properties are concentrated on by foreigners. This reflects the relatively low value of Russian corporations little appreciated by foreign investors.

[9] Here, the word "capital accumulation" simply means capital formation.

[10] If imitators can replicate new technology or products immediately, then potential innovators do not have incentives to implement research and development, at least in economic terms. See Nelson &Winter (1982).

[11] This word means the outflow of state assets. Goldman, M. call this "piratization" (ironically resembles privatization), while Shleifer, A. called this the "grabbing hand" (similar to the invisible hand).

[12] While institutions are generally defined as the rules of games or the equilibrium of a game, some economists question this definition because it hardly explains the endogenous change of institution. Therefore, evolutionary games including genetic drifts are in fashion as a valid analysis method. Others are trying to redefine institution as a bunch of rules (Nishibe 2007).

[13] The change of formal institution requires substantial expenditure (money, manpower and time). Although we cannot intentionally change an informal institution, in evolutionary dynamics, the change in population which follows an informal institution can change it. The change of informal institution also requires expenditure (for example, initial deviations from existing norms will be severely punished by other agents).

[14] Argandoña (2004) shows a relatively intensive classification of institution and relations between institution and ethics. He defines ethics as criteria to judge the morality of institutions. However, this implies that ethics is a kind of meta-institution. Therefore this assertion can not avoid infinite regress in explaining its origin.

[15] It can be observed among animals inhabited in each territory. Animals sometimes intrude into another territory, but if the fighting proves costly for them, a spontaneous order will be developed. Similarly, we may imagine how our ancestors developed private property. In new institutional economics, conventional property rights are regarded as solutions to the internalization of externality in *commons* between agents characterized by bounded rationality (Demsetz 1967). Behavioral economics shows many examples of the recognition of incumbency in many species. For example, the studies about the respect for possession or the occupation in primate societies make us consider the origin of ethical norms about human property rights. See Gintis (2007).

[16] Attali (1988) depicts this change as the transition from *orders of empire* to *orders of merchant*.

[17] "Oligarchy" means monopolistic political style and "Oligarch" means each agent who possesses monopolistic power in Oligarchy.

[18] This is also treated as "compliance" in the discussion about CSR.

[19] The word "rent" originally means the fee imposed on the use of lands. Its expanded usage contains excess profit created by economically wasteful and politically unfair behaviors. The word "rent seeking" means the behavior that require excess profits created by political intervention rather than the profits gained from normal economic activities, in political economics.

[20] While the rich may stimulate investment because of their relatively high marginal propensity to save (inequality is advantageous to growth), their lower marginal propensity to consume may reduce national consumption (inequality is disadvantageous to growth). This topic has been studied in political economy for a long time, but the consensus about the

causal relationship between inequality, democracy and economic growth has not been attained yet. See Ryosin, M. et al. (1999). However, this is not our main interest here.

[21] Strictly speaking, the validity of Coase Theorem is acceptable, if and only if wealth effects and transaction costs were negligible.

[22] If each producer faced the same technological constraints, all rents would vanish in the equilibrium.

[23] Russian word "delets (делец)" (pl. deltsi) which may be translated as "businessman" is a derogatory word used in reference to anyone who makes illegal, illegitimate, or even shameful deals (Papava. 2005 p35).

[24] Kornai considered the idea of soft budget constraints. He mentioned that paternalistic states soften the budget constraints of state enterprises. Recently, paternalism was explained as backward induction of a two-level decision-making game model between the government and enterprise (Kornai et al. 2003). According to this model, the government relieves the enterprise facing problems, in order not to waste previously invested capital.

[25] Here, uncertainty means the difficulty of precise estimation about the consequence of economic activities in the market. Although the word "uncertainty" is usually treated as objective conditions including the probability distribution of risks, our terminology includes subjective uncertainty in expectations.

[26] An economic system can be treated as a complex network. Even if no one knows the structure of the entire network, he can act depending on expectations based on existing institutions in an ordinary capitalist economy. If old institutions were destroyed at once, anyone could shrink the network until he could predict the behaviors of agents (for example, his family, community, and previously connected agents).

[27] Shadow economy is defined as the entity of illegal economic action without recognition of the state. It occurs primarily for tax evasion in developed countries, while the reason is different in socialist countries. Recall that it is not necessarily criminal or ethically blamed. For example, all private economic activity outside a centrally planned economy was illegal in socialist countries, even if the activity, in itself, was a wholesome one.

[28] The word "capture" means that the state as rule maker takes part in the game for the profit of regulated industry. Capture theory was proposed by Stigler, J.

[29] Recent news (2007/12/14) shows Putin will maintain his political power even after the end of his term of office.

[30] Because each agent prefers to play the adjusted game that ensures higher payoff, otherwise, each player will require higher payoff than that expected from dilemma equilibrium among anonymous agents. This game tends to be repeated among kinship. This repetition enforces cooperative behavior as "Tit for Tat" strategy shows. Note that the adjusted game is no longer a prisoner's dilemma game.

[31] Some economists attribute the difference to their initial conditions such as industrial structures in pre-reform periods. Although this opinion exactly has some persuasiveness, since all countries inevitably have different initial conditions, I would not treat this issue here.

[32] Fei (2005) regards Chinese reform as "stop and go". Chinese reform is characterized by its experimental gradualism in the early stage and its radical expansion in the later stage. Gang & Woo (2005) modeled Chinese reform as "parallel partial progression". This model shows that sequential reforms implemented simultaneously in all areas do not impede institutional complementarity.

[33] I previously studied TVEs, and concluded that a socialist market economy is nominal socialism in an economic system (Masuda 2007). However, this does not underestimate Chinese economic performance.

[34] Chinese tax reform in 1994 decreased the source of regional tax revenue, and pressured regional governments to increase economic performance by themselves.

[35] Branchard & Shleifer (2001) modeled and indirectly verified this hypothesis.

[36] Regional governments have managed many of the small and middle scale state-owned enterprises substantially. The right to dispose was conventionally attributed to them in China (Marukawa 2000).

[37] Regional governments could distribute money to TVEs at their discretion, and often stood securities for TVEs.

[38] Lang xian ping who is a famous professor of economics in Hong Kong University is warning about the danger of asset stripping in Chinese privatization.

[39] This is considered the problem when dealing with multiple equilibria.

[40] Lau. et. al. (2000) show that the dual-track system could be Pareto improving. They consider the mobility of production factors including free entry as a necessary condition for convergence.

[41] Very curiously, many of neoclassical economists supported t he possibility of market socialism as insisted by Lange, O. in 1920's. This is because Lange's model was built by imitating the Warlasian coordination process which involved imaginary auctioneer coordinate prices and the contention that the central planning agency could be substituted for the auctioneer. For the distortions in socialist calculation debates, see Nisibe (1996).

[42] Nobel laureates in 2007 (Hurwicz, L., Maskin, E., Myerson, R.) show that this is current, but the studies about these issues were developed mainly in the 1960's. Many economists considered whether decentralized or self-managed socialism was feasible or not (Malinvaud 1967), and considered the convergence between capitalism and socialism (Tinbergen 1961).

[43] Chen (2005) pointed out a growing mind for environmental protection in resent China. He recognized this tendency as an endogenous change, because environmental disruptions directly affect rural economic performance in the point that it reduces foreign investments.

Chapter 9

Stewardship and Co-Creator?:

Analysis of the Historical Background of These Two Concepts

Akira TSURUSHIMA

1. Introduction

In this Chapter I will focus on the two leading concepts, 'Stewardship' and 'Co-Creator,' found in the field of Christian bioethics and environmental ethics recently. These two concepts are mainly about how to understand human nature in relationship to God and the rest of nature, and are used for arguments in bioethics and environmental ethics. It is my aim to show the background from which these two concepts began to appear and how they have come into use as significant concepts. To be sure, there are some religious traditions about these concepts (Islam, Judaism), but in this essay I will only focus on the arguments in relation to Christianity. In this perspective, I will analyze the concept of 'Stewardship' first, and then I will focus on the concept of 'Co-Creator.'

2. Stewardship
2-1. Challenge to Christianity

The idea of 'stewardship' is found and affirmed in recent major documents in Christian writings including both the evangelical and the catholic traditions [McGrath 2002]. This concept is rooted in the traditional Christian thought and is used to describe what the proper human relationship to the rest of nature should be. It was in the seventeenth century when this concept was first recognized in the way that it is regarded today. And it was in the mid-twentieth century when this concept was rediscovered and developed in various directions. Today there are many examples using 'stewardship' in the works or debates about environmental ethics and bioethics, but these trends arose from the 1960s onward.

Partly because of the growing voices from global-scale environmental crisis and the ecological crisis, the relationship between human beings and nature has been brought to the forefront again. The attitude in which human beings exploit natural resources in order to meet their desire has been brought into question. The accusation is often made that Christianity has fostered these attitudes and actions toward nature. However such an accusation can be arguable.

Challenging and aggressive criticism rose against Christianity in the 1960s. Such criticism set the stage for rethinking what the actual relationship between human beings and nature/natural resources should be with respect to Christian thought.

Despite it's inaccuracy, the argument by Lynn White has played a role in shaping the secular scientific attitude to any religion (including Christianity). According to Lynn White's extraordinarily influential essay *The Roots of Our Ecological Crisis* [1967] the ecological crisis has been caused by the Judeo-Christian belief which regards human beings as the top of the created creatures. This thinking directly flows from the doctrine that man is made in the image of God, and as such it justifies the idea that all creation was brought into being for human benefit. Though the ecological crisis is the product of the fusion of science and technology in the nineteenth-century [White p.1204], both science and technology reflect the most influential interpretation of the tradition inherited by the Western world from *Genesis* speaking about the special status of human beings, while pagan animism has held to the perspective of respecting for the natural world. For White this characteristic Christian beliefs embraced in the Western society through 'the victory of Christianity over paganism' [White p.1205] brought about the attitudes to disregard the natural objects. White wrote as below:

'Christianity, in absolute contrast to ancient paganism and Asia's religion (except, perhaps, Zoroastrianism), not only established a dualism of man and nature but also insisted that it is God's will that man exploit nature for his proper ends. ... Man's effective monopoly on spirit in this world was confirmed, and the old inhibitions to the exploitation of nature crumbled.' [White, p.1205]

However, White's interpretation which regards the Old Testament as promoting exploitation provoked debates. The superficiality of his historical consideration was immediately exposed by careful researchers.

2-2. Biblical Resources

As a result of this controversy, the concept of 'stewardship' was rediscovered and traditional Christian thoughts came into focus once again. Contrary to what White thought, with careful reading of the Bible it is clear that there is no theme regarding dominance and exploitation over the rest of nature. Rather the Bible teaches that humans are in partnership with God and they have been given stewardship over creation.

In both the Old and New Testament the theme that it is God who has ownership of creation is repeatedly affirmed; The earth is the Lord's, and everything in it (Ps.50:10-12, Ps.24:1, 1Cor.10:26). God not only owns everything, but He also cares and provides for the physical needs of His creatures including human beings. Psalm 104 portrays God's providential care for a variety of wild creatures. And God provides water through the valleys for all the wild beasts (Ps.104:10f.). Scriptural warrants could be found in the themes of God's care for the land (Lev.25:1-7). In the New Testament, Jesus affirmed that God loves His creatures and provides food for them (Mat.6:26, Luk.12:24). Passages such as Psalm 104 indicate quite clearly that God cares for the earth and His creatures. Job 38 expresses the uninhabited wilderness given rain to support the plants (Job.38:26f.). And the whole creation is said to groan in travail of release from decay (Rom.8:19-23). The rest of nature, that is non-human nature, is involved in the salvation of human beings (Col.1:20).

Therefore it is difficult to credit the claim like White's criticism that Christianity insisted that it is God's will that man exploit nature for his proper ends [White p.1205]. The Bible does not support the idea of fostering or sustaining exploitative attitudes to nature, but rather it promotes the idea that human beings are to care for the rest of creation. The Bible also says those who destroy God's creation will be judged by God in the last day (Rev.11:18).

In the Book of *Genesis* there are two explanations for human nature. One is a Priestly account (Gen.1:26-28). The Priestly writer held a perspective that viewed the human beings as a godlike being in relation to the rest of nature, dominating and ruling over all else. The other is Yahawist account. The perspective is of oneness with the earth and all living creatures (Gen.2:7). The human being tilling the soil is the servant of the land and not its master [Hefner 1993 pp.98f.; Case-Winters p.817]. The passages such as Gen1:26f. and Gen.2:15 express the idea that human beings are stewards of the earth. Contrary to what White claimed, the doctrine of man being made in the image of God speaks about the theme of human responsibility for the environment. Nature is not made for humans to dispose of as they like but rather nature has been entrusted to man by God and God desires that man protect nature [Hall pp.23f.].

2-3. Baconian Project

The modern ideological idea of the exploitative domination of nature does not have direct roots in the Christianity, but in the thought by the English philosopher Francis Bacon (1561-1626). According to Bacon, all knowledge is sought for its utility, 'for the benefit and use of life' [Bacon p.12]. The knowledge which he recommended to be sought is one by which human beings can overcome the difficulties of nature and miseries brought about by nature itself. And it is this knowledge which can give humanity power over nature for itself. This is the practical knowledge exalted in western societies in which power over nature presumably brings human well-being [Verhey pp.62f.].

But this kind of view, often called 'the Baconian project' or 'the Baconian perspective', puts humanity not only over nature but against it [Verhey p.63]. Moreover there is no value and dignity in nature itself. Its value or its dignity is "reduced to their usefulness to humanity - and nature does not serve humanity 'naturally'" [Verhey p.63]. The Baconian perspective recognizes nature as something which is fundamentally against humanity and is threatening to rule and to ruin humanity. So human beings must protect themselves by gaining practical knowledge whereby they can master nature in order to prevent it from destroying them and also to be able to relieve human miseries and illness. Nature must be mastered by scientific and practical knowledge. In this perspective, Bacon turned the concept of dominion in the Book of *Genesis* into a programme of scientific and technological enterprise, in which scientific mastery of nature's law was regarded as the means to master and control nature so it could be utilized for the benefit for human. This Baconian programme became the ideology which has inspired and governed scientific research and technological innovation down into the twentieth century [Bauckham 2000 p.101]. The Christian frame of reference includes as a primary teaching the thought that human beings are to serve and praise God and to love their neighbour. However Bacon only saw Christian thinking as something to help human beings limit their own self indulgence. With the rise of Enlightenment in the eighteenth century the influence of Christian thought in this area practically vanished.

2-4. Rise of Stewardship
It was in this context in which the interpretation of dominion as stewardship arose in seventeenth-century England. This interpretation was due to Sir Matthew Hale (1609-1676), the eminent lawyer Chief Justice of England [Black pp.95f.; Bauckham 2006 p.43; Passmore p.185][1]. He recognized the danger of the Baconian programme. Hale insisted that human beings should not regard nature as material only for human benefit and that they should not master nor control nature for human ends. Instead, he stressed the importance of maintaining the view that it is the responsibility of human beings to care for nature. At that time he used the word 'stewardship' as a term to express the concept that human beings have both an obligation and responsibility to care for nature and to recognize its "intrinsic value as created by God for God's glory, not merely for human benefit" [Bauckham 2000 p.101]. Hale expressed this interpretation of stewardship in his Book *The Primitive Origination of Mankind* [1677].

But his idea of nature is something different than ours today. He presupposes that nature left to itself would be chaotic. Therefore humans have to keep things in balance and control the earth for the earth's sake as well as for their own sake. It takes for granted that human control improves nature and it needs a superior creature, namely human beings, to keep it in order. Therefore technology is justified as an instrument of humanity's beneficent stewarding of the world [Bauckham 2000 pp.101f.; 2006 p.43]. But in rediscovering the idea of stewardship after 1960s, we can recognize a shift from the emphasis in its seventeenth-century pioneers like Hale: The emphasis is on the givenness of the created order rather than on human intervention to change nature. So the role of human stewards is not described as improving nature, but as preserving and protecting it now [Bauckham 2000 p.102]. "It is not that nature needs human protection from its own destructiveness, but that it needs protection and healing from human abuse of it" [Bauckham 2006 p.44].

In any case Christian theology has rediscovered the idea of stewardship as a concept which can help solve the ecological crisis as well as social and ethical problems involved in technological sciences. And through these kinds of debates the concept of stewardship has become more sophisticated.

3. Co-Creator
3-1. Suspicious about Stewardship
The main point of White's claim was about the anthropocentrism which could justify human exploitation of nature. As we have seen, those who advocate the idea of 'stewardship' have a perspective which views human beings as stewards of creation. Such a perspective nulls White's criticism. It also positively affirms the importance of the care (stewardship) of nature and provides a theological framework for dealing with the ecological crisis.

But some Christian thinkers think it is not enough to avoid the anthropocentrism as long as appealing to stewardship, because of the special status of human beings in the universe. For them the question is the framework in which the matter of man being made in the image of God is treated: What distinguishes the human being from the rest of nature? How are we special from nature? It would seem to them that this framework might presuppose anthropocentrism. Thus this perspective appealing to stewardship including the doctrine 'the image of God' needs to be corrected.

If this argument is viable, the concept of stewardship seems insufficient. They tend to insist on an alternative idea of a co-creator. And so the approach taken by them is to put human beings on the same plane as other creatures. They define human beings as co-creators not as stewards.

3-2. Impact raised by Evolutionary Theory

There is background to suspect the special status of human. Evolutionary theory has raised the serious suspicions about the human status in the universe. In his book *The Descent of Man* [1871] Darwin insisted humanity shared its origins with the rest of the other species and that man was brought about by the same natural processes. Humanity is not special, but rather has the ability to survive by chance. It is clear that this point is in conflict with what is derived from the concept of man being made in the image of God. The traditional Christian thought is that human beings were created as unique and special beings different from all the other creatures. Furthermore this insight has been strongly reinforced by the recent developments in genetics. When human investigation has delved into the DNA structure, which is often called as the "Blueprint of Life," it begins to prove the continuity between humanity and the rest of nature. This kind of challenge appeared at the front stage of the history by Darwin's natural selection in the late of the nineteenth century for the first time. But it is only in more recent times as we come to possess a greater accumulation of scientific data and the theory has been become sophisticated to the point where we can reconsider the Christian doctrine.

In the middle of twentieth century the double-helix structure of DNA was discovered and a few years ago The International Human Genome project (HGP), a nation-led program, was completed. This kind of research targeting DNA for application is developing with high speed day by day all around the world. As this kind of research is improving, some new knowledge about nature, including that about human beings, comes to us. It suggests that there is a greater continuity and similarity between human beings and the rest of nature much more than we had expected. We see degrees of quantitative rather than qualitative distinctions. In fact, as Gustafson has pointed out, the very areas that historically have been assumed to make us distinctive from other genetics, language, culture, and morality turn out to have more similarities than differences. All of these achievements throw doubt on the "special status of human nature."

3-3. Influence of Process Theology

Some thinkers use the term 'co-creator,' not 'stewards,' to respond to such scientific knowledge from the Christian view point. This tends to come out of Process theology which affirms a close relationship between God and world. This thought is rooted in Alfred North Whitehead historically. Process thought suggests the relationship between God and the world is a very intimate one. The origins of this thought are rooted in *Process and Reality* [1929] written by A.N.Whitehead. The position of process theology argues against the traditional view of the world, which is static expressed in the term of 'substance' and 'essence.' Instead, it insists that the world should be viewed as something dynamics, that is a 'process.' All of the reality is constituted of 'entities' and 'occasion' which have a degree of freedom to develop by themselves and is influenced by their surroundings. So Causation is not a matter of an entity being coerced to act in a given manner, but of influence and persuasion. The same is true for God as well as other entities. God can only act in a persuasive manner, within the limits of the process itself. Just as God influences other entities, so God is also influenced by them.

3-4. Rise of Created Co-Creator

There may very well be many such untapped resources in the tradition that would underscore our humble

place as a part of nature and the intrinsic value of the rest of nature. In this line it is American Theologian Philip Hefner who proposed the 'created co-creator' to describe human nature in the 1990s [Hefner 1993 pp.236f.]. The term created co-creator then become widely used in bioethics and environmental ethics. He believes that with this perspective he offers an alternative frame to grasp and correctly deal, from the theological perspective, with the results of modern science, especially genetic engineering. One of Hefner's main concerns is about the correlating theology with modern science and viewing science as a partner with Christian theology. The traditional understanding of human nature, 'special status of human beings,' is challenged by the technological science proposing the continuity and similarity between human beings and the rest of nature. Hefner, depending on the Process thought, revises human nature in its relationship with God and nature and thus he formulated his 'created co-creator.'

Those who advocate this kind of concept might reject the term 'stewardship' as inappropriate and share the tendency of Process thought, even though they are not self-professed Process thinkers frequently like Ted Peters, Case-Wintrers, Cole-Turner and so on[2].

4. Conclusion

Now I have analyzed the historical background from which the two leading concepts, 'Stewardship' and 'Co-Creator,' began to appear. In both cases it is clear that the motivation which promotes using and developing these concepts is a desire to avoid anthropocentrism. In any case I have briefly evaluated whether the idea of 'Co-Creator' can overcome that problem here. It seem doubtful whether the idea of Co-Creator, like Hefner's, can avoid the idea of anthropocentrism as those who use 'Co-Creator' intend. They suggest that our vocation is to shape the future of the planet, and this is known as God's will for humans. Human beings serve the process of the Creator, but in such a way that they cannot take credit for this themselves, so 'they cannot be said to be morally superior or inferior to any other species or entity in the same ecosystem' [Hefner p.36]. The consideration of the moral status of humans is ambiguous here.

On the one hand, humanity is not superior on account of the process of evolution, but, on the other hand, humanity is given freedom to be co-creator, which marks out the distinctive contribution of human agency in the world [Hefner pp.165f.]. If so, it considers humans to have a special role and status which is different from the rest of the creatures on the earth. This thinking links back to the anthropocentricism which they had managed to avoid [Deane-Drummond 2006 pp.37f.]. So Hefner's interpretation, namely, the close association of human capacities and purposes with the purpose of nature seems to run the risk of a return to anthropocentrism [Case-Winters p.821][3]. Langdon Gilkey criticized Hefner's proposal because Hefner couldn't take human sin seriously. And then Gilkey saw the Hefner's claim as an reversal one, namely, as proposed by many nineteenth-century liberal theologians (especially Ritschl) as the following:

> While Hefner's insights are admirable, his work could be viewed, in part, as a covert expression of nineteenth century liberal beliefs in progress [Gilkey p.293, 299].

This tendency has much to do with the approach taken by them. They depend much on Process thought presupposing an assumption that evolution is purposive and progressive. This assumption might lead to the optimistic reading of human culture and exercise of freedom [Case-Winters p.822]. And the progress is a statistical illusion fostered by humanity's anthropocentric hopes.

So it is not enough to appeal to the concept of 'Co-Creator' as an alternative to 'Stewardship' in order to avoid anthropocentrism. This problem is very important and interesting, but it is beyond the scope of this essay. I will treat this subject another time.

References

Attfield, Robin, 2006. "Environmental Sensitivity and Critiques of Stewardship," in Berry R.J. (ed.), *Environmental Stewardship: Critical Perspectives - Past and Present*, T & T Clark International, 76-91.

——————, 1983. "Christian Attitudes to Nature," *Journal of the History of Ideas* 44:3, 369-386.

——————, 1999. *Ethics of the Global Environment*, Edinburgh University Press.

Bacon, Francis, [1620] 1960. *The New Organon and Related Writtings*, Fulton H. Anderson (ed.) The Liberal Arts Press, Indianapolis.

Bauckham, Richard, 2000. "Stewardship and Relationship," in Berry, R.J. (ed.) *The Care of Creation – Focusing Concern and Action*, Inter-Varsity Press, 99-106.

——————, 2006. "Modern Domination of Nature - Historical Origins and Biblical Critique" in: Berry, R.J. (ed.), *Environmental Stewardship: Critical Perspectives - Past and Present*, T & T Clark International, 32-50.

Black, John, 2006. "The Dominion of Man" in: Berry, R.J. (ed.), *Environmental Stewardship: Critical Perspectives - Past and Present*, T & T Clark International, 92-96.

Case-Winters, Anna, 2004. "Rethinking the Image of God," *Zygon*, 39:4, 813-826.

Deane-Drummond, Celia E., 2006. *Genetics and Christian Ethics*, Cambridge University Press.

——————, 2004. *Ethics of Nature*, Blackwell Publishing.

——————, 2001. *Biology and Theology Today*, SCM Press.

Gilkey, Langdon, 1995. "Evolution, Culture and Sin: Responding to Philip Hefner's Proposal," *Zygon*, 30:2, 293-308.

Hefner, Philip, 1993. *The Human Factor: Evolution, Culture, and Religion*, Minneapolis: Fortress Press.

McGrath, Alister, 2002. *The Re-Enchantment of Nature - The Denial of Religion and the Ecological Crisis*, New York, Doubleday.

Passmore, John, 1974. *Man's Responsibility for Nature*, London.

Santmire, H. Paul, 2003. "Ecotheology" in: J. Wentzel van Huyssteen (eds.) *Encyclopedia of Science and Religion*, Macmillan Reference USA, Thomson Gale, 2nd ed., 247-251.

Southgate, Christopher, 2006. "Stewardship and its Competitors: A Spectrum of Relationships between Humans and the Non-Human Creation" in: Berry, R.J. (ed.) *Environmental Stewardship: Critical Perspectives - Past and Present*, T & T Clark International, 185-195.

Verhey, Allen D., 1997. "Playing God" in: Kilner, John F., Pentz, Rebecca D., Young Frank E. (eds.) *Genetic Ethics - Do the Ends Justify the Genes? - The Center for Bioethics and Human Dignity presents*, Wm.B.Eerdmans Publishing Co., 60-74.

White, Lynn, Jr., 1967. "The Historical Roots of Our Ecological Crisis," *Science*, 155:3767, 1203-1207.

---

[1] Some thinkers like Attfield insisted that the idea of stewardship was found in the works by Church Fathers or Reformers [Attfield 1983 p.380; 1999 pp.47f.; 2006 pp.81f.] casting doubt on Passmore's claim. For example, taking the passages by Jean Calvin (1509-1564), Attfield wrote as following:

> ..., his(=Calvin's) teaching was "Let every one regard himself as the steward of God in all things which he possesses." Here the biblical belief in stewardship and responsible dominion is re-emphasized well before its expression, according to Passmore, for the first time among Christians by Sir Matthew Hale in 1677 [Attfield 1983 p.380].

But Bauckham denied Attfield's proposal mainly because his idea of stewardship was wider, more ambiguous and unhelpful: That Attfield apparently included even Francis Bacon within a stewardship tradition seems to undermine his case considerably. The idea that the rest of nature was created by God for the human benefit reigned in the Middle Ages and the Reformation. At that time we could not speak of stewardship in the way that it is regarded today [Bauckham 2006 pp.42f.]. It is sure that Calvin used the term 'stewardship' as Attfield suggested, but his use does not imply "the inherent value of these things and does not contradict his belief that God created all things for human use and benefit; it merely limits the individual's use of what God intended for the benefit of all people"[Bauckham 2006 p.50].

[2] For example, the elements of Process theology in Peters' thinking come out clearly in the following: "The goodness of nature should be seen as a dynamic goodness, as belonging to history of nature in which the pursuit of the good is a divinely inspired process. Rather than see nature alone as the ontological source of the good, we need to see God as the source of the good bestowed in a redeeming and creative way. Rather than seek liberation from nature, the created co-creator seeks to be responsible within nature for the future of nature" [Peters pp.162f.].

[3] In the face of this challenges, for example, Case-Winters who advocates created co-creator proposes some possibilities to avoid this criticism with taking other resources for theological reflection on nature's purposes drawn in from the Christian tradition: For example, Augustine's 'principle of plenitude' or process theology's 'maximal harmony and intensity.'

Chapter 10

Beyond the Precautionary Principle:

Lessons Learned from the HIV crisis in France [1]

Tomohiko YARA

Introduction

Medicine has made remarkable progress through the development and introduction of new medical products.   Unfortunately, not all these products have been free from unexpected harmful side effects.   In fact, some products have resulted in grave consequences.   One typical example of this is the HIV crisis that occurred in France's blood supply system.   The government, doctors, nurses, and especially patients and their families were confronted with grave difficulties.

However, the question arises as to how we should deal with an unexpected and uncertain risk.   The "precautionary principle" was introduced to grapple with such difficulties.   This principle was characterized in the 1998 Wingspread Statement as follows: "*When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically*."

However, the precautionary principle is considered to be imprecise and vague when we apply it to real-life cases.   Thus, it needs to be "interpreted" and specified on a case-by-case basis.   Therefore, in this essay, I will apply the principle to the case of the HIV crisis and examine what measures should have been adopted.

1. What is the Precautionary Principle?

The precautionary principle was introduced to cope with unexpected and uncertain risks that are produced by environmental disruptions and with health problems caused by the development of science and technology.   I would now like to categorize the principle into four elements.

① Accepting scientific uncertainty

To take preventive measures, scientific proof linking the risk and cause is not always necessary.   Instead, immediate action is required [2].   If necessary, conducting an "inference by analogy" would be plausible (I will discuss this later [3]).

② Allocating the burden of proof to the proponents of potentially harmful activities

The burden of proof for safety should be assumed by the proponents of potentially harmful activities.   This implies a shift in the burden of proof because the potential victims are primarily ordinary people who cannot afford to assume the burden [4].

③ Renouncing the zero-risk standard

Policies that require perfect safety and that prohibit any action if there is even the slightest possibility of harm are "absurd" and "unrealistic."   This is because such policies are too costly and certain risks can be offset by other benefits [5].

④ Increasing public participation in decision making

The application of the precautionary principle should be decided based on democratic procedures [6].   Although we should compare the risks and benefits prior to taking preventive measures, there is no

specialist who can decide the order of the priority of values in a society with a pluralistic sense of values.

2 Case Study: HIV Crisis in France's Blood Supply System

(1) Case study of the HIV crisis in France

Although we have overviewed the four elements of the precautionary principle, it is still too abstract and vague for application to real-life cases.   However, this is because the principle should be interpreted on a case-by-case basis.   Therefore, we examine the case of the HIV crisis in France's blood supply system in light of the precautionary principle.

First, we must review the history of HIV research.   In June 1981, the Center for Disease Control and Prevention (CDC) in the USA reported five cases of an unnatural disease (opportunistic infections).   In October 1982, the CDC named this disease the "Acquired Immunodeficiency Syndrome" (AIDS).   In February 1983, Montagnier team of l'Institut Pasteur (the Pasteur Institute) discovered a new type of retrovirus in four patients with AIDS and designated it as the "Lymphadenopathy Associated Virus" (LAV). In May 1984, Robert Gallo team of the National Institutes of Health (NIH) in the USA announced the discovery of the AIDS virus and termed it as the "Human T-cell Leukemia Virus III" (HTLV-III).   There was a heated debate about which team first discovered the actual AIDS virus.   Subsequently, however, both viruses were found to be the same.   In May 1986, the virus was designated as the "Human Immunodeficiency Virus" (HIV).

Next, we will examine the French case.   In the 1980s, there were 4000 hemophiliacs in France, of which 1300 died of AIDS after being infected by contaminated blood products.   Moreover, 4000-5000 ordinary people contracted AIDS through the blood transfusions and died as a result.   A characteristic of the French case is that the number of patients who died due to blood transfusions was larger than that of hemophiliacs.

In 1980, the French blood transfusion system was held in high estimation by the international community owing to its self-sufficient blood supply system and gratuitous blood donation system. However, the risk of contamination of blood had been pointed out because a substantial volume of blood from tens of thousands of blood donors was collected and pooled into only one lot.   Therefore, the entire inventory of the blood could be easily contaminated if even one donor's blood was contaminated.

In 1978, unheated blood products for hemophiliacs were produced.   Although the risk of infection by hepatitis B was known, patients and doctors chose the unheated blood products in respect of their effectiveness, scope for mass production, and simplicity of usage.   In fact, although the German company Behring produced a heated blood product that inactivated hepatitis virus, it did not find favor with patients because of its inefficacy and inconvenience [7].

From the second half of 1982 onward, French people began to recognize the risk of AIDS infection.   In November 1982 and June 1983, J.–P. Soulier, the Director of le Centre National de la Transfusion Sanguine (CNTS) (National Centre of Blood Transfusion in France), issued warnings about the risk of infection from unheated blood products.   This could have saved the lives of many people, but the warnings were neglected.   The general meeting of Association Française des Hémophiles (the French Hemophilia Society) was held in May 1983; however, the risk was underestimated and further introduction of unheated blood products was recommended at the meeting, which only exacerbated the situation.   Many French people had believed that the prevalence of AIDS had been limited to within the USA and within specific "risk groups."   Furthermore it was a fact that patients and doctors preferred unheated blood products due to their convenience and economy.

On November 24, 1984, Dr. J.-B. Brunet, an epidemiologist in la Direction Générale de la Santé (DGS) (French Ministry of Health and Welfare) issued statements on the following: the death rate from AIDS, the risk of unheated blood products and blood transfusions, and the safety of heated blood products. Moreover, this was the date that a judgment of le Conseil d'Etat (Supreme Court), issued on April 9, 1993, acknowledged as the day that the risk of using unheated products was officially established [8].

(2) First antagonism–the hypotheses of FDA and CDC

We now examine the case in France, followed by an analysis of the case.   Hermitte focused her attention on two cases of conflicting hypotheses.   The first is the antagonism between the FDA and CDC on account of conflicting hypotheses and the second, between Gallo and Montagnier.

In 1982–83 in the USA, Food and Drugs Administration (FDA), the US government, blood banks, and drug manufacturers framed the hypothesis that the new disease was not a viral infection but merely a disorder of immunity caused by overload of the immune system ("immune overload").   This hypothesis took into account the fact that the risk groups (homosexuals, drug abusers and hemophiliacs) had many opportunities to come into contact with the body fluids of a large number of people.   The merit of this hypothesis was that the countermeasures against AIDS could be limited to within the risk groups, and large-scale precautionary measures would not be necessary [9].   Even when a patient who did not belong to the risk group– a one-year-old-baby–died of AIDS in December 1982, the leaders of blood banks and drug manufacturers kept on insisting on the safety of their blood and blood products.

In contrast, the CDC predicted the possibility of viral infections being transmitted through blood on the basis of an epidemic research conducted in 1982.   Although the cause of the disease was not known, the CDC staffs noticed its resemblance to hepatitis B and proposed preventive measures based on the model of countermeasures against hepatitis B.   These included measures such as (1) the adoption of blood products such as cryoprecipitate produced from the blood of a small number of donors, (2) reduction in the usage of blood transfusion, and (3) request for information on the sexual lifestyles of blood donors.   The CDC's proposals were admirable because of their convenience and efficacy [10].

(3) Second antagonism–the hypotheses of Gallo and Montagnier

Robert Gallo, a staff member of the NIH, was the first to discover the human retrovirus (HTLV-I) and was a worldwide authority on it.   However, when he began his research as part of the effort to discover the AIDS virus, he believed that it would belong to the same family of retrovirus (HTLV) that he had discovered before.   He was obsessed by this preconception because of his past achievement.   As a result, his research was delayed by a year.

Gallo harbored no doubt that the AIDS virus belonged to the family of HTLV.   Further, he believed that the onset rate of the disease was very low and that the incubation period was more than 20 years similar to the Adult T-cell leukemia (ATL) that is the disease caused by HTLV-I.   In other words, Gallo initially underestimated the seriousness of AIDS.   However, the FDA and the US government, who had once supported the immuno overload hypothesis, eagerly espoused Gallo's hypothesis [11].

On the other hand, Montagnier, a staff member of l'Institut Pasteur, and his team predicted that the virus was an unknown and new type of virus different from HTLV in light of its morphological features.   Moreover, the decisive factor was that the AIDS virus kills infected cells, contrast to HTLV-I that multiplies infected cells.   Their hypothesis was very pessimistic because it did not allow the prediction of the onset rate of the disease and the incubation period based on known models [12].   In February 1983, they were the first to discover the AIDS virus and termed it LAV.

3 Examination of the Case: Two Attitudes toward Uncertain Risks

Hermitte pointed out two attitudes toward uncertain risks from the case study: one was "rational theoretical optimistic," which was typical of the FDA, the US government, and pharmaceutical manufacturers, and the other was "intuitive empiric pessimistic," which is typical of the CDC [13].   Such a distinction between attitudes was correspondent to the distinction between "scientific rationality" and "social rationality" proposed by Ulrich Beck [14].   Hermitte utilized the distinction to clarify the "precautionary attitude".

The "rational theoretical optimistic" attitude, which was Hermitte's satirical expression regarding standard risk management, was the attitude wherein preventive action was delayed until the risk was proved scientifically.   In addition, the attitude wished to maintain the present technological-economical-social situation and underestimated the risk as much as possible.   For example, the FDA, the US government and pharmaceutical manufacturers supposed that the risk of AIDS would be

limited to specific risk groups and that it would not be necessary to spend a large sum of money on medical systems, blood supply systems, and manufacturing processes in order to deal with the risk.   This was the common case.   However, it was merely constituted a channel of "escapism" from confronting the risk [15].

On the other hand, the "intuitive empiric pessimistic" attitude was an attitude in which scientifically uncertain risks were dealt with promptly.   Furthermore, it advocated adopting temporary but feasible measures even when neither the cause of the menace nor the correct treatment was known (e. g. the adoption of the blood products such as cryoprecipitate produced from the blood of a small number of donors, reduction in the usage of blood products, and requests for information on the sexual lifestyles of blood donors).   Moreover, the attitude was not bound by preconceptions but rather assumed new possibilities (e. g. the AIDS virus did not belong to HTLV but was a new type of virus).   Finally, it recommended assuming the worst-case scenario and preparing for it because the assumption of an unknown virus would make predictions on the extent and gravity of damages impossible and this might seriously impact not only patients but also the entire society.

4 Application of the Precautionary Principle to the Case
How should an uncertain risk be dealt with?   Indeed, this is a difficult question.   However, I would like to proffer a solution to the problem by justifying the precautionary principle on the basis of Hermitte's criticism.

①   Accept scientific uncertainty
The relevant authorities should have taken the "pessimistic attitude" of Hermitte, and adopted feasible measures accordingly.   For example, in 1982, the CDC recommended the adoption of blood products such as cryoprecipitate produced from the blood of a small number of donors, reduction in the usage of blood products, request for information on the sexual lifestyles of blood donors.   These recommendations originated from regarding AIDS as analogous to hepatitis B.   Kaiser recommended such analogies in the case of uncertainty [16].

②   Allocate burden of proof to proponents of potentially harmful activities
Apparently, the burden of proof of the safety of blood and blood products should have been borne by the manufacturers.   The relevant authorities should have taken responsibility.   In addition, at that time, they should have adopted the most feasible measures albeit temporary ones such as the CDC's recommendations, in order to minimize the risk.   In fact, the number of options for feasible measures increased considerably with the progress of research on the relevant subject.   For example, in addition to the measures mentioned above, ones such as the postponement of non-urgent operations, auto transfusions, use of condoms, and usage of heated blood products gradually became feasible [17].

③   Renounce the zero-risk standard
It is true that risks can be offset by accompanying benefits.   In fact, the risk of hepatitis B caused by unheated blood products had been recognized before the 1980s.   However, the risk might have been regarded as being offset by the benefits on account of their remarkable efficacy.   On the other hand, this would have been true only if the patients had access to reliable and sufficient sources of information and if they had the option of choosing their own course of action.

However, a more puzzling problem occurs when the risk that surfaces is inconclusive.   A great misconception that prevailed during that time was that the only two available options were that of a total ban or laissez-faire.   The concerned authorities should have made all information available, presented all the options of medical treatments, and allowed the patients to make their own decisions.

④   Increase public participation in decision making
When we confront uncertain risks, we have to collect as much essential information as possible, make it available to the public, search for feasible measures, and discuss what measures to adopt.   In such a

scenario, we have to consider the merits and demerits of any measure that is contemplated.   However, since the standards of judgment accorded to values vary from person to person, all stakeholders should be gathered and included in a discussion.   Among all the views, those of the possible victims should be respected.

In the French case, as the research was advanced, patients were presented with many choices for effective measures; however, their right to choose was not respected.   The hemophiliac patients did not have accurate information at their disposal.   For example, they were informed that the risk of unheated blood products was not very high and that the alternatives such as cryoprecipitate or heated blood products were not available.   Even if they demanded such alternatives, their demands were politely refused.

Undoubtedly, if we leave the decisions to the direction of each patient, some of them might commit mistakes.   However, since it is the patients themselves who sustain damages, possibly serious in cases, they should be entitled to make their own choices.   In addition, to respect each patient's judgment is to diversify the options, which leads to the dispersion of risks.   This would be the merit of public participation.

5 Beyond the Precautionary Principle

After examining the case study, I would like to emphasize the importance of the fourth (public participation) among the four elements of the precautionary principle.   The reason is that we cannot decide the course of action in advance and perfectly prevent a hazard, and that there is no single specialist authority who can appropriately decide the risks and countermeasures.   Therefore, we have no choice but to share the decision-making responsibility with the public (at least with all stake holders).   However, this indicates the limitation of the precautionary principle and we have to take the step of risk communication for decision making.

---

[1]   The original version of this article was written in Japanese and published as the title "The HIV/AIDS politics and the principle of precaution", in *Journal of Japan Association for Bioethics*, Japan Association for Bioethics,Vol.15 No.1, 2005, pp.93-100.

[2]   Godard, p.59.

[3]   Kaiser, p.41.

[4]   Godard, p.59.

[5]   Godard, p.52.

[6]   Cf. Larrère (1), pp.24, 27; Kaiser, p.49.

[7]   Hermitte (1), pp.181-2. Feldman, Bayer et al., p.8.

[8]   Hermitte(1), pp.183-5.

[9]   Hermitte (1), p.183, Hermitte (2), p.244, 246.   Seytre, p.33.

[10]   cf. MMWR, Nov. 5, 1982, 31(43), pp.577-80.   Hermitte (1), p.183.

[11]   Hermitte (1), pp.183-5; Hermitte (2), pp.246-7.

[12]   Hermitte (1), p.185.

[13]   Hermitte (1), pp.187-8.

[14]   Hermitte (2), p.262.

[15]   Cf. Institute of Medicine, pp.216-20.

[16]   Kaiser, p.41.

[17] cf. Institute of Medicine, p.194.

References

Bernard Seytre, *Histoire de la Recherche sur le SIDA*, tr. Takashi Tsukada, Hakusuisha,1998, Japan (Presses Universitaires de France, 1995)

Catherine Larrère, "Le contexte philosophique du principe de precaution," *Le Principe de Précaution Aspects de Droit International et Communautaire*, Editions Panthéon Assas, 2002.(Larrère (1))

Catherine Larrère, and Raphaël Larrère, *Du Bon Usage de la Nature: Pour une Philosophie de l'Environnement*, Aubier, 199 (Larrère (2))

c/b Eric Feldman, *Ronald Bayer, Blood Feuds: AIDS, Blood, and the Politics of Medical Disaster*, tr. Yamada, Miyazawa et al. P/b Gendaijinbunsha,2003 (Oxford Univ. Press, 1999)

c/b Institute of Medicine, *HIV and the Blood Supply: An analysis of Crisis Decisionmaking*, tr. Shimizu, Niimi, p/b Nihonhyouronsha, 1998 (the National Academy Press, USA, 1995)

Marie-Angèle Hermitte, "Le principe de précaution à la lumière du drame de la transfusion sanguine en France," *Le Principe de Précaution dans la Cconduite des Affaires humaines*, INRA, 1997 (Hermitte (1))

Marie-Angèle Hermitte, *Le Sang et le Droit, Essai sur la Transfusion Sanguine,* Seuil, 1996 (Hermitte (2))

Matthias Kaiser, "Ethics, Science, and Precaution: A View from Norway," *Precaution, Environmental Science, and Preventive Public Policy*, ed. J. A. Tickner, Island Press, 2003, pp.39–53

MMWR (Morbidity and Mortality Weekly Report), "Current trends Hepatitis B virus vaccine safety: Reports of an inter-agency group," 31(34), Sep. 03, 1982, pp.465-467

MMWR, "Current trends Acquired Immune Deficiency Syndrome (AIDS): Precautions for clinical and laboratory staffs," 31(43), Nov. 05, 1982, pp.577-80

Olivier Godard, "L'ambivalence de la précaution et la transformation des rapports entre science et decision," *Le Principe de Précaution dans la Conduite des Affaires Humaines*, INRA, 1997

Tomohiko Yara, "The HIV/AIDS politics and the principle of precaution", in *Journal of Japan Association for Bioethics*, Japan Association for Bioethics, Vol.15 No.1, 2005, pp.93-100.

Chapter 11

Regulation on Genetic Information in Spain

Maria Dolores HERVAS ARMERO

Introduction

In recent years, the development of biotechnological research and genetic techniques has shed light on the issue of genetic information, primarily because the current genetic research has made detailed genetic information of individual persons available. This topic has been discussed in the legal and ethical contexts because it raises a wide range of legal and ethical issues such as human dignity, rights, privacy and discrimination. Indeed genetic information can be used as a basis for many types of discrimination. In order to avoid infringement of privacy and discrimination based on personal genetic data, many countries have established a legal framework for the regulation of genetic information.

The purpose of this paper is to examine the regulations on genetic information in the Spanish legal system in order to make clear what has been done so far and what should be done in the future. This article is divided in three sections. In the first section, I examine the Spanish legal framework regarding biotechnological techniques and the protection of personal data. In the second section, I consider the rights of the patients to the privacy of health information. Finally, the third section deals with the problematic use of genetic and health information in the field of employment.

1. An Overview of the Spanish Legal Framework

In the Spanish legal system, there is no specific law regarding genetic information. Instead, regulation relies on general laws regarding human dignity, such as the Spanish Constitution, and specific laws concerning private data and the regulation of the rights of the patient. In the field of employment there is also some regulation on the matter, as there is in Criminal Law. In order to see how Spanish law regulates the issues related to genetic information, we must start from a general perspective, namely the treatment given to personal data and privacy in the Spanish Legal System. The first step must be the Spanish Constitution of 1978, article 18 of which guarantees privacy as a fundamental right, related to article 14, where any kind of discrimination based on personal or social conditions is forbidden. We can thus deduce what the principle followed in Spanish law regarding personal information in general, and genetic information in particular, will be: respect for individual privacy as a general principle and an absolute forbidding of discrimination in any field. So, if we accept that genetic information is one of the most serious interferences in privacy, we can find that any kind of misuse is covered by the forbidding of discrimination in article 14, and by the right to privacy as contained in article 18. Specifically, the Constitutional Court (Judgment 290/2000, November 30th, Legal basis 7th and Judgment 292/2000, November 30th, Legal basis 5th and 6th)[1] has recognized, together with the right to privacy, an independent right to the protection of personal data which, in addition to the protection of family and individual privacy, entails the right to know and be informed of and the right to consent to or reject the use of personal data (Romeo Casabona 2003, pp.242-243)[2]. This specific right comes from article 18.4, which refers to the right to be free of any possible damage to dignity resulting from illegal use of data through computing, and guarantees individuals will have control over their data, including the right to give or refuse prior consent to the collection and use of personal data, and also the right to know and be informed of the use and the purpose of use of information, and to be able to access, correct or cancel it (Jaen Vallejo 2004, pp. 126-128)[3].

It is interesting to note that the Spanish Constitution establishes human dignity as the basis of our political and social system, and constitutional jurisprudence considers it a spiritual and moral value inherent to the person, which shows itself specially through the responsible and conscious self-determination of own life, with the aim of respect from the rest (Judgment 53/1985, April 11th, Legal basis 8)[4]. All of this implies that the concept of human dignity will mark the limit on the acceptance of genetic techniques and research in Spain (art. 10) (Puigpelat Martí 1998, pp. 43-44)[5], and will be the root of fundamental basic human rights(Romeo Casabona 2003, p. 55)[6]. So, human dignity, together with the basic values of justice, liberty, equality and pluralism (art. 1), will be the criteria used to develop the regulation on the questions related to biotechnology and medicine.

To further strengthen this principle, article 10.2 establishes that any interpretation regarding fundamental rights must be made in accordance with the Universal Declaration of Human Rights and with the international agreements ratified by Spain. Hence, the rights contained in the Universal Declaration of Human Rights, such as dignity, equality and non-discrimination (arts. 1 and 2), are recognised as compulsory principles in the Spanish system. More recently, the Oviedo Convention or European Bioethics Convention on Human Rights and Biomedicine[7] of 1997 has come to specify these principles of respect for privacy and non-discrimination in the field of genetic data, and establish important guidelines in the field of biotechnology and ethics, which have indeed been compulsory in Spain since January 1st 2000 (the date of ratification), whilst providing a summary of the way regulations on this issue are, and will continue to be, implemented. In summary, article 1 establishes the protection of Human Dignity as the basis of the regulation of the applications of medicine and biology. It also pays special attention to the informed consent of the patient (arts. 5-8), and recognizes the privacy of health related information and the right of the patient for this kind of information to not be known, whilst establishing that any limitations on these rights must be exceptional and can only be set out in law, based always on the interest of the patient (art.10). This is indeed the principle now followed in Spanish Law: a strict requirement of informed consent aimed at protecting personal autonomy or self-determination. The Convention also forbids any kind of discrimination based on the human genome, and limits genetic tests to medical care or research, always with suitable genetic counselling. Regarding gene therapies, it limits the purpose to prevention, diagnosis and medical treatment, but only in the somatic line, forbidding any intervention in the germinal line. The use of reproductive techniques for the selection of the gender of the embryo, unless it is to avoid a serious hereditary disease, is also forbidden. Regarding research on embryos, choice is left to the law of each country, with the need to guarantee a suitable level of protection of the embryo being established; what it is clearly forbidden is the creation of human embryos for research purposes. Making use of this choice, Spanish Law 14/2006, of May 26th, on techniques of human artificial reproduction, allows the use of the embryos for research, depending only on the consent of the parents. Regarding the creation of new embryos for research, this was forbidden even before the Convention was signed by Spain, because its Criminal Law forbids any creation of human embryos for purposes other than reproduction.

The Convention also establishes the restriction of the rights set out in law for reasons of public safety, prevention of criminal acts, public health and protection of other people's rights, but excludes the possibility of any kind of restriction or limit on the forbidding of discrimination because of the genome (art. 11), intervention in germinal line (art. 13) and the selection of the gender of descendants (art. 14), among other questions. As was said previously, all these points are compulsory in the Spanish legal system. Some of them were already covered by our Constitution and by other laws, whilst newly implemented laws should respect the principles of the Convention. In fact, if there are issues which are not regulated in national laws, the Convention will be applied.

As for other biotechnological issues, the cloning of human beings is forbidden in Spain, not only because of the Additional Protocol to the Convention on Human Rights and Biomedicine on the Prohibition of Cloning Human Beings[8], of January 12th 1998, a compulsory law in Spain since March 2001, but also Law 14/2006, of May 26th, on Techniques of Human Artificial Reproduction (art. 26),

and Criminal Law, of November 23rd 1995, which, in article 161.1, specifically considers human cloning as a crime. Likewise the alteration of the genotype for purposes other than the elimination or reduction of defects or serious diseases (art. 159) is also considered a crime; in this case the law does not distinguish between somatic and germinal lines, which is resolved by the Oviedo Convention, in which the germinal line is specifically forbidden. Thus in the Spanish legal system, only alterations in the somatic line aimed at reducing or eliminating serious diseases are permitted. Article 161.1 also forbids fertilization of human ova not aimed at human procreation, so our system had already forbidden the creation of embryos for research before the Oviedo Convention did.

Concerning the use of embryos in research, Law 14/2006, of May 26th, on Techniques of Human Artificial Reproduction, follows the limit established by the Warnock Commission. Only research on embryos under 14 days, so called pre-embryos, would be authorised, with the consent of the parents to the use of the embryos in such specific research being required. Thus a general consent to donate the embryos to research is needed as a first step, but is insufficient in itself. To start effective research, specific consent is required for the research or use in question (art. 15). Another possibility allowed in this Law, under strict control, is the pre-implantation selection of embryos in order to obtain a therapeutic benefit for a third party (this means the selection of a so-called medicine baby) (art.12.2.).

Returning to the field of genetic information, we do not, as I said previously, have a specific law, although Act 15/1999, on the Protection of Personal Data, the purpose of which is to guarantee and protect the personal data and fundamental rights of people, especially honour and personal and family privacy (art. 1), has been in place since 1999. Under the concept of personal data, this law regulates all data which may affect the basic rights of the person and privacy, including genetic information. The law establishes different procedures in order to safeguard privacy in the way information is collected and stored, and also the security measures to access to it, and the obligation of professional secrecy for all the people that work with this kind of data (arts. 9, 10, 11, 12). Again, as in all matters related to privacy in the Spanish legal system, the consent of the individual is fundamental for the legality of these procedures, so all people whose information is collected must be told the reason for and purpose of data collection, and must be informed of their right to access, modify and cancel the information stored in the databases. Consent is also needed to allow information to be communicated to people other than the person who collected the data, and even when this consent exists, it can be revoked when the person so decides. The exceptions to this requirement for consent and to these rights are set out in law, only for special cases and not for all kinds of data (arts. 5, 6, 11). Again, the importance of personal autonomy expressed through the request for informed consent will provide the basis of the system for the protection of privacy.

Article 7 of the law refers to specially protected data, namely data concerning health. There is once again no specific mention of genetic information, although, as specially qualified health information, it is included as data with higher protection, which means it can only be collected, processed, consulted and transferred if general interest exists, as set out in law, or through express consent by the affected person. Of these exceptional circumstances, only in cases of medical care, the data can be consulted, and then only by medical professionals bound by the obligation of professional secrecy (art. 7.3, 6). To complete the treatment of health information, article 8 refers this question to the laws already existing in the field of medicine, such as General Health Law 14/1986. Finally, regarding the misuse of personal information, article 13 recognizes the right to contest any kind of administrative action or private decision based on personal information which shows private characteristics of the person. Such use is only possible when requested by the affected person. If the misuse causes damage, the law establishes the right to seek compensation, so liability exists. This liability is particularly serious in cases related to the data of article 7, namely health information (the sanction ranges from €300,000 to €600,000 (art. 45.3)). To finish with this law, one particularly important point is the creation of a national and independent Data Protection Agency, which will be the institution to oversee compliance with the rules and respect of the rights.

2. The Use of Genetic Information in Medicine

Regarding the use of genetic information in the field of medicine, a basic regulation appears early on in General Health Law 14/1986, article 10 (points 1 and 3) of which recognises the rights of patients to the privacy and secrecy of information about them, forbidding any kind of discrimination. To complete the basic regulation of this general law, a new law on the autonomy and rights and obligations of the patient with regards to questions of information and clinical documentation was developed. This is Law 41/2002, which, in its introduction, directly refers to the international texts on this issue and, of course, the Oviedo Convention, developing the rights recognized in them into effective rights which can be taken to court. It is also a transposition on this specific field of EC Directive 15/1999, of October 24th 1995, which defends the rights of European citizens, dealing specially with the privacy of health information, but also taking care of the general interests of society such as public health, research and clinical tests, which, if established in law, are able to justify an exception to the rights of the patient. So, it not only pays attention to the interests of the individual, but also the interests of the community, which will be the only possible exception to the rights of the patient, and only when such an exception is established by law. Regarding genetic data obtained by way of any kind of medical treatment, this law will be the point of reference, so later laws such as Order 1301/2006, of November 10th, on the donation and use of cell and human tissues, refer to it with regards to the privacy of personal information (art. 6).

What is again pointed out as a basic principle of the law is respect for human dignity, and, attached to it, respect for autonomy and privacy. This respect will provide the basis of the regulation of the procedures to obtain and use medical information. This means not only informed consent about medical treatment and the use of the personal information to be provided, but also a confidentiality obligation for those professionals working with this information (art. 2), and the existence of liability in the event of breach of the law. According to this law, information regarding the health of the person and the corresponding treatment will not be given to anyone except the patient. The family will only receive such information if the patient so allows, or if the patient is unable to understand it (art. 5).

Article 7 of this Law refers specifically to the privacy of data regarding health, which naturally includes all kinds of genetic data, recognizing the right to the privacy of such information, forbidding access to it without permission as supported by law. This means that accessing a clinical history for any purpose other than medical assistance will require special conditions that allow the separation of the information which identifies the patient. In other words, the anonymity of patients should be preserved, except when they give consent to allow their identity to be known. Apart from this, the sole possibility to access such data regarding the identification of the owner is for judicial research and in specific cases (art. 16). Any person accessing the clinical history should maintain the confidentiality of this information. Access to clinical history is limited even after the death of the patient, in order to respect his or her autonomy and privacy.   Thus, article 18 establishes that after the patient's death, the information should be given only to the family, and only in those cases in which the patient has not given instructions to the contrary, and, even when this information is needed by another person as a result of a risk to his or her health, the information given will be limited to that specifically needed. Any breaches of this law may lead not only to professional liability of the people involved, but also to civil and criminal responsibility.

3. Genetic Information and Employment

Regarding the use of genetic information in the field of employment, Law 31/1995, on the prevention of risks at work, makes reference to the carrying out of health tests in order to control the safety of employees. There is no particular reference to genetic tests, although they are included in the wide range of medical tests covered by this law. The tests that provide this kind of information must be used only as a subsidiary way to obtain the information needed about the health of the employee if no other

means is suitable, save for there being consent by the affected employee. The data obtained must be used only for the purpose of research, which must be related in all cases to the monitoring and control of the health of employees; the affected person will be free to know or not know the results of the studies, whilst the employer will not know the exact data about the health of the employee other than that which is necessary in order to know whether the person can do the job or not, with specific information never being given. This information must be kept secret by the medical professional, who will be the only one allowed to carry out the test and know the exact results, always with the exception of the employee giving consent to the transmission of this information (art. 22).

According to this law, we may distinguish between genetic monitoring tests and genetic screening (Calvo Gallego 2003, pp. 17-18)[9]. The former, to check the effects of the work environment on the health of the employees, as a way to control and improve these circumstances (art. 25.2), but always with the limits on the protection of privacy as set out in the same text. The latter will detect whether there is any kind of genetic anomaly that may affect the carrying out of the work, in order to assign suitable jobs to the employee (art. 25.1). This test must respond to the principles of proportionality and subsidiarity, and must never be a basis for discrimination at work, according to the conditions required to carry out any medical test.

Regarding Public Health regulation, in addition to the laws mentioned above, it is interesting to note that Law 16/2003, on the cohesion and quality of the National Health System with regards to research, has created an Advisory Commission on Research. The goal of the Commission is to improve cooperation between research in the public and private sectors, whilst ensuring, in collaboration with the Health Ministry, that research is carried out according to the guidelines on bioethics, with reference, for example, to the Helsinki Declaration or the Nuremberg Code.

Conclusion

In this article, the Spanish legal system on the regulation of genetic information has been examined. To conclude, some points can be summarized: human dignity is the basis of the political and social system and should be specially protected (art. 10 Constitution); according to the Constitutional Court (Judgment 54/1985, April 11th, Legal basis 8), human dignity is a fundamental value, closely linked to free personal development (art. 10 Constitution), and to personal and family privacy (art. 18.1 Constitution) amongst others. Thus, human dignity can be damaged by the violation of the specific fundamental rights to which it is linked (Romeo Casabona 2003, pp.55-56)[10], one of them being the right to privacy (art. 18 of the Constitution). In order to protect privacy, the Spanish Constitution states both a general right to privacy (art 18) and a specific right regarding the protection of personal data (art. 18.4 according to the interpretation of Constitutional Court Rulings 290/2000 and 292/2000, November 30th). The right to privacy, in the case of genetic privacy, will be the right to decide on the conditions of access to genetic information (Ruiz Miguel 2001, p. 33)[11]. Privacy of genetic data will be protected in Spain through the regulations concerning informed consent for the collection and use of personal data, the obligation of confidentiality of the people working with the data, measures against discrimination, and civil and criminal consequences in the event of misuse. To finish, I would like to add that the Charter of Fundamental Rights of the European Union, of December 7th 2000, in article 2, recognizes respect for informed and free consent as a right in the field of medicine and biology, and forbids not only eugenics but also human cloning. Moreover, as an important point, when forbidding any kind of discrimination, it specifically mentions genetic characteristics as the basis of discrimination.

---

[1] http://www.tribunalconstitucional.es/jurisprudencia/JC2000.html   (October 2007)

[2] Romeo Casabona, C.M. 2003. "El tratamiento y la protección de los datos genéticos" in Mayor Zaragoza, F., Bedate, C. A. (coords.), *Gen-Ética*, Madrid: Ed. Ariel, 235-260.

[3] Jaen Vallejo, M. 2004. "Una visión del problema desde una perspectiva constitucional: El estudio particular de la protección de la intimidad y los bancos genéticos" in Perez del Valle, C.J., *Genética y Derecho*, Madrid:Cuadernos de Derecho Judicial-Consejo General del Poder Judicial, 95-133.

[4] http://www.boe.es/g/es/bases_datos_tc/doc.php?coleccion=tc&id=SENTENCIA-1985-0053 (October 2007)

[5] Puigpelat Martí, F. 1998 "Bioética y valores constitucionales" in Casado, M. (coord.), *Bioética, derecho y sociedad,* Madrid: Ed. Trotta, 35-54.

[6] Romeo Casabona, C.M. 2003 "Los desafíos jurídicos de las biotecnologías en el umbral del siglo veintiuno", in Martín Moran (coord.), *Biotecnología, Derecho y dignidad humana*, Granada: Ed. Comares, 45-65.

[7] In October 2007, the following countries were signatories of the Convention: Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxemburg, Macedonia, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and Ukraine.

It has been ratified by: Bosnia and Herzegovina Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Georgia, Greece, Hungary, Iceland, Lithuania, Moldova, Norway, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain and Turkey.

[8] In October 2007, the following countries were signatories of the Convention: Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxemburg, Macedonia, Moldova, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and Ukraine.

It has been ratified by: Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Georgia, Greece, Hungary, Iceland, Lithuania, Moldova, Portugal, Romania, Slovakia, Slovenia and Spain.

[9] Calvo Gallego, F.J. 2003 "Test genéticos y vigilancia de la salud del trabajador", *Derecho y conocimiento,* vol.2, 3-19.

[10] Romeo Casabona, C.M. 2003 "Los desafíos jurídicos de las biotecnologías en el umbral del siglo veintiuno", in Martín Moran (coord.), *Biotecnología, Derecho y dignidad humana*, Granada: Ed. Comares, 45-65.

[11] Ruiz Miguel,C. 2001, "Los datos sobre características genéticas: Libertad, intimidad y no discriminación", in Romeo Casabona, C. (dir.), *Genética y derecho ,* Madrid: Consejo General del Poder Judicial/ Ilustre Colegio Oficial de Médicos de Madrid, 15-68.

Part III
Frontiers in Applied Ethics

Chapter 12

Agent-Centered Approach in Engineering Ethics: A Consideration of the Methodology of Applied Ethics

Hidekazu KANEMITSU

Introduction

The specific problems related to the field of applied ethics and the methodology used in this field have been discussed by various studies. In the field of bioethics, for instance, the "principle-based approach" has been the subject of considerable discussion, and scholars continue to discuss the methodological determination of these "principles."

The author will focus on the "agent-centered approach" as one of the discussions on the methodology used in applied ethics; this method was proposed by Caroline Whitbeck, and it is a frequently used approach in the field of engineering ethics. Whitbeck criticizes the existing ethics and applied ethics in that they previously ignored the "agent perspective." In other words, she strongly criticizes dealing with ethical problems from the "judge perspective," which she considers to be excessively abstract and rationalistic (Whitbeck 1998, p. 72). From the viewpoint of ethics education, in particular, Whitbeck emphasizes the benefit of dealing with the analogy between ethical and design problems, and she insists on the necessity of engineering ethics education based on the agent perspective (Whitbeck 1995, pp. 299–300).

This approach will indeed be beneficial in educating people so as to help them develop the ability to deal with real-life ethical problems. However, the agent-centered approach involves the risk of considering ethical problems without providing any justification. We cannot ignore the claim that Whitbeck has only laid down rules for the art of living well with regard to practical issues; it is suggested that this approach should be supported by some kind of justification. The author will briefly describe Whitbeck's criticism of the judge perspective, examine the ethics-as-design thesis, and then proceed to discuss the limitations and future prospects of this approach.

Criticism of the "judge perspective"

Whitbeck states that "most of recent ethics and applied ethics have neglected the perspective of the moral agent" and that "ethics has exclusively emphasized the perspective of the judge or that of a disengaged critic who views the problem from 'nowhere' and treats it as a 'math problem with human beings'" (Whitbeck 1998, p. 72).[1] Further, she stresses the importance of an agent-centered approach to educate people in order to enable them to develop the ability required when confronting actual ethical problems. This approach is agent-centered in that its central aim is to prepare people (and particularly students) to act wisely and responsibly when faced with moral problems (Whitbeck 1995, p. 299). "Presenting an ethical problem from an 'agent perspective,'" according to her, "means presenting a situation as it would appear to someone who must respond to it" (Whitbeck 1995, p. 300).

While existing theories on ethics exclusively emphasize analytic reasoning and frame ethical problems "from the vantage point of a judge or moral critic" (Whitbeck 1998, p. 73), Whitbeck treats a practical ethical problem from the perspective of the person facing it.

It would appear that Whitbeck levels her criticism at applied ethics itself. She distinguishes between the "applied ethics" and "practical ethics" approaches to professional ethics, which investigates professional responsibility. Whitbeck criticizes the former as a rational foundationalist approach. According to her, the "'applied ethics' approach to professional ethics is the application of rationalist

foundationalist ethical theory or abstract ethical principles" (Whitbeck 2004, p. 85). This approach begins with abstractions in the form of ethical principles and seeks to apply these abstractions to particular instances. "These principles are abstract in that they are supposedly apprehended in abstraction from context" (ibid.).

In contrast, the practical ethics approach begins with context. It "begins with ethically significant practical problems and the enduring (rather than "timeless") moral rules and norms that have been developed to give guidance to those addressing those problem situations" (ibid.).[2]

A summary of Whitbeck's work has been provided by van Amerongen; here, Whitbeck states that rational foundationalism fails in moral practice for at least three reasons. First, it "has little to do with moral reality" (van Amerongen 2004, p. 114). Rational foundationalism—the theory pertaining to the use of ethical theory in moral practice—cannot deal with real-life problems. A moral philosopher's abstract debate is remote from real life and is not directly connected with real-life moral experiences. "Whitbeck herself endorses an approach close to experience, which recognizes the influence of moral tradition and social context on moral terms" (van Amerongen 2004, pp. 114–5).

Second, van Amerongen states that "Whitbeck objects to the rational foundationalist approach as it suggests that it is possible to formulate general theories and rules first, and apply those to specific social practices later" (van Amerongen 2004, p. 115). In contrast, Whitbeck focuses her attention on problem situations and norms derived from actual experience. In other words, she emphasizes social practice and the viewpoint of the actual agent. According to her, "we must deliberate from where we are," not by reason alone and quite apart from actual social experience.[3] Whitbeck considers that the rational foundationalist approach does not provide directions on how to manage concrete moral problems (Whitbeck 2004, p. 88).

Third, although rational foundationalism is certainly one possible approach to professional ethics, it is not the only one. "When addressing a particular moral problem, Whitbeck argues, an agent can take into account the *whole* spectrum of moral judgments and justifications, and is not limited to just one ethical theory" (van Amerongen 2004, p. 115). This means that a moral agent should not be forced to choose between theoretical principles. In other words, the agent can draw from "the *whole* moral vocabulary (which includes both utilitarian and deontological principles, as well as, for instance, considerations of care and rules attached to social or professional roles)"(van Amerongen 2004, p. 116).

It is true that recently "many who initially adopted the applied ethics approach have modified their views to take account of the insights that have come from practical ethics." However, Whitbeck points out that "four tendencies of the applied ethics approach persist into the present day," namely, (1) the emphasis on application of the foundationalist ethical theory, (2) the emphasis on analysis to neglect synthetic reasoning, (3) the tendency to treat moral problems as though they were multiple-choice problems, and (4) the tendency of the proponents of applied ethics to ignore their own historical and cultural position and to argue as though their principles were timeless truths (Whitbeck 2004, p. 86).

Whitbeck's position can be clearly understood through an overview of her criticism, which is directed toward rational foundationalism. She places importance on practical ethics that emphasizes the cultural context, and she first discusses practical problems and enduring moral rules and norms. This implies that we should consider ethical problems from the viewpoint of the agent who lives with particular ethical sensitivity in concrete social situations.

With regard to engineering ethics, it is clear that Whitbeck conducts an in-depth examination of the ethical norms that have historically evolved in the engineering community. She considers it important to draw from the experience of relevant communities and professions, irrespective of whether cumulative reflection is prescribed in the form of ethical codes and guidelines (cf. Whitbeck 2004, pp. 89–90).

Apart from moral rules and obligations, these norms include the responsibility to promote or protect the well-being of others. Moral obligations and most rules specify the acts that are required or forbidden; however, fulfilling a responsibility requires the achievement of an end. "Carrying out a responsibility requires the making of complex judgments about which *acts* will best achieve the desired *ends*" and "complex problem-solving skills" (Whitbeck 2004, pp. 90–1).

Consequently, Whitbeck emphasizes the perspective of the moral agent and encourages the grooming of engineers who have ethical sensitivity and who will be able to creatively find solutions to problems.

Ethics as design

Whitbeck stresses the importance of the agent-centered approach for educating people in order to enable them to develop the ability to confront real-life ethical problems. Further, she uses an analogy between ethical problems and design problems to clarify the agent perspective. "The similarities between ethical problems and another class of practical problems, design problems, are instructive for thinking about the resolution of ethical problems and correcting some common fallacies about ethical problems" (Whitbeck 1998, p. 54). According to Whitbeck, it is misleading to frame moral problems as a multiple-choice dilemma: a problem with a fixed number of possible alternatives, only one of which is correct (van Amerongen 2004, p. 117).

Whitbeck states that "[d]esign problems are problems of making (or repairing) things and processes to satisfy wants and needs" (Whitbeck 1998, p. 55). "Engineers recognize the ability to analyze the designs of others (i.e., being an astute judge of designs) as a useful skill for designers to possess, but not sufficient to make a person a good designer." In other words, engineers appreciate "the importance of practical as well as theoretical problems and of synthetic as well as analytic reasoning" (ibid.).

In this manner, "design problems in engineering are typically highly constrained, as are challenging ethical problems" (ibid.). An analogy between ethical problems and design problems is effective for recognizing that people confronting ethical problems should not only make judgments but also devise responses. "The design process, especially in the ways in which it differs from merely analyzing the designs of others, highlights the very aspects of the agent's response to ethical problems that philosophy and applied ethics have had difficulty illuminating" (ibid.). While devising a good response "requires synthetic reasoning," ethics has emphasized on "analytic reasoning and the analysis of ethical problems and possible answers to them" (ibid.). The design problem model of ethical problems clarifies the character of an agent's "synthetic" or constructive task of formulating and refining responses over and above the analytic tasks that agents share with judges (Whitbeck 1995, p. 302).

As van Amerongen points out, the notion of "synthetic reasoning" is the central point of Whitbeck's discussion (van Amerongen 2004, p. 118). According to Whitbeck, we should abandon the idea of fulfilling only one demand when some tension or conflict exists between moral demands; instead "it is often possible to at least partially satisfy many of these demands simultaneously. Indeed, doing so is a mark of wisdom. … Although such conflicts are occasionally irresolvable, the initial assumption that a conflict is irresolvable is misguided, because it defeats any attempt to do what design engineers often do so well, namely, to satisfy potentially conflicting considerations simultaneously" (Whitbeck 1998, p. 56).

An analogy with design problems presents ethical problems as characteristically possessing more than one correct answer, thus contradicting the frequent assertion that there is no right or wrong answer to an ethical question. This is also in contrast to the representation of ethical problems as multiple-choice problems, which usually have a unique best answer, especially when they are framed as choices between two alternatives (Whitbeck 1995, p. 302). By presenting ethical problems as multiple-choice problems, ethicists are implicitly suggesting that we should choose any one of the given alternatives through rigid analytic reasoning. Ethical problems are not like puzzles or math problems, which mainly have fixed alternatives to choose from, usually one maximally correct answer, and rules or methods that will generate more or less straightforward answers. Whitbeck regards ethical problems as resisting such a rigid methodology and believes that synthetic reasoning may lead to more preferable, creative, and midway solutions (van Amerongen 2004, pp. 118–9).

Whitbeck aims not only at acquiring moral knowledge but also at developing the moral skills needed to respond well to ethical problems, which are grasped through an analogy with design problems. We will summarize the points of analogy between ethical and design problems. She identifies several

features of the design problems that are significant for ethical problems (Whitbeck 1995, p. 302; Whitbeck 1998, pp. 57–60):

(1) For interesting or substantive engineering design problems, there is rarely, if ever, a uniquely correct solution or response, or indeed, any predetermined number of correct responses.
(2) Even though no unique correct solution may exist, some possible responses are clearly unacceptable and some solutions are better than others: there are wrong answers even if there is no unique right answer.
(3) Solutions may have advantages of different sorts, such that where there are two candidate solutions, neither may be incontrovertibly better than the other.
(4) A proposed solution must do all of the following:
- Achieve the desired performance or end
- Conform to specifications or explicit criteria for this act
- Be reasonably secure against accidents and other miscarriages that have severe negative consequences
- Be consistent with existing background constraints, for example, ensure that no one's human rights are violated and that infringement of other rights is minimized

Whitbeck focuses on strategies for addressing ethical problems by using the analogy between ethical and design problems. In fact, she suggests some lessons from design problems for ethical problems. These lessons will clarify the nature of synthetic reasoning.

First, the unknowns and uncertainties in the situation should be considered. Although ambiguities and uncertainties are often underemphasized in professional ethics, in cases where crucial ambiguities cannot be fully resolved early in the problem situation, the ambiguity should be understood as a defining characteristic of the situation (Whitbeck 1998, p. 62).

Second, the development of possible solutions is separate from the definition of the problem and may therefore require more information. This is one of the features that distinguish ethical problems from formal decision problems that have multiple choice answers and wherein the nature of the problems is fully defined. In real life, we need to develop possible solutions; therefore, open-ended statements of ethical problems do more justice to problems than do representations of answers in the form of multiple choices. Furthermore, before proposing solutions, agents must frequently clarify the problem. In other words, agents need to accumulate additional information to develop possible solutions. "One of the important characteristics of a responsible or wise response to a practical problem is appropriate investigation of a problem before attempting to solve it" (Whitbeck 1998, p. 63).

Third, it is often important to begin by simultaneously pursuing several possible solutions in order to avoid feeling helpless when faced with insuperable obstacles and avoid expending too much energy too broadly. This lesson concerns acting under time constraints. In addition to keeping options open, agents should avoid investing their energy too broadly. "Pursuing several options contrasts with representing the ethical problem as a static situation with static solutions; the problem becomes simply one of selecting the right alternative and doggedly pursuing it" (Whitbeck 1998, p. 66).

Finally, the dynamic character of problem situations implies that both the problem situation and the individual's understanding of it are likely to change and develop over the course of time. "When the dynamic character of the ethical situation is neglected, people often mistake doing the wrong thing and then making the best of the bad situation with taking an action that is justified in some circumstance" (Whitbeck 1998, p. 66).

A critical examination of the analogy between ethical and design problems
Whitbeck's analogy between ethical problems and (engineering) design problems has several advantageous implications for ethics education; indeed, in van Amerongen's words, Whitbeck's analogy "has a number of attractive features":

It shows that moral acting is not only about deciding between a fixed number of alternative actions or values, but that it also involves a process of acting in which the moral problem unfolds itself and new options may arise, options that may bring together seemingly conflicting moral demands. Moral reasoning is not only about defending a solution; it is also about *finding* one. Her dynamic approach allows for uncertainties and changing interpretation of the moral problem. (van Amerongen 2004, p. 120)

Whitbeck's discussion takes into consideration ethics education. Her analogy focuses on issues of developing options or finding solutions to ethical problems in the process of an ongoing action, and not of evaluating unalterable past cases. Whitbeck's analogy seems to be effective in that it clarifies the method of being extremely practical—ethical thinking that concerns how to deal with actual problems under constantly changing situations (cf. Tsuboi 2005, pp. 69–70). While ethics has been more involved with the justificatory theory of action and not with the clarification of our actual moral reasoning, Whitbeck focuses precisely on the latter. As already stated, her efforts will undoubtedly be beneficial, particularly for ethics education. Whitbeck states that in the face of an ethical problem, "the question is not simply how should I evaluate proposed courses of action, but how should I go about devising such courses of action" (Whitbeck 1998, p. 53).[4] In order to deal with such a question, it appears that the agent-centered approach and the analogy with design problems are suitable.

In addition, the analogy between ethical and design problems may be interpreted as implying the necessity of rethinking the process of moral judgment. This approach grasps the process of moral judgment as involving individual value, a view of life, the formation of self-image, and so on, all of which are matters that ethics has not dealt with (cf. Tsuboi 2005, p. 70; Itou 2001, pp. 72–3). The analogy may be expected to open up new possibilities for ethics.

However, Whitbeck's approach does have some drawbacks, one of which pertains to the justification of judgment. While pointing out that the agent-centered approach holds possibilities for demanding a reexamination of ethics in general, Ishihara criticizes Whitbeck's approach:

To overemphasize the "complexity (of the situation)" and "agent perspective" can pose an ethical threat. If we consider "constraints" in each situation seriously, it appears possible that most unethical behaviors can be justified. Therefore, ethicists should not be too compassionate about agents in each situation; instead, they should show some kind of stubborn attitude. From the vantage point of the judge, ethicists should boldly judge actions that the agent had to take and should promote the establishment of the guidelines that agents can use in similar situations. (My translation, Ishihara 2002, pp. 234–5)

Whitbeck's proposition that "a moral problem is about dealing with a number of given ethical constraints using designing skills rather than applying moral theories" is attractive; however, it lacks external justification. As van Amerongen points out, "Whitbeck may be able to avoid fundamental justificatory issues, but cannot eliminate them" (van Amerongen 2004, p. 121). It may be true that fundamental issues need not be immediately resolved in each case and that sometimes a solution may be at hand. "But this does not imply that those fundamental issues have disappeared completely and some may want a plausible answer to them" (ibid.).

Certainly, when Whitbeck stresses the importance of the agent perspective, what Whitbeck questions is not ethicists but a person faced with an ethical problem. However, this raises questions concerning the evaluation of the moral course of action itself. This matter is referred by van Amerongen as "internal justification," and the following analysis is provided:

If the moral agent is to practice his/her design-like skill, and choose in a designer-like way if and what principles are relevant and how or to what extent they should be met, how can we tell, in the

end, if his/her choices were *right*? Furthermore, if moral agency is viewed as a skill, how we can test whether or not this skill has been adequately performed, or if someone masters this skill? And, given Whitbeck's claim that moral problem solving is better understood as a constructive process rather than as a single decision, wouldn't we need some specific criteria to evaluate such a process? Without such criteria or a decent methodology, Whitbeck is just "black boxing" the moral decision process, and leaving us without a clue as to how the moral agent could (rationally) justify his/her decisions. (van Amerongen 2004, pp. 121–2)

Whitbeck does not explain how designers deal with trade-offs, which is the conventional method employed by designers when dealing with conflicts between requirements, nor does she explain how such choices are evaluated. Solving a moral question requires not only designing skill, namely, the skill to design possible solutions, but also the skill to assess such solutions based on their moral acceptability (cf. van Amerongen 2004, p. 126, n.8).

Whitbeck adopts a pragmatic approach and emphasizes that ethical problems are practical problems. However, by rejecting rational foundationalism and other justificatory approaches, "Whitbeck lacks the necessary normative sources to evaluate the norms and values at stake, as well as the moral design itself—thus debarring both external and internal justification" (van Amerongen 2004, p. 123). Therefore, even if we agree on the significance of Whitbeck's view of ethical problems as design problems, we need to consider normative sources to evaluate the moral design.

Design ethics and technological mediation

Finally, in order to consider normative sources for evaluating the moral design, the author will adopt the analysis that has been elaborated over the past years in science and technology studies (STS) as well as the philosophy of technology. According to the author, the notion of "technological mediation," introduced by Peter-Paul Verbeek, is beneficial for a consideration of the moral design.

To analyze the moral aspect of design in a systematic manner, we should focus not only on the normative aspects of the goals for which technologies are designed or the quality of the way in which the technologies function, but also on the context in which the technological products will function. In doing so, it is possible to identify and answer the normative questions during the design process and to consider the specific responsibility of the designer.

Verbeek believes that the concept of technological mediation is a helpful tool to analyze the role of technologies in the daily lives of human beings, especially given that it was developed based on the postphenomenological philosophy of technology (Verbeek 2006, p. 363).[5] According to his elementary definition, phenomenology refers to the philosophical analysis of the structure of the relations between humans and their lifeworlds. "From such a phenomenological perspective, the influence of technology on human behavior can be analyzed systematically, in terms of the role technology plays in human–world relations" (ibid.). Furthermore, Verbeek stresses on the role of technology in human action (conceived as the ways in which human beings are present in their world) and human experience (conceived as the ways in which their world is present to them), with regard to technological mediation (ibid.). In other words, he discerns two perspectives of mediation: one that focuses on perception; the other, on praxis. The former is the "hermeneutic or experience-oriented" perspective and the latter is the "pragmatic or praxis-oriented" perspective.

The hermeneutic or experience-oriented perspective starts from the side of the world and directs itself at the ways in which reality can be interpreted for and presented to people. Here, the main category is perception (Verbeek 2006, p. 364). Verbeek emphasizes this perspective by citing Don Ihde, who shows that technologies, when mediating our sensory relationship with reality, transform what we perceive. Mediating technologies amplify the specific aspects of reality while reducing other aspects (looking at a tree with an infrared camera, for instance). Ihde refers to this transforming capacity of technology as "technological intentionality": technologies have "intentions"; they are not neutral instruments but play an active role in the relationship between humans and their world (Verbeek 2006, p.

365; see also Ihde 1990, p. 141).

Just as "perception-in-itself" does not exist, neither does "technology-in-itself." Consequently, just as perception can be understood intentionally only as "perception of," technology can only be understood as "technology-in-order-to." "The 'in order to' indicates that technologies always and only function in concrete, practical contexts and cannot be technologies apart from such contexts" (Verbeek 2005, p. 117). In their contexts of use, technologies are interpreted rather differently. This phenomenon is what Ihde calls "multistability": a technology can have several stabilities, depending on the way it is embedded in its context of use (Verbeek 2006, p. 365; see also Ihde 1990, pp. 144–5). Accordingly, technological intentionalities are always dependent on the specific stabilities that emerge (ibid.).

According to Verbeek, Ihde's analysis has important hermeneutic implications, namely, that "… mediating artifacts help to determine how reality can be present for and interpreted by people.… This hermeneutic role of things has important ethical consequences since it implies that technologies can actively contribute to the moral decisions human beings make" (Verbeek 2006, p. 366).

On the other hand, the pragmatic or praxis-oriented perspective approaches human-world relations from the human side. "Its central question is how human beings act in their world and shape their existence. The main category here is action" (Verbeek 2006, p. 364). Verbeek suggests that the work of Bruno Latour offers many interesting concepts for analyzing how artifacts mediate action; Verbeek uses the concept of a "script," introduced by Latour and Akrich, to describe the influence of artifacts on human action. Like the script of a movie or a theater play, artifacts advice their users on how to act when user employ them (Verbeek 2006, p. 366).

According to Verbeek's summary, scripts are the products of "inscriptions" by designers. Designers anticipate how users interact with the product they are designing and—implicitly or explicitly—build the prescriptions for use into the materiality of the product. Latour describes this process in terms of "delegation": designers delegate specific responsibilities to artifacts, for example, the responsibility of preventing people from driving too fast is delegated to a speed bumps (Verbeek 2006, p. 362).

Similar to the case in the mediation of perception, transformations occur in the mediation of action. In other words, in the mediation of perception, some aspects of reality are amplified and others are reduced; so also, in the mediation of action, specific actions are invited while others are inhibited (Verbeek 2006, p. 367).

These analyses of technological mediation have significant implications for engineering design. "Designers should focus not only on the functionality of technologies but also on their mediating roles. The fact that technologies always mediate human actions charges designers with the responsibility to anticipate these mediating roles" (Verbeek 2006, pp. 377–8). This implies that a designer should design a product "not only the basis of the desired functionality but also on the basis of an informed prediction of its future mediating role and a moral assessment of this role" (Verbeek 2006, p. 372).[6]

The anticipation of technological mediation seems to entail a reconsideration of the design process, for instance, the method to deal with trade-offs. In some cases, designing a product with specific desirable mediating characteristics might have negative consequences on the usefulness or attractiveness of that product.[7] "Also, when anticipating the mediating role of technologies, prototypes might be developed and rejected because they are likely to bring about undesirable mediation. Dealing with such trade-offs and undesirable spin-offs requires a separate moral decision-making process" (Verbeek 2006, p. 378). From the perspective of technological mediation, designing should be regarded as a form of "materializing morality" (Verbeek 2006, p. 379); accordingly, we should give more serious consideration to the moral aspect of designing.

Conclusion

Whitbeck's agent-centered approach and her analogy of ethics with design problems are very insightful when considering the ideal nature of engineering ethics education. However, her theory attaches greater importance to practical aspects, and therefore, it lacks internal justification concerning the evaluation of a moral course of action as well as external justification concerning values and principles.

Even if we concede that her intention is to develop practical ethics education and her theory has possibilities of demanding a reexamination of ethics in general, we should consider the action of "design" itself, in particular, the ethical aspect of designing. The technological mediation perspective, which was introduced by Verbeek through his knowledge in STS and in the philosophy of technology, will facilitate such a consideration. It is necessary to rethink the ethical aspect of designing and the ethical responsibility of designers, if only to adequately apply Whitbeck's theory to ethics education.

Notes

1. She cited the term "view from nowhere" from Thomas Nagel (*The View from Nowhere*, Oxford University Press, 1986). cf. Whitbeck 2004, p. 87. Further, she owes the distinction between the judge perspective and the agent perspective to Stuart Hampshire. cf. Whitbeck 1995, p. 300.

2. Whitbeck discusses "practical turn" in ethics itself (Whitbeck 1996); she points out three elements in this movement. The first element is the recognition that "ethical understanding is a cultural product" (she refers to Annette Baier here). The second element is "the awakening of interest in subjects, such as trust, that are especially ill-suited to treatment in abstraction from context" (she refers to Bernard Williams here). The third element is "the renewed attention to the centrality of character in moral life.… Attention to the centrality of virtue in moral life has used examination of intention to show how character develops and is displayed in intelligible action" (She refers to G. E. M. Anscombe and Donald Davidson here).

3. Whitbeck criticizes abstract approaches to ethics, citing Bernard Williams *(Ethics and the Limits of Philosophy*, Cambridge University Press, 1985) and Annette Baier ("Extending the Limits of Moral Theory" in *The Journal of Philosophy* 83:10, 538–45, 1986) as follows: "Philosophers like Baier and Williams argued that the abstract mode of philosophizing poses the danger of making ethics irrelevant to actual moral life…" (Whitbeck 2004, p. 87; see also Whitbeck 1998, xvi–xvii).

4. Whitbeck, quoting Stuart Hampshire, points out that a course in ethics only teaches students to critique moral actions rather than to resolve ethical problems. According to her, "the skills of a judge are only part of the skills an agent needs to respond to an ethical problem. The rest of the task is a constructive or synthetic one of devising and refining candidate responses" (Whitbeck 1998, p. 53).

5. According to Verbeek, "[p]ostphenomenology can be viewed as an offshoot of phenomenology that is motivated by the postmodern aversion to context-independent truths and the desire to overcome the radical separation of subject and object, but that does not result in relativism. From the postphenomenological perspective, reality cannot be entirely reduced to interpretations, language games, or contexts" (Verbeek 2005, p. 113).

6. Verbeek indicated such a prediction as a meditation analysis that is carried out in two different ways: The first is simply prediction by the imagination of the designer. The second is a more systematic one; it consists of an augmentation of the existing design methodology of constructive technology assessment in such a way that it becomes an instrument for a democratically organized moralization of technology (Verbeek 2006, pp. 372–3).

7. To cite an example provided by Verbeek, "introducing automatic speed influencing in cars will make sure that drivers keep to the speed limit but at the cost of the experience of freedom, which appears to be rather important to some car drivers, judging by the fierce societal resistance against speed-limiting measures" (Verbeek 2006, p. 378).

References

Ihde, Don. 1990. *Technology and the Lifeworld*, Bloomington: Indiana University Press.

Ishihara, Kohji. 2002. "The Necessity of Introducing External Perspective into Engineering Ethics," in Naoki Kamo, *Research Materials for Social Philosophy* I (2002 Report to Grants-in-Aid for Scientific Research, Grant-Number (B) (1)13410004), 226–37 (Japanese).

Itou, Hitoshi. 2001. "The Analogy between Design Problems and Ethical Problems," in *Prospectus* 4, 65–75 (Japanese).

Tsuboi, Masashi. 2005. "On Methodology of Applied Ethics," in *The Human Studies* 157, 59–80 (Japanese).

van Amerongen, Melissa. 2004. "The Moral Designer," A Review of Ethics in Engineering Practice and Research, in *Techné*, 7:3, 113–26.

Verbeek, Peter-Paul. 2005. *What Things Do*, The Pennsylvania State University Press.

_____2006. "Materializing Morality," in *Science Technology and Human Values* 31:3, 361–80.

Whitbeck, Caroline. 1995. "Teaching Ethics to Scientists and Engineers: Moral Agents and Moral Problems," *Science and Engineering Ethics* 1:3, 299–308.

_____1996. "Problem and Cases: New Directions in Ethics 1980–1996," in *Professional Ethics* 5:3, 3–16 (Available at http://www.onlineethics.org/CMS/edu/instructessays/probcase.aspx).

_____1998. *Ethics in Engineering Practice and Research*, Cambridge University Press.

_____2004. "Investigating Professional Responsibility," in *Techné* 8:1, 79–98.

Chapter 14

Human Enhancement, For and Against

Takeshi SATO

Introduction

The progress of scientific and medical technologies provides us with means to satisfy our new desires. New technologies have made it possible for us to acquire superior appearance, intelligence and physical ability, to change our personality and control the genes of our children, and even to create *posthumans* [1] . These technologies are generally called human enhancements, which can be defined as "those well-meaning and strictly voluntary uses of biomedical technology through which the user is seeking some improvement or augmentation of his or her own capacities, or, from similar benevolent motives, of those of his or her children" (Kass 2003).

Enhancements have provoked controversy because these new technologies enable us to drastically improve our physical, mental and psychological ability, whereas the use of these technologies involves considerable risks. In order to deal with this newly emerging situation, several research commissions have been established. For instance, in the U.S., the President's Council on Bioethics was founded in 2001, and this commission puts forth negative opinions on enhancements. On the other hand, the ENHANCE project in Europe, founded by the EU in 2005, presents positive opinions on them.

The purpose of this article is to survey the debate over the pros and cons of enhancements by focusing on the following five core topics: (1) nature, value and happiness, (2) authenticity and identity, (3) liberty and autonomy, (4) politics and religion, and (5) inequity and injustice.

1. Nature, Value and Happiness

Enhancements draw huge attention, unlike other technologies which similarly make our lives better, because they add some properties to us and because they can change our properties, often completely. The question we must consider here is what are *we* ourselves? One of the most frequently debated issues over enhancements is our "nature". The definition of human nature and the definition of nature have much significance because enhancements can change their very essence.

Opponents of enhancements claim that nature should not be changed, whereas proponents disagree. In this context, "value" and "happiness" are also considered to be important concepts. The dilemma is whether or not true value and happiness can be achieved through the use of enhancements, and whether or not value and happiness thus achieved deserve to be called *true value* and *happiness*. In this section, the following four topics, namely, "human nature", "value of nature", "human excellence and flourishing of our potential" and "true happiness" are examined.

The first issue is whether or not a kind of inherent human nature really exists. F. Fukuyama argues that human beings have an inherent nature, and that our human dignity arises from it (Fukuyama 2002). However, A. L. Caplan opposes this view, arguing that what is meant by human nature is absolutely unclear (Caplan, Elliott 2004). The proponents of enhancement argue that even though human nature possesses a certain value, they question why it should not progress and evolve since human nature is not static. The proponents emphasize that enhancements can advance human nature. The opponents, however, argue that such unnaturally enhanced posthumans lose their inherent human nature, which results in a loss of human dignity. They argue that we are weak beings and posthumans may be stronger in physical performance, but accepting pain and cooperating with others are our most important activities as human beings (Matsuda 2005).

The arguments over whether or not human nature is static call us to the next problem: that is, should

we be satisfied with ourselves as we are? M. Sandel argues that there is a great value in the gift of nature (Sandel 2002, 2004). The opponents argue that we approve of efforts as self-improvement, but at the same time, we admire talent as a gift from nature. L. R. Kass points out that we should not value ability that can be enhanced by drugs over that based on natural merit (Kass 2003). To aspire to change everything with new biomedical technology is the ultimate in willfulness, according to the opponents. However, the proponents such as L. M. Silver argue that nature itself does not possess inherent value, and cannot be evaluated as either good or bad (Silver 1998). Proponents argue that there is no reason to preserve it absolutely or to accept it as it is: for example, disease and violence are also part of nature, yet we fight against them. They consider that enhancements are merely an extension of this fight. They further argue that even if people currently have negative feelings or perhaps feel revolt about enhancements, these could sooner or later be overcome, just as the history of our attitude toward IVF has shown. However, Fukuyama argues that to wish to inhibit violence is a natural desire and to eliminate violence is, thus, not against nature (Fukuyama 2002).

Effort and talent are concerned with flourishing of human potential. Normally, we understand that excellence must be attained through hard effort. The opponents argue that improvement through drugs disposes of the need for such effort (Kass 2003). Mood-enhancing drugs satisfy people only with the illusion of happiness, and suppress other natural feelings. Drugs take away from the need for worthwhile activities (McKibben 2003) – the pleasure attained through hard training, great works of art born through anguish, the unforgettable pain of a tragedy like the Holocaust – all of these would be eliminated. However, the proponents make two objections against the opponents: (1) it is not necessarily the case that enhancements spoil the value of effort; to take a bus to make commuting time shorter does not eliminate the value of jogging (Bostrom, Roache 2007); and (2) despite the fact that as the value of effort and achievement decreases, enhancements provide us with a worthwhile tradeoff; that is, removal of pain. In this regard, according to D. DeGrazia, enhancements are reasonable means to achieving this goal (DeGrazia 2000). Along the same line, Silver considers it pointless that we must be forced into severe disadvantage in order to deliver certain works of art (Silver 1998). However, Silver's objection against the opponents seems to miss the point because our goal is not only to remove pain--we sometimes accept pain spontaneously. Similarly, flourishing of human potential is not our sole goal: it is, among many, just one of our goals. This point needs to be further examined in detail.

If this is the case, then the question to be considered is what may be called *our goals*? One possibility is happiness. However, happiness, or "real happiness", is also a problematic concept because the issue of authenticity, which is real, is involved when considering happiness. The opponents argue that real happiness cannot be obtained merely by satisfying apparent desires, but is gained as a result of struggle and hardship (Kass 2003). Similarly, if new technologies bring us real happiness, we have to ask ourselves whether or not people who did not have access to these technologies were all unhappy (Shickle 2000). We might also have to consider whether or not an increase of a certain capacity makes one "really happy". The opponents argue that if we suffer and lament through the events truthfully – in the end, real happiness would be attained. The proponents might ask the opponents which pain is and is not necessary, because the proponents consider that whether or not to go through such pain should be decided by each individual. Silver argues that we are not compelled to suffer such pain (Silver 1998). Indeed, the proponents argue that some kinds of enhancements, such as improvement of intelligence, can help people achieve happiness. The proponents consider that it is surely a valuable goal, irrespective of the means, to provide happiness to people (Bostrom, Roache 2007).

2. Authenticity and Identity

Having raised the issue of authenticity of happiness in the previous section, in this section we will consider authenticity and identity in detail. Both proponents and opponents of enhancements agree on the point that our feelings must be authentic and our identity must be firm (Parens 2005). They disagree on the following question, however; whether or not enhancements, especially mood-enhancing drugs such as Prozac, threaten our authenticity and identity.

The proponents argue that mood-controlling drugs can provide people with feelings of happiness independently of events. Indeed character-changing drugs can make a person completely different from before. Contrary to this argument, the opponents argue that such feelings and character changes as a result of drugs are, after all, fakes and substitutes in the sense that what is gained without effort is not authentic and enhancements extinguish authenticity (Kass 2003). DeGrazia, however, criticizes this line of argument because he considers that one's character will naturally and gradually change in the ordinary course of events, and so too will the things one values and selects for oneself (DeGrazia 2000). If one chooses to take a drug, then eventually any changes of character will also be included in one's self-creation. Drugs provide the chance to become authentic by increasing one's prospects. Glasses and wheelchairs do not threaten authenticity (Caplan 2004). The proponents argue that calculators and the Internet decrease the difficulty in obtaining information, but this is not cheating; rather, this is more accurately a reflection that the self will naturally change over time. The point to be noticed here is that a difference of means and processes can result in a difference of value; in the context of the debate over enhancements, means such as drugs change a person internally, and thus, they are not the same as means such as glasses, which only add an external property to their users. On this point, the argument of the proponents seems to lack persuasion.

Then, let us examine how the proponents and opponents of enhancements consider the change of identity of individuals through enhancements. J. Habermas states that, at the least, gene enhancements for children would erode their identity, because children who were designed through gene manipulation could not escape from the fact that they had been controlled by others; in other words, they would be unable to build a fully equal relationship with their parents (Habermas 2001). The opponents support that construction of a perfect identity should be inhibited and a failure of control might result in a "wrongful life" and an unwanted birth (Kass 2002). They further argue that even the characteristics that form the foundation of identity would become the object of drug dispensing, and self-understanding would also become an object of medicalisation; in the end, they consider, our identity would be confused. The question to be considered here is whether or not all interventions are necessarily wrong. Stock points out that we select our spouses with the eventual objective of childbearing in mind: but, importantly, this does not threaten their identity (Stock 2002). Following this line of argument, neither do children born by IVF all suffer an identity crisis. Similarly, O. Kanamori points out that even if a boy's height were genetically enhanced, whether he became a professional basketball player or not would still be up to him (Kanamori 2000). Proponents argue that enhancements merely provide opportunity, and no matter how artificial a treatment one is given, one can still feel proud of oneself because enhancements do not erode identity. These arguments have certain plausibility; however, even if children could choose their own future, they would still be exposed to their parent's expectations all their lives. The pressure they would feel would be far more burdensome than that of children who had special education. In this regard, it seems correct to say that enhancements would affect their very identity.

The next issue we have to examine here in this section is human agency. The opponent, Sandel argues that drugs erode human agency by making people into means to satisfy desires (Sandel 2002). For example, the argument of the opponents flows that the athlete who dopes loses his achievements from his performances, and becomes solely robotic. Improvement of ability with drugs cannot be accompanied by self-realization. Even if a new record is achieved, the person to be praised is the developer of the drugs, not the athlete. The athlete is changed by the things that he cannot control and has become a different person, his true agency and identity lost. New technology dominates human beings and brings about dehumanisation (Kass 2002). In response to such criticism, however, the proponents argue that excellence in sports is not determined only by quantity of muscle (Savulescu, Foddy, Clayton 2004). In this line of thought, it is discernment and all of the other comprehensive aspects that decide the winner, and taking a drug is just one of those aspects. In addition, as G. P. McKenny argues, it is always our decision what new technologies we choose to employ (McKenny 2002). The proponents argue that to decide to make use of enhancements is an expression of our agency; in addition, enhancements can make an introverted person behave in an outgoing manner. They may conclude that the greater the influence of enhancements over

our body, the greater is the increase in our agency. However, these arguments provoke further criticism, such as that the problem is not of a sort of the reduction of agency, but of a form of hyper-agency that wants to control everything (Sandel 2004). Indeed the proponents and opponents need to examine in detail what would be *reasonable agency*.

3. Liberty and Autonomy

In a liberal society, we have the right of self-determination. We are allowed to decide for ourselves what we will do. Even if there are some risks involved, we may take responsibility for them, provided we do not harm others. The question to be considered here is whether or not enhancements should be included under this umbrella of free will. We shall examine three arguments over enhancements – "value of life extension," "autonomy of children" and "free choices".

The first issue is the value of life extension. Many people want to live longer and to extend their lives. The opponents of enhancements argue that unlimited life extension should not be encouraged, because even if a life is extended, pleasure may not necessarily follow. Nobility exists in rising above the attachment to survival (Kass 2002). An increase in the number of elderly people burdens young people, and intensifies the overpopulation problem (Fukuyama 2002). These arguments are called "intensive criticism." For example, N. Bostrom argues that no matter what meaning there may be in life, it is not wrong to want to extend it (Bostrom, Roache 2007). However, the proponents might argue that the satisfaction of such desire may conflict with other interests. If the burden on young people is a problem, then all activities that sustain life become inappropriate. Concerning the overpopulation problem, an extended lifespan does not entail prolonged reproductive years, and regardless, higher levels of education would serve to counter any ill effects of longer lifespan on the global birthrate. Neither the opponents nor proponents have developed a fruitful argument, because just as we cannot compare the lives of elephants with those of ants, so we cannot weigh the lives of posthumans against the measure of the lives of present human beings.

A more urgent problem concerns the autonomy of our children. Genetic screening has already been introduced in some developed countries. However, in a truly liberal society, the opponents argue that eugenic intervention must be prohibited because it deprives children of their liberty and autonomy. Moreover, it cannot be permitted in virtue of its indelibility, which, contrary to education, children cannot escape from after they have grown up (Habermas 2001). The proponents do not accept this line of thought. They argue that genes can indicate a possible, if not necessarily decisive, direction. Whatever drug one takes, it remains useless unless one has the motivation to make something of oneself. Indeed, R. Naam argues that the restriction of enhancements is rather the oppression of liberty and eugenetic coercion; however, the opponents force us to accept their ideals that the genes we have now are supreme and worth preserving (Naam 2005). It seems to be correct to argue that enhancements have extended autonomy by widening the range of available objectives. However, intervention among children explicitly violates their autonomy because it decreases their capacity for control. Enhancements such as manipulation of the genes of children cannot be compatible with their autonomy. To assent that this manipulation can be viewed as a form of paternalism may help to make any argument in its favour somewhat more coherent, even if it invites criticism that it is eugenetic compulsion. Bostrom argues that considering that enhancements are certainly effective, they should be provided to all people by the government (Bostrom 2003a).

Our liberty is also closely related to the liberty of others in our society. This is the point that the proponents often overlook; the opponents argue that we do not make absolutely free choices. A social choice is always influenced by normality as a bad norm (Parens 1998). Comparing ourselves with others, we are always likely to want to be normal. Notably, in a society in which the winner takes all, enhancement of one person inevitably forces others to follow (Chatterjee 2006). If one does not use enhancements, one cannot be a winner. If once enhancements are accepted, then a never-ending escalation of such conflict, as in an arms race, will occur. Particularly, because the American people attach great weight to self-respect and the avoidance of stigma, they are controlled by the pharmaceutical industry,

which cashes in on this and encourages such feelings (Elliott 2003).

4. Politics and Religion

In this section, we examine social implications of enhancements because these new technologies can affect and change society; and for this reason, regulations within both domestic and international dimensions become an issue of debate. In order to consider whether or not there are enough social reasons for regulating them, we investigate the following four topics – "risk and restriction", "ideology and bias", "playing God" and "a diversity of culture".

As noted in the introduction, some enhancement technologies are very powerful, and if they are abused or misused, the results can be tragic. The opponents argue that the restriction of these technologies in accordance with the precautionary principle is necessary in order to avoid disasters. Against this line of argument, the proponents argue that every new technology looks dangerous at first, and we must anticipate some risks and unfavorable consequences. If this is the case, then the question to be discussed is how to reduce such risks. The proponents further point out the risk of a stringent application of the precautionary principle, because they consider that the blanket prohibition of certain enhancement technologies places an unnecessary hindrance on the development and application of these technologies for future generations. Furthermore, the proponents might ask if new technologies always lead the marketplace and civilization, then why should we be satisfied with the status quo? Politicians do not have the right to intervene, and if severe restrictions were enforced, the result would be an increase in behind-the-scenes abuses, as was the case during the Prohibition era (Savulescu, Foddy, Clayton 2004). The proponents also argue that even if restrictions work in one country, it does not necessarily mean that they will work elsewhere. The government of each country has only local and domestic binding authority, and cannot counter the impelling force of the whole of the global and international marketplace (Stock 2002). Against this view, the opponents use an analogy of nuclear weapons. We have already placed some controls on the development, possession and use of nuclear weapons. The opponents also argue against market principle: there is no reason to accept a slippery slope argument that the expansion of enhancements is inevitable and unstoppable because we now have in place working regulations and codes of ethics by which the use of certain risky technologies can be regulated (Dees 2004).

The above-developed arguments may appear to be a conflict between conservative moralists and radical scientists: indeed, many of the arguments concerning enhancements are based on ideology. For example, the opponents argue that when scientists' activities seem to be restricted, such scientists allege that their opponents are ignorant, and criticize their conservative attitudes. To look closer, however, the argument over enhancements is, in fact, not simply a disputation between the ignorant and the enlightened, or the conservative and the progressive (Parens 2005). One of the main reasons for this is that the scientists are biased and influenced by the pharmaceutical industry. In contrast, the proponents argue that dialogue with an opposition led by bio-conservatives and Luddites must be forgone (Hughes 2005). From the viewpoint of the proponents, sympathetic consideration of science and technology had eventually been gained under President Clinton. However, the council affiliated with President George. W. Bush has advanced arguments against enhancements and new science technology once again. In addition, there is a criticism that both opponents and proponents assume a liberal society convenient only to their own arguments. (Ashcroft 2003). These characteristics of arguments over enhancements in the social context remind us of the need to examine both sides carefully by taking their ideological backgrounds into account.

From a religious viewpoint, an important problem with enhancements is that they are seen as an attempt to play God. Sandel argues that it is hubris to want to change everything (Sandel 2002). Sandel's argument indicates that we may transform and mould the world; however, at the same time we should accept the giftedness, behold the world as it is, and be conscious of gratitude toward nature. However, Kanamori argues against this view; if to change nature is to play God, then the treatment of disease is playing God, because disease is also part of nature, and there seems to be no problem in accepting that God created human beings with a capacity for self-improvement (Kanamori 2000).

Concerning the influences of enhancements on our culture, the opponents show anxiety; if enhancements become more popular, cultures will risk becoming standardized (Shickle 2000). They are particularly concerned about the global applications of enhancements because these technologies would erode cultural multiplicity: if everyone wanted blond hair and round eyes, individuality would be eliminated. The proponents, however, deny that there would be uniformity among human beings. Considering the entire human population, the number of enhanced people would be very small (Stock 2002). In the gene pool, the proponents argue, we have already influenced a multiplicity of genes through medical treatments to save people who would have died without them. Even if enhanced people were to become the majority, it seems extremely unlikely that the minority would ever disappear entirely.

5. Inequality and Injustice

The final problem is also a social problem – the relationship between enhancements and inequality. We examine the frequently discussed issue of inequality and injustice over enhancements: that is, enhancements widen the gap between the poor and the rich, and consequently promote inequality and injustice.

Currently enhancement technologies are very expensive, and only the rich can afford to use them, and enhancements such as improvements in intelligence allow the user more benefits. For these reasons, the opponents argue that the gap between the rich and the poor will expand. The proponents argue against this view and state that the expansion of the gap could be prevented, for example, by establishing a gene fund, introducing tax enhancements that have positional good and negative externality, and/or by subsidizing enhancements that have intrinsic good and positive externality [2]. The opponents propose a counter-argument, arguing that subsidizing policy would not be realized because subsidies would be used for more urgent problems such as medical services, as enhancements have only a low social priority (Kato 2005). Similarly, C. M. Tamburrini argues that enhancement technology is not considered to be a primary good, so it is not thought to be suitable as a form of compensation to the deprived in an application of Rawls's difference principle [3] (Tamburrini 2006). The proponents deploy another line of defense against the opponents, by insisting that if enhancements were restricted, then the rich, who can afford to spare no expense, would merely evade the law and get enhancements. In other words, the proponents suggest the worst-case scenario that inequality would prevail since the rich, if they wish, can access enhancements regardless of their legal status (Stock 2002). According to the proponents, furthermore, enhancements of cognitive function could help to settle every single difficult social problem, including the above mentioned "gap problem". If such technology were available to all people, it would serve to redress the inequalities resulting from the natural lottery.

This line of argument for enhancements may raise a series of concerns among the opponents, who may consider that the greater the amount of enhancements given, the greater the possibility of people who are already strong become stronger. Therefore, the gap moves only in parallel, or, even worse, becomes wider; for example, life extending techniques would cater to the interest of healthy people, and therefore, inequality between people who can access these techniques and people who cannot would grow (Wolbring 2006). Besides, the current situation in developing countries indicates that the idea that technology will become inexpensive enough to be accessible by everyone is completely unrealistic. H. Kato argues that it would be an unfair free ride to make use of medicine developed by medical payment and health insurance for enhancements (Kato 2005). In contrast, the proponents argue that not all inequality must inevitably be wrong. Our education system is unequal, but we have come to accept it. The wrongness of inequality itself can be counterbalanced by other goodness. For example, we do not refuse to treat AIDS just because other societies cannot afford these interventions, according to J. Harris (Harris 2005). The proponents consider that an egalitarian view (i.e. we should renounce the development of a new technology or wait to use it until we can offer it to all social groups on equal terms) is not realistic because for the victims of disadvantage, enhancements that can raise their basic level of the quality of life (QOL) have a great value, even if they incur some amount of increased inequality (Tamburrini 2006).

Conclusion

We have examined the arguments of the opponents and proponents of enhancements. Just as the dispute on human cloning, the controversy started with the emergence of new technologies; the opponents of the new technologies initially appeared, and then the proponents criticized them. However, just as the enhancement technologies are still under development, so are the arguments concerning them.

So far, all we can say is that enhancements are means, especially as short-cuts. In some cases, their users appear to be cheating, and in other cases they appear very ingenious. There might be unexpected pitfalls with such shortcuts, or the users may simply be trying to save time. It all depends on what we need and where we want to go.

However, almost all of the experts admit that if we do nothing, technology will go on *ad infinitum*. In this regard, it does not seem wise to leave everything to individuals and the marketplace. In my view, enhancements to children such as gene manipulation should be prohibited on the grounds of protecting their autonomy. In addition, drugs which completely change our mood and character should be restricted in principle, because these kinds of enhancements do not seem to expose the real self, but rather seem to eliminate the former, true self. This should be compared to suicide, not merely to the right to do what is wrong. Just as suicide may be acceptable in certain cases of euthanasia, so are certain cases where enhancements should be allowed, for example, in order to eliminate / mitigate one's severe suffering. Some other kinds of functional enhancements are just extensions of supplements, and thus, they should be permitted in some forms such as muscle augmentation. In sports, it is necessary to separate games involving enhanced athletes from those involving unenhanced.

No matter what, enhancement society will soon be with us. As J. Farah remarks, "we will soon reach the point where not to decide is to decide" (Farah et al, 2004).

References

Ashcroft R.E. 2003 "American biofutures: ideology and utopia in the Fukuyama/Stock debate" *Journal of Medical Ethics* 29

Bostrom N. 2003a "Human Genetic Enhancements: A Transhumanist Perspective" *The Journal of Value Inquiry* Vol. 37

-------. 2003b "The trancehumanist FAQ – the general introduction" www.transhumanism.org/resources/FAQv2.pdf (accessed on 23/2/2008)

Bostrom N., Roache R. 2007 "Ethical Issues in Human Enhancement" *New Waves in Applied Ethics* Ryberg J., Peterson T.S., Wolfs S.(eds.) Palgrave MacMillan

Caplan A. L. 2004 "Is biomedical research too dangerous to pursue?" *Science* 303:1142

Caplan A.L., Elliott, C., 2004 "Is it ethical to use enhancement technologies to make us better than well?" *PLoS Med* 1(3)

Chatterjee A. 2006 "The promise and predicament of cosmetic neurology" *Journal of Medical Ethics* Vol.32

Dees R.H. 2004 "Slippery slopes, wonder drugs, and cosmetic neurology: The neuroethics of enhancement" *NEUROLOGY* 63

DeGrazia D. 2000 "Prozac, Enhancement, and Self-Creation" *Hastings Center Report* Vol.30

Elliott C. 2003 "American Bioscience Meets the American Dream" *The American Prospect*, vol. 14 no. 6, June 1

Farah M.J., Illes J., Cook-Deegan R., Gardner H., Kandel H., King P., Parens E., Sahakian B., Wolpe P. R., 2004 "Neurocognitive enhancement: what can we do and what should we do?" *Nature Reviews Neuroscience* 5(5): 421

Fukuyama F. 2002 *Our Posthuman Future: Consequences of the Biotechnology Revolution* Farrar, Straus and Giroux

Habermas J. 2001 *Die Zukunft der Menschlichen Natur: Auf dem Weg zu einer liberalen Eugenik?* Cambridge: Polity

Harris J. 2005 "Enhancements are a moral obligation" *Welcome Science* 14 October

Hughes J. 2004 "Human Enhancement on the Agenda" *Better Humans* Oct 31

Kanamori O. 2000 "Idensi kairyou no ronri to rinri" *Gendai Shiso* vol.28, no.10 (Japanese)

Kass L. R. 2002 *Life Liberty and the Defense of Dignity: The Challenge for Bioethics* Encounter Books

Kass L. R. / The President's Council on Bioethics 2003 "Beyond Therapy: Biotechnology and the Pursuit of Happiness" http://www.bioethics.gov/. (accessed on 23/2/2008)

Kato H. 2005 "Enhansumento no rinri mondai" *Nihon Ishikai Zassi* 134 (Japanese)

Matsuda J. 2005 *Idenshi gijutuno sinten to ningen no mirai: doitu seimei kankyou rinrigaku nimanabu* Tisen Shokan (Japanese)

McKenny G.P. 2002 "Technologies of desire: Theology, ethics, and the enhancement of human traits" *Theology today* Apr.

McKibben B. 2003 *Enough: Staying Human in an Engineered Age* New York An Owl Book

Naam R. 2005 *More Than Human: Embracing the Promise of Biological Enhancement* Broadway Press

Parens E. 1998 "Is better always good? The enhancement project" *Hastings Center Report* Vol.28

--------. 2005 "Authenticity and Ambivalence" *Hastings Center Report*, Vol.35

Rawls J. 1971 *Theory of Justice* Belknap

Sandel M. 2002 "What's wrong with Enhancement" www.bioethics.gov

-------. 2004 "The Case Against Perfection" *The Atlantic Monthly* April

Savulescu J., Foddy B., Clayton M. 2004 "Why We Should Allow Performance Enhancing Drugs in Sport" *British Journal of Sports Medicine* Vol.38

Shickle D. 2000 "Are "Genetic Enhancements" Really Enhancements?" *Cambridge Quarterly of Healthcare Ethics* Vol.9

Silver L. M. 1998 *Remaking Eden: Cloning and Beyond in a Brave New World* New York: Avon,

Stock G. 2002 *Redesigning Humans: Our Inevitable Genetic Future* Houghton Mifflin

Tamburrini C. M. 2006 "Enhanced bodies: Distributive aspects of genetic enhancement in elite sports and society" Presented at Beijing Conference

Wolbring G. 2006 "The unenhanced underclass" Miller P. and Wilsdon J. *Building everyday democracy*, London: Demos

---

[1] Posthumans mean a hypothetical future being "whose basic capacities so radically exceed those of present humans as to be no longer unambiguously human by our current standards". (Bostrom N. 2003)

[2] "An externality, as understood by economists, is a cost or a benefit of an action that is not carried by a decision-maker. An example of a negative externality might be found in a firm that lowers its production costs by polluting the environment. Externalities can also be positive, as when people put time and effort into creating a beautiful garden outside their house." (Bostrom N. 2003b)

[3] Rawls's difference principle is that "social and economic inequalities are to be arranged so that they are to be of the greatest benefit to the least-advantaged members of society". (Rawls J. 1971 p.303)

Chapter 15

Ethics of Neuro-modulation: Possibility and Necessity of Neuroethics

Tamami FUKUSHI and Osamu SAKURA

Deep Brain Stimulation: technical and clinical views in movement disorders

Deep Brain Stimulation (DBS) has been developed by Benabid and his colleagues in 1980s, which was originally for a treatment of movement disorders including essential tremor, as a replacement of stereotactic surgery (ablation of target cortical/subcortical structures of a given disease) (for a review, Wichmann and DeLong 2006). The procedure of DBS is as follows; chronic stimulation electrode(s) is implanted into a focal brain structure, e.g. subthalamic nucleus in case of Parkinson disease, followed by the implanting pulse generator(s) in the patient's upper trunk to send continuous electrical stimulation signals. Although it is still unclear the pathophysiological mechanisms of DBS this surgical procedure has been extensively used for various types of neurological disorders including essential tremor, dystonia, ballismus, and chorea. (Montgomery 2004; Wichmann and DeLong 2006). In Japan, the Department of Neurosurgery at Nihon University has been playing a key role to progress DBS treatment for movement disorders and vegetative state patients (Yamamoto et al., 2004; Yamamoto and Katayama, 2005).

It is believed widely that the durability of implanted electrode is almost permanent, whereas a pulse generator needs to be replaced every several years because of the limited capacity of battery. In addition to this technical limit, hardware- or procedural-related troubles may bring suboptimal outcomes for the patients. Recent studies by Blomstedt and his colleagues reported relatively long-term (up to 10 years) effect of DBS in Sweden, including the hardware-related complications (Blomstedt and Haritz 2005; Blomstedt et al. 2006, 2007). A follow-up study by Blomstedt and Haritz (2005) also mentioned that the patients with non-microelectrode guided DBS would require more careful follow-up since the hardware-related troubles (breakage, migration, erosion, or infection) has been founded in considerable number of cases. In addition, the postoperative effect is still better for the pallidotomy (the ablation of target region in globus pallidus) patients than for the pallidal DBS patients (Blomstedt et al. 2006). They also reported the modulation of stimulation parameters (voltage, pulse-width, frequency, etc.) in 66-102 months after the surgery for 19 patients with DBS for essential tremor treatment (Blomstedt et al. 2007).

Okun et al. (2005) systematically summarized the cases with suboptimal results by the patient's first DBS surgery, which was done outside of his hospital. They reported that the most frequent failure was the misplacement of DBS electrode brought by inadequate localization. The second major reason for inducing insufficient outcomes was wrong programming of stimulation parameters. Their empirical database will be integrated with the pathological databases regarding quantitative evaluation of infection of brain tissue using immunohistochemistry (Smith et al. 2007). Collaboration between neurosurgeons and basic researchers would provide more objective views of safety and efficacy of DBS treatment for further integrating medical technology with ethics, or balancing them in clinical decision making process for neurological disorders.

Changes in cognitive function, mood, and behavior induced by DBS for movement disorders

Whereas the intrinsic therapeutic goal of DBS is improvement the movement disorders, there are considerable case reports indicating unexpected psychiatric side effect induced by DBS. For example, a 62 years old man, a patient with a 14 years history of Parkinson disease, showed an acute depressive state by intraoperative stimulation of the substantia nigra (Blomstedt et al., 2008). Another reports introduced aggressive behavior by the intraoperative stimulation in the triangle of Sano (Bejjani et al. 2002), manic symptoms in the subthalamic nucleus within 48 hours after the surgery (Kulisevsky et al. 2002), and

worsened mood state in subthalamic nucleus within 6 month postoperatively (Berbey et al. 2002). Funkienwiez et al. (2004) reported the long-term effects of bilateral subthalamic nucleus simulation on cognitive function, mood, and behavior in Parkinson's disease patients in France. Though they did not concluded that DBS leaded to global cognitive deterioration, they found several cases of behavioral changes such as transient aggressive impulsive episodes, suicide attempts, psychoses, ad hypomania. Taken together, risk of DBS regarding cognitive, mood and behavioral changes in DBS should be informed to possible DBS candidates. Furthermore, the neural basis of such psychological changes should be examined with more basis approach using the animal model to avoid the wrong stimulation target selection or under estimate of side effect in future.

Application of DBS to psychiatric treatment

Application of the DBS for psychiatric patients, such as depression, Tourette's syndrome, and obsessive-compulsive disorder (OCD) has commenced recently in North America and Europe (Fins, 2003; Koppel and Rezai, 2003). However, it is not approved by the Japanese government yet. It seems that there are still some perils of invasive treatment for psychiatric disorders, such as, lobotomy for Japanese society. Therefore Takagi's group funded by New Energy and Industrial Technology Development Organization (NEDO) carried out extensive interviews to neurosurgeons, psychiatrists, neurologists, neuropsychologisits, nurses, patients, and bioethicists to ask about safety and informed consent issues regarding deep brain stimulation (DBS) therapies for psychiatric disorders (NEDO, 2008). In the US, this procedure is applied for patients with severe depression showing no improvement pharmacologically or by electroconvulsive therapy (ECT) (see Cleveland Clinic Center for Neurological Restoration web site, http://cms.clevelandclinic.org/neuroscience/body.cfm?id=951). The DBS for OCD patient was approved by the Food and Drug Administration (FDA) as investigation for humanitarian device exemption, which is applied in case that the given disease has less than 10,000 patients across states. In this case, only institutional review board (IRB) approval is required to execute the DBS treatment. Though it is still on the clinical trial level for both psychiatric disorders, several cortical and subcortical structures have been reported as an effective target, such as area 25 (Mayberg, 2005) and internal capsule (Nuttin et al., 2003). In Takagi's conclusion, interdisciplinary panel would be important for suitable patient selection and decision making in DBS therapy in terms of informed consent and decision making process with/without surrogate authorization Further translational research and clinical verification is needed to establish the suitable protocol of psychiatric DBS.

Transcranial magnetic stimulation: technical and clinical views

Transcranial magnetic stimulation (TMS), another example of neuro-modulation, is relatively new technology as brain stimulation and considered more "non-invasive" and "safe" stimulation procedures (George, et al., 2003; Steven and Pascal-Leone 2006). Technically, TMS produces magnetic field by electric current flowing through a coil of wire, and it is categorized three types of stimulation pulses, single-, paired-, and repetitive (rapid-rate) types (Quintana, 2005).

TMS has been used as a treatment for adult psychiatric patient, relatively new to electroconvulsive therapy, though it is still controversial whether this procedure is valid for the improvement of depression (for reviews, Couturier, 2004; Loo et al., 2005; McNamara et al., 2001). It is also applied for pediatric and adolescent populations (for a review, see Quintana, 2005; see also Loo et al., 2006). The problem of psychiatric treatment using TMS is obviously its unstable efficacy across whole ages of populations, and this instability may suggest the benefit of DBS, more invasive procedure for the psychiatric patients.

Ethical problem regarding non-clinical use of TMS

One issue regarding non-clinical application of TMS to normal healthy subject is how to estimate their "minimal risk". Recently Knoch et al. (2006) demonstrated that the repetitive TMS (rTMS) on the right prefrontal would lower the threshold for the acceptance of unfair offer during Ultimatum Game for healthy subjects. Their stimulation parameter was based on the current safety criteria of rTMS, which was

issued by the International Federation of Clinical Neurophysiology (Hallett, et al., 1999). Leslie Sergeant Jones (2007), neuroscientist of UCLA and a member of the IRB claimed that the study of Knoch et al. based on the interpretation of "minimal risk" (45 CFR section 46.102).

The safety criteria of stimulation parameters in the guidelines of International Federation of Clinical Neurophysiology (IFCN) was defined by the effect of rTMS on motor cortex of healthy adults (not to induce seizure by the stimulation), which means that there is no guaranty of safety in case of rTMS on prefrontal cortex even the subjects were normal healthy category. Indeed, it is still unclear whether the application of TMS on human cortex is really non-invasive or not, since it has not been sufficiently investigated yet about its acute and long-term effects on various cortical structures of healthy human subjects and patents (Machii, et al., 2006). Considering younger subjects, it is strongly required to estimate potential risks and possible benefits in research using TMS in whole process of research project including IRB (Gilbert, et al., 2004).

In Japan, no local guidelines treating TMS have been established. The domestic researchers and their communities have just followed the international guidelines, even the medical treatment criteria may alter across nations and societies. Recently non-clinical researchers are getting involved in the pediatric neuroscience research using TMS. Therefore more careful discussion during IRB processing would be needed until the special guidelines, for example, the one for pediatric research, are established.

Neuroethics of neuro-modulation

Neuroethics is a new academic discipline related to neuroscience, mainly focusing on research ethics of new technologies in neuroscience and impact of that technology and research results on general public in today's society (Fukushi et al., 2007; Ishihara 2007; Marcus, 2002). From the neuroethical views, the ethical, legal, and social issues caused by these neuro-modulation technologies are summarized as follows; 1) invading "autonomy" or "self", 2) uncertain effect on mood and cognitive function in movement disorders patients, 3) unpredictability of long-term effect on both physical/mental functions in normal healthy subjects. Modulating brain function brings drastic changes in the patient's QOL, which may also induce the changes in QOL for patient's family and support members (Diamond and Jankovic, 2005). Furthermore, neuro-modulation for normal and healthy subjects contains more uncertain and complicated ethical dilemma as introduced "neurocognitive enhancement" (Farah et al., 2004) or "neuroenhancement" (Stevens and Pascal-Leone, 2006). As demonstrated by Knoch et al. (2006), neuro-modulation can alter human decision-making process during economic behavior. How researchers, clinicians, and ethicists can consider these ethical issues?

Okun et al. (2007) suggested the importance of neuropsychologist in case of DBS treatment to assess the patient's cognitive function and mood under pre- and post-surgery condition. Academic evaluation of cognitive ability as well as the clinical one may provide more ethical practice of neuro-modulation treatment. Similar contribution by the neuropsychologist would be needed for non-invasive brain stimulation procedures. Another example is that basic, translational, and clinical researches to clarify the physiological and biochemical basis of neurological disorders provides more safety criteria of neuro-modulation, such as, subject screening criteria, target cortical/subcortical structures identification, threshold of stimulus parameters, detailed prediction of potential risk (Dujardin et al., 2001; Elder et al., 2006; Mink et al., 2006; Miocinovic et al., 2007; Moll et al., 2006; Sibon et al., 2007). In middle of 20th century, Penfield described the need for scientific and practical verification of the effects of psychosurgery, which were the motivating factors to map the human cortex using electrical stimulation in order to minimize functional loss of brain function brought by psychosurgery (Fins, 2008; Jasper and Penfield 1954). Recent ethical approaches of neuro-modulation almost remind that Penfield revisited neuroscience in the 21st century (Fins, 2008; Fukushi and Sakura, 2008; Mayberg and Lozano, 2002).

Acknowledgement

References

Bejjani, B.P., Houeto, J.L., Hariz, M., Yelnik, J., Mesnage, V., Bonnet, A.M., Pidoux, B., Dormont, D., Cornu, P., Agid, Y. 2002. "Aggressive behavior induced by intraoperative stimulation in the triangle of Sano", *Neurology* 59(9), 1425-7.

Berney, A., Vingerhoets, F., Perrin, A., Guex, P., Villemure, J.G., Burkhard, P.R., Benkelfat, C., Ghika, J. 2002. "Effect on mood of subthalamic DBS for Parkinson's disease: a consecutive series of 24 patients", *Neurology* 59(9), 1427-9.

Blomstedt, P., Hariz, M.I. 2005. "Hardware-related complications of deep brain stimulation: a ten year experience", *Acta neurochirurgica (Wien)* 147(10), 1061-4.

Blomstedt, P., Hariz, G.M., Hariz, M.I. 2006. "Pallidotomy versus pallidal stimulation", *Parkinsonism & related Disorders* 12(5), 296-301.

Blomstedt, P., Hariz, G.M., Hariz, M.I., Koskinen, L.O. 2007. "Thalamic deep brain stimulation in the treatment of essential tremor: a long-term follow-up", *British Journal of Neurosurgery* 21(5), 504-9.

Blomstedt, P., Hariz, M.I., Lees, A., Silberstein, P., Limousin, P., Yelnik, J., Agid, Y. 2008. "Acute severe depression induced by intraoperative stimulation of the substantia nigra: A case report", *Parkinsonism & related Disorders*, 14(3), 253-6.

Couturier, J.L., 2004. "Efficacy of rapid-rate repetitive transcranial magnetic stimulation in the treatment of depression: a systematic review and meta-analysis", *Journal of Psychiatry and Neuroscience* 30(2), 83-90.

Diamond, A., Jankovic, J., 2005. "The effect of deep brain stimulation on quality of life in movement disorders", *Journal of Neurology, Neurosurgery, and Psychiatry* 76(9), 1188-93.

Dujardin, K., Defebvre, L., Krystkowiak, P., Blond, S., Destée, A. 2001. "Influence of chronic bilateral stimulation of the subthalamic nucleus on cognitive function in Parkinson's disease", *Journal of Neurology* 248(7), 603-11.

Elder, C.M., Hashimoto, T., Zhang, J., Vitek, J.L. 2005. "Chronic implantation of deep brain stimulation leads in animal models of neurological disorders", *Journal of Neuroscience Methods* 142(1), 11-6.

Farah, M.J., Illes, J., Cook-Deegan, R., Gardner, H., Kandel, E., King, P., Parens, E., Sahakian, B., Wolpe, P.R. 2004. "Neurocognitive enhancement: what can we do and what should we do?" *Nature Reviews Neuroscience* 5(5), 421-5.

Fins, J.J. 2003. "From psychosurgery to neuromodulation and palliation: history's lessons for the ethical conduct and regulation of neuropsychiatric research", *Neurosurgery Clinics of North America* 14(2), 303-19.

Fins, J.J. 2008. "A leg stand on: Sir William Osler and Wilder Penfield's "neuroethics"", *American Journal of Bioethics*, 8(1), 37-46.

Fukushi, T., Sakura, O., Koizumi, H. 2007. "Ethical consideration of neuroscience research: a perspective on neuroethics in Japan", *Neuroscience Research* 57(1), 10-6.

Fukushi, T., Sakura, O. "Exploring the origin of neuroethics: from the view points of expression and concepts", *American Journal of Bioethics*, 8(1), 56-7.

Funkiewiez, A., Ardouin, C., Caputo, E. Krack, P., Fraix, V., Klinger, H., Chabardes, S., Foote, K., Benabid, A.L., Pollak, P. 2004. "Long term effects of bilateral subthalamic nucleus stimulation on cognitive function, mood, and behaviour in Parkinson's disease", *Journal of Neurology, Neurosurgery, and Psychiatry* 75(6), 834-9.

Gilbert, D.L., Garvey, M.A., Bansal, A.S., Lipps, T., Zhang, J., Wassermann. E.M. 2004. "Should transcranial magnetic stimulation research in children be considered minimal risk?", *Clinical Neurophysiology* 115(8), 1730-9.

Hallet, M., Wasserman, E.M., Pascual-Leone, A., Valls-Sole, J. 1999. "Repetitive transcranial magnetic stimulation" in "Recommendation of for the practice and clinical neurophysiology", *Electroencepharography and Clinical Neurophysiology Supplment* 52, 105-13.

Ishihara, K. 2007. "Neuroethics in cultural and institutional settings: toward a comparative study", in 1st International Workshop of Neuroethics in Japan: Dialog on Brain, Society, and Ethics, JST/RISEX, 27-41.

Jasper, H. and Penfield, W. 1954. *Epilepsy and the Functional Anatomy of the Human Brain (2nd edition)*. Brown and Company.

Jones, L.S. 2007. "The ethics of transcranial magnetic stimulation", *Science* 315(5819), 1663.

Knoch D, Pascual-Leone A, Meyer K, Treyer V, Fehr, E. 2006. "Diminishing reciprocal fairness by disrupting the right prefrontal cortex", *Science* 314(5800), 829-32.

Kopell, B,H,, Rezai, A.R. 2003. "Psychiatric neurosurgery: a historical perspective", *Neurosurgery Clinics of North America* 14(2), 181-97.

Kulisevsky, J., Berthier, M.L., Gironell, A., Pascual-Sedano, B., Molet, J., Parés, P. 2002. "Mania following deep brain stimulation for Parkinson's disease", *Neurology* 59(9), 1421-4.

Loo, C.K., McFarquhar, T., Walter, G. 2006. "Transcranial magnetic stimulation in adolescent depression", *Australasian Psychiatry* 14(1), 81-5.

Loo, C.K., Mitchell, P.B. 2005. "A review of the efficacy of transcranial magnetic stimulation (TMS) treatment for depression, and current and future strategies to optimize efficacy", *Journal of Affective Disorders* 88(3), 255-67.

Machii, K., Cohen, D., Ramos-Estebanez, C., Pascual-Leone, A. 2006. "Safety of rTMS to non-motor cortical areas in healthy participants and patients", *Clinical Neurophysiology* 117(2), 455-71.

Marcus, S.J. (ed.), 2002. *Neuroethics: Mapping the Field*, Dana Press.

Mayberg, H.S., Lozano, A.M., Voon, V., McNeely, H.E., Seminowicz, D., Hamani, C., Schwalb, J.M., Kennedy, S.H. 2005. "Deep brain .stimulation for treatment-resistant depression" *Neuron* 45(5), 651-60.

Mayberg, H.S., Lozano, A.M. 2002. "Penfield revisited? Understanding and modifying behavior by deep brain stimulation for PD" *Neurology* 59, 1298-9.

McNamara, B., Ray, J.L., Arthurs, O.J., Boniface, S. 2001. "Transcranial magnetic stimulation for depression and other psychiatric disorders", *Psychological Medicine* 31(7), 1141-6.

Mink, J.W., Walkup, J., Frey, K.A., Como, P., Cath, D., Delong, M.R., Erenberg, G., Jankovic, J., Juncos, J., Leckman, J.F., Swerdlow, N., Visser-Vandewalle, V., Vitek, J.L., Tourette Syndrome Association, Inc. 2006. "Patient selection and assessment recommendations for deep brain stimulation in Tourette syndrome", *Movement Disorders* 21(11), 1831-8.

Miocinovic, S., Zhang, J., Xu, W., Russo, G.S., Vitek, J.L., McIntyre, C.C. 2007. "Stereotactic neurosurgical planning, recording, and visualization for deep brain stimulation in non-human primates", *Journal of Neuroscience Methods* 162(1-2), 32-41.

Moll, G.H., Heinrich, H., Gevensleben, H., Rothenberger, A. 2006. "Tic distribution and inhibitory processes in the sensorimotor circuit during adolescence: a cross-sectional TMS study", *Neuroscience Letters* 403(1-2), 96-9.

Montgonmery, E.B. 2004. "Deep brain stimulation for hyperkinetic disorders", *Neuronsurgery Focus* 17(1), 1-7.

New Energy and Industrial Technology Development Organization. 2008. *Safety Issues in Neuroscience and Their Effects on Research Activities in the Field of Life Sciences in Japan, International cooperative research/leading survey program report of project 2007-8*, New Energy and Industrial Technology Development Organization (NEDO), Ministry of Economy, Trade and Industry of the Japanese Government.

Nuttin, B.J., Gabriels, L.A., Cosyns, P.R., Meyerson, B.A., Andreewitch, S., Sunaert, S.G., Maes, A.F., Dupont, P.J., Gybes, J. M., Gielen, F., Demeulemeester, H.G. 2003. "Long-term electrical capsular stimulation in patients with obsessive-compulsive disorder" *Neurosurgery* 52(6), 1263-72.

Okun, M.S., Tagliati, M., Pourfar, M., Fernandez, H.H., Rodriguez, R.L., Alterman, R.L., Foote, K.D. 2005. "Management of referred deep brain stimulation failures: a retrospective analysis from 2 movement disorders centers", *Archives of Neurology* 62(8), 1250-5.

Okun, M.S., Rodriguez, R.L., Mikos, A., Miller, K., Kellison, I., Kirsch-Darrow, L., Wint, D.P., Springer, U., Fernandez, H.H., Foote, K.D., Crucian, G., Bowers, D. 2007. "Deep brain stimulation and the role of the neuropsychologist", *Clinical Neuropsychologist* 21(1), 162-89.

Quintana, H. 2005. "Transcranial magnetic stimulation in persons younger than the age of 18", *The Journal of ECT*, 21(2), 88-95.

Sibon, I., Strafella, A.P., Gravel, P., Ko, J.H., Booij, L., Soucy, J.P., Leyton, M., Diksic, M., Benkelfat, C. 2007. "Acute prefrontal cortex TMS in healthy volunteers: effects on brain 11C-alphaMtrp trapping", *Neuroimage* 34(4), 1658-64.

Smith, K.L., Goodspeed, D.L., Okun, M., Eskin, S.T., Foote, K.D.,　Shain, W. 2007. "Analysis of reactive cell responses around deep brain stimulators in post-mortem human brains" *Society for Neuroscience Abstract*, 829.13.

Steven, M.S., Pascual-Leone, A. 2006. "Transcranial magnetic stimulation and the human brain: an ethical evaluation", in Illes, J.

(ed.), *Neuroehtics: Defining the Issues in Theory, Practice, and Policy*, Oxford University Press, 201-11.

Yamamoto, T., Katayama, Y. 2005. "Deep brain stimulation therapy for the vegetative state" *Neuropsychological Rehabilitation* 15(3), 406-13.

Yamamoto, T., Katayama, Y., Kano, T., Kobayashi, K., Oshima, H., Fukaya, C. 2005. "Deep brain stimulation for the treatment of parkinsonian, essential, and poststroke tremor: a suitable stimulation method and changes in effective stimulation intensity", *Journal of Neurosurgery* 101(2), 201-9.

Wichmann, T., DeLong, M.R. 2006. "Deep brain stimulation for neurologic and neuropsychiatric disorders", *Neuron* 52(1), 197-204.

Chapter 16

Media Violence within the Framework of Biomedical Ethics:

Why Hurley's Argument Fails

Saku HARA

1. Introduction

It is a remarkable feature of contemporary life that we spend considerable time living in virtual worlds. Our homes and offices have full access to virtual worlds such as internet and television, and we carry with us a mobile phone, a notebook computer, a portable DVD player, a handheld game console, and so forth. Virtual worlds might be invented to enhance efficacy of our daily life in the real world, to begin with, so that the significance of virtual worlds depends on that of the real. However, more and more people tend to confine themselves in virtual worlds, who often do not want to return to the real world. The order of priority may be reversed for them.

Virtual worlds are characterized by disembodiment. While watching TV shows, surfing the internet, or playing videogames, our real bodies are never present in virtual worlds. We can appear only virtually embodied there and, therefore, do not receive any direct physical influence from virtual worlds. This makes them so fascinating. We can enjoy such bizarre experiences as being run after by dinosaurs, fighting with terrorists, or falling into romantic love with a prince, and we do not need to worry about their consequences. Our bodies are here untouched. However, it is not precluded that we receive some psychological impacts from virtual images, which may have some consequences for our real life.

In the last four decades, the issues concerning possible undesirable effects of virtual worlds have been discussed mostly in relation to media violence. The debate has been motivated by serious homicides taking place every year somewhere in the world; it is sometimes broadcast that killers were fans of splatter or killer films and violent games and might be influenced by them. For instance, families of those who killed in the Columbine massacre, taking place on 20 April 1999 at Columbine High School in Colorado in the U.S., brought a lawsuit against computer game makers for damage, claiming that their products could have caused the killings (*BBC News*, 1 May 2001). Also, Senator Hillary Clinton, believing that violent media may have bad influences on youth, condemned violent video games as a "major threat" to moral health and called for more detailed scientific investigations into their psychological impacts on children's cognitive, social, emotional, and physical development (*The Sunday Times*, 27 March 2005).

Recently, Susan Hurley has advanced a philosophical argument against media violence (Hurley, 2004; 2006). Since her argument is rather obscure, I will reconstruct its main point within the theoretical framework of biomedical ethics, from which she clearly distances herself. Then, it will be discussed whether the legal restriction of media violence can be justified. In so doing, I am going to review empirical theories and findings in order to explain why and in what sense I think that special protection of media violence due to the free speech principle cannot be justified. Finally, the meta-bioethical implication of the argument will be discussed.

2. Media violence within the framework of biomedical ethics

There are two kinds of debates concerning media violence. The first is an empirical one. Some argue that violent expression circulating in virtual worlds may increase the probability of aggressive behaviors of audience, while others believe that there are mixed evidence concerning this and that, therefore, no causal connection between an exposure to violent expression and enhanced aggression has been established. The

other topic is a socio-cultural one, which is concerned with legal restriction of media violence. Those who believe in the causal connection tend to regard the legal restrictions of media violence as necessary and call for it. However, there are objections to the legal restriction of media violence. Putting aside a defense based on skepticism about the causal connection, there is an objection grounded on the principle of free speech. They say that the legal restriction of media violence directly violates that principle, even in the case where violent media may enhance audience's aggression.

Hurley linked this debate to recent empirical studies on imitative instinct found in primates and human beings. According to her, epidemiological studies have already found short-term and long-term causal effects of human exposure to violent expression resulting in enhanced tendency toward aggressive behaviors. And in addition, new empirical studies on imitation suggest that these psychological effects often bypass audience's deliberative control. Based on these empirical findings, Hurley insists that violent expression in mass media can hardly be protected on the ground of audience autonomy, on which the free speech principle is partly based. She says, "I am arguing that if violent entertainment causes harm to third parties in ways that bypass autonomous deliberative processes, such harm cannot be justified in terms of audience autonomy." (Hurley, 2004: 195, 2006: 319)

Why does the bypass effect of media violence make the reason for special protection of media violence on the ground of audience autonomy powerless? A natural explanation would be that audience autonomy plays a supporting role in the justification of special protection of media violence. In this case, the special protection of media violence would not be acknowledged, since consumption of media violence undermines its indispensable foundation, that is to say, audience autonomy. However, Hurley denies this explanation by saying, "I am rebutting a justification of special protection in terms of autonomy. I am not putting forward autonomy as a positive justification for anything" (ibid.). Hurley does not propose, however, any alternative explanation at all. Therefore, in what follows, I will formulate Hurley's argument within the bioethical framework, which makes the reason for the legal restriction of media violence more intelligible.

About three decades ago, biomedical ethics started as an academic endeavor to regulate social impacts resulting from findings in life-sciences to make them in harmony with ethical values accepted in liberal societies such as respect for autonomy and justice in addition to traditional ethical values accepted by professionals such as non-maleficence and beneficence (Beauchamp & Childress, 1979). In contemporary biomedical ethics, respect for autonomy is normally regarded as the most preferred ethical value. Other value principles such as the principle of nonmaleficence and the principle of justice are deductively explained based on the principle of autonomy (see, for instance, the article entitled "autonomy" in Encyclopedia of Bioethics, 3rd edition: 248). In this sense, the value system typical with the contemporary biomedical ethics is autonomy-centered. Hurley does not share that value representation. I am rather sympathetic to her position, which, however, makes her argument quite obscure.

Concerning the legal restriction of violent expression in media, its proponents are worried that violent expression may increase audience's tendency toward violent behaviors. In contrast, opponents of the legal regulation argue that the legal regulation of violent expression in media violates the principle of free speech. Here, two important social principles are in conflict. The one is the principle of the free speech that the right of unlimited distribution of and access to any speech and expression should be respected. Hurley thinks that the free speech principle is partly backed by the principle of respect for autonomy. The other is the principle of nonmaleficence, which aims at realizing physical security of societal members such as patients. Here, I propose to extend the principle of nonmaleficence so as to make the dispute of media violence treatable within the bioethical framework. According to my extended version of the principle, one should not compel or drive others to give harms to third parties. Taking these principles as a frame of reference, the current discussion can be expressed in terms of a two-choice question.

According to the principle of nonmaleficence, the access to violent video games should be restricted.
1. However, the distribution of media violence must be allowed because the principle of free speech takes priority over the principle of nonmaleficence.

2. Even though the principle of free speech must be respected, this principle is less valued than the principle of nonmaleficence in this case. Therefore, access to violent expression should be restricted.

Question: Which is correct?

Concerning the principle of free speech, Hurley insists that this principle is grounded on following three arguments: 1. the argument from truth, 2. the argument from democracy, 3. the argument from autonomy (Hurley, 2004: 192, 2006: 317). Very roughly, the first and the second arguments can be explained as follows. Even though one may possibly harm others by speech (news on a political corruption, for example), the free access to that speech should be guaranteed since it may help people to know the true implications of the government's policy and to evaluate them correctly. This is necessary for a democratic social system to function normally. In short, democracy depends on people's knowledge, which is secured by the rights of free speech.

To examine whether these arguments are applicable to media violence, it is necessary to distinguish among variations of violent expressions. There seem to be roughly two categories: violent news and violent entertainment (Hurley, 2004: 193ff.). They are distinguished by their goals. Violent news aims at broadcasting real violent events taking place in the real world that people must politically deal with. Their significance lies in their truth and political relevance. In contrast, violent entertainment, at least its typical example, does not aim at conveying true information on the reality at all. It may sometimes be a true picture of the reality; however, the main point of violent images in entertainment is not truth but just entertainment. The first two arguments for free speech – argument from truth and argument from democracy – are related to violent news. Because of these arguments, free access to violent expression in the media representing real violence reported by journalism should be protected because of these arguments. However, they do not justify free access to other kinds of violent expression such as those in violent video games or movies. In what follows, I will deal with only these kinds of violent expression. Perhaps, the protection of free access to violent expression for fun should be guaranteed because of the argument from autonomy.

Hurley bases the argument from autonomy on audience's deliberative nature: rational and autonomous human beings can deliberately assess the truth/falsehood or goodness/badness of the content of speech and can deliberatively decide whether or not to accept it. Because of the capacity for deliberative decision-making, audience is responsible for the most part, when they execute some actions under the influence of the message contained in speech. As a result, speech is allowed to be freely distributed and accessed.

This means that, concerning the legal regulation of media violence in entertainment media, the true conflict stands between two bioethical principles: namely, the principle of respect for autonomy and the principle of nonmaleficence. In light of this, the above-discussed two-choice question can be reformulated as follows;

According to the principle of nonmaleficence, the access to violent expression distributed by entertainment media should be restricted.

1. However, the audience of the media distributing violent expression can deliberately control their psychological effects. Therefore, they are, for the most part, responsible for their actions executed under the influence of viewing media content that includes violent expression. According to the principle of respect for autonomy, people's autonomous decision to view media content with violent expression should be highly respected in spite of the principle of nonmaleficence. Therefore, the access to media violence should not be restricted.

2. In reality, it is difficult for audience to control deliberately the psychological effects evoked by violent expression in media content they viewed. In this sense, people's autonomy is quite limited when consuming media violence, and, therefore, they cannot be responsible for their actions executed under the influence of media violence consumed. This is why the principle of nonmaleficence should take precedence over the principle of autonomy. As a result, free access to

media violence can hardly be protected.
Question: Which is correct?

This is related to two further questions to be answered empirically. The first question is whether violent images really enhance audience's tendency toward violent behaviors. If this question is answered in the negative, the issue of media violence is settled. Because media violence does not have causal efficacy upon people's aggression, access to media violence should not be restricted. However, if the question is answered in the affirmative, the second question must be answered: whether the audience of violent entertainment can autonomously control the enhanced tendency toward their violent behaviors. If this question is answered in the negative, the conclusion will be that free access to media violence can hardly be protected. Therefore, the second answer is correct. However, the first answer turns out to be correct if one finds empirical evidence showing that audience can deliberatively control that negative effects.

3. Empirical findings supporting Hurley's argument

Hurley reviews relevant empirical literature from two research fields in order to judge whether or not to restrict access to media violence. The one is researches on causal effects of media violence in social psychology and epidemiology. And the other is researches on imitation conducted in cognitive sciences and neuroscience. These researches will be summarized.

As Hurley correctly insists, studies in social psychology and epidemiology strongly suggest psychological influences of viewing media content with violent expression. For example, the joint statement on the impact of entertainment violence on children, adopted by the congressional public health summit 2000, says: "at this time, well over 1000 studies…point overwhelmingly to a causal connection between media violence and aggressive behavior in some children" (Joint Statement, 2000). The effect size is not small. According to a comparative study, the effect of media violence on aggression is almost as great as that of smoking on lung cancer and greater than that of exposure to asbestos on laryngeal cancer and that of exposure to lead on IQ scores in children (see Figure 2 of Bushman & Anderson, 2001: 481). So, it can be treated as an established fact that exposure to media violence has long-term as well as short-term causal effects on audience's enhanced aggression (for more empirical findings, see Anderson et al., 2003).

As to the possibility of deliberative control of violent behavior caused by media violence, Hurley turns to scientific researches on imitation and insists that an enhanced violent tendency can hardly be deliberatively controlled. Her argument depends greatly on neuroscientific researches on mirror neurons found in monkey's premotor cortex (F5 and F6), and in its counterpart in the human brain. These neurons have following properties which seem to facilitate an animal's imitative learning. 1. A mirror neuron has a disposition to detect a specific type of instrumental goal-directed bodily action. Thus mirror neurons distinguish among action types such as "grasping," "throwing," "tearing," and so forth, and each of them detects only one type among of those types of action. 2. Mirror neurons do not show any behavioral difference when an animal is executing a relevant action and when it perceives its conspecifics execute that type of action (Gallese & Goldman 1998, Metzinger & Gallese 2003).

Various authors speculate that children may learn language and other complex social behaviors by imitating sophisticated actions executed by older members of the community they belong to who have higher linguistic and social skills. It is supposed that mirror neuron systems may underlie animals' ability for imitative learning. The observational learning driven by mirror neuron systems can take place automatically, thus without guidance by deliberative control (Hurley, 2003: 173-4; Iacobini, 2004). If this hypothesis is correct, it may be probable for the youth to learn behavioral patterns of aggression through automatic imitation, even in case that they are exposed to those behavioral images distributed in mass media.

Based on these and other similar empirical findings, Hurley insists that media violence causally enhances tendencies toward violent behaviors in some audience and that these psychological effects, at

least in significant part, bypass audience's deliberative processes. Hurley names this phenomenon "bypass effects" of media violence (Hurley, 2004, 2006). If there really are bypass effects of media violence – Hurley thinks that there are –, the principle of nonmaleficence must be taken more seriously than the principle of respect for autonomy in determining the legal treatment of violent expression. The result of this would be that one can hardly justify the protection of violent expression on the ground of freedom of speech.

4. Various concepts of autonomy

I think, however, that Hurley's argument is not acceptable. The problem with her argument is that her concept of autonomy is not defined properly. The essential point of the empirical part of Hurley's argument is that violent expression has bypass effects on their audience, because bypass effects undermine audience's autonomy. However, according to her, imitation mechanisms including mirror neuron systems underlie all observational learning processes, a large part of which are not guided by any deliberation. This means that what we have non-deliberatively learned to do through observational learning often manifests – even though not always – bypass effects. Here, the problem is that a large part of repertoire of our motor skills may have been acquired through automatic imitation learning and, therefore, may often have bypass effects. In addition, it seems that what we habitually do also have bypass effects, because we perform our habitual behaviors without deliberative control and because sometimes we cannot inhibit our habitual behaviors deliberatively. These points conjointly lead to the conclusion that we are not autonomous agents in the most part of our life because of omnipresent bypass effects.

This view is highly contra-intuitive, however theoretically possible it may be. Therefore, one can either accept a view that human beings are only autonomous in some exceptional cases where we really deliberatively control our action, or, alternatively, one can try to redefine the concept of autonomy so as to maintain a rationalist view that human beings are normally autonomous. Theoretically, both positions are possible. However, from a practical viewpoint, it is worth choosing the second option, because liberal societies are theoretically and institutionally based on the supposition that normal human beings are autonomous.

It would be intuitively more acceptable to suppose that bypass effects do not suffice to repudiate the ownership of autonomy. Unusual reduction in human capacity for deliberative control entails such psychopathological illness as schizophrenic delusion and serious depression in addition (Fuster, 1997: chap. 7). This notion of autonomy enables us to see normal human beings in normal situation as autonomous, and people with serious dementia as non-autonomous.

According to this notion of autonomy, one must additionally examine whether functions of the prefrontal cortex is normal or not, since the prefrontal part of the brain underlies the capacity for deliberative control (Daw et al. 2007, Wood & Grafman 2003). Here, deliberative control can be explained through interactions of two neural mechanisms; the one is automatic mechanisms including an imitative system, and the other is the inhibitory function executed in the prefrontal cortex. Tendencies of automatic behaviors can be detected and effectively interfered with by the prefrontal cortex, so far as this part functions soundly. If the prefrontal cortex occasionally fails in detection, we lose deliberative control over our behaviors on that occasion (bypass effects). However, this bypass effects as such do not undermine human autonomy. If one finds additional unusual reduction in prefrontal function, it is safe to insist that the person has lost his autonomy.

How about media violence? Does exposure to media violence significantly reduce the prefrontal function? There are very few researches on this issue. Matsuda and Hiraki have recently observed that the activity of the dorsal prefrontal cortex is continuously decreased while children play video games. This phenomenon was observed independent of what contents are dealt with in video games (Matsuda & Hiraki 2006: 709). Matsuda and Hiraki suggest that the activity of the prefrontal cortex might be reduced because enormous cognitive recourses are required to process attention-grabbing visual stimuli in video games (ibid. 710). However, implications of this finding are not clear. It is not studied whether or not the

reduced activity of the prefrontal cortex is correlated with its reduced inhibitory function while and after playing video games. This is an open question. For the moment, we do not have any clear idea whether the legal restriction of media violence can be justified.

However, we must accept this rather vague conclusion only because we rely on the specific notion of autonomy that human autonomy is grounded upon our capacity for deliberation. According to the notion of autonomy discussed so far, one is autonomous in so far as one has an active mechanism for deliberative control responsible for his motor behaviors, and it is not considered whether the content and process of deliberation are appropriate or not.

It seems to me that, based on this notion of autonomy, one cannot regard some people apparently lacking in autonomy as non-autonomous. For example, if one suffers from serious cocaine addiction, one's thought is strongly biased toward consumption of cocaine. In this case, even if someone deliberatively decided to inject a dose of cocaine and did so, one cannot regard this action as autonomous at all, because he was obsessed by a specific irrational bad thought. This example suggests that one must distinguish normal deliberation from obsessive deliberation in terms of its process. Furthermore, with regard to the content of deliberation, rational deliberation must be distinguished from irrational deliberation that is bad, or inappropriate in biological, social, or ethical respect. Based on this notion of autonomy, people suffering from obsessive deliberation with irrational contents typically found in drug addiction are not regarded as fully autonomous.

It is reported that the consumption of media violence alters the process and content of audience's deliberation. People who have more exposure to violent images tend to display more aggressive thoughts and emotions, and to become more tolerant for aggression (Anderson et al., 2003: 86). Besides, a recent fMRI study has found that playing violent video games modulates neural circuits related to emotion regulation containing anterior cingulated cortex in the medial frontal area (ACC) and the amygdala. During game phases involving violent interactions, it was observed that activity of the dorsal cognitive part of the ACC (dACC) was enhanced, while the rostal affective part of the ACC (rACC) and the amygdala showed reduced activities. A quite similar activity pattern is found in people with tendencies toward criminal and aggressive behaviors (Weber et al., 2006). This research examines only a short-term neural effect of playing violent video games. Besides, it was not investigated whether the altered neural state have some causal efficacy, for instance, whether or not that altered neural state causes people to form aggressive thoughts resulting in aggressive behaviors. It is an open question.

Concerning video game addiction, the Council on Science and Public Health (CSAPH) of the American Medical Association (AMA) has recently published a featured report of the year 2007 on "emotional and behavioral effects, including addictive potential, of video games" (CSAPS, 2007). That report points out, that with some heavy users of video game "symptoms and social dysfunction/disruption appear in patterns similar to that of other addictive disorders. … Dependence-like behaviors are more likely in children who start playing video games at younger age." (ibid. 4) Based on these and similar findings, the AMA strongly recommends that "internet/video game addiction" be adopted as a diagnostic notion in the upcoming revision of the DSM-IV (ibid. 7).

To summarize recent empirical studies on video games, it is observed that people more exposed to media violence displayed more aggressive thoughts, emotions, and behaviors. Furthermore, a part of heavy users of video games show addictive symptoms. Even though neural substrates of these traits are still under research, there are some evidences supporting a hypothesis that the consumption of media violence, especially playing violent video games, biases some heavy users in favor of aggressive thoughts possibly resulting in irrational violent behaviors. In this case, audience's autonomy can be lost because of media violence effects.

5. Conclusion

As a conclusion, I will explain why and in what sense, I think, Hurley's argument is unacceptable. Her original argument against media violence was based on two empirical suppositions. Firstly, viewing media content with violent expression tends to enhance aggression in some audience, and, secondly,

aggressiveness enhanced by media violence has bypass effects, that is to say, cannot easily be controlled through deliberation. Hurley insists that special protection of distribution and consumption of media violence on the ground of the free speech principle is not justified because this principle presupposes that audience is capable for autonomous control over causal effects of hearing speech, which is largely undermined by the bypass effect in the case of violent expression.

Even though I share this conclusion, I think that her argument as such is not acceptable. This is mainly because she holds a view on autonomy that an agent is autonomous in so far as his/her deliberative control mechanisms really are in charge of his/her motor behaviors, that is to say, when no bypass effects emerge. In contrast, I argued for two points. Firstly, Hurley's notion of autonomy can demarcate a group of autonomous agents too narrowly. On the contrary, all agents equipped with sound neural mechanism of deliberative control can be treated as autonomous, even though that mechanism is sometimes bypassed. Therefore, mere bypass effects do not undermine autonomy, if deliberative control mechanisms function normally. Secondly, I insisted that human autonomy is destroyed, if deliberative control mechanisms, possibly located in the prefrontal cortex in the brain, systematically malfunction due to pathological reduction or bias in their functions. Since much part of empirical findings I reviewed earlier suggests that the consumption of violent expression tends to reduce or to bias deliberative control mechanisms in some audience, one can regard autonomy of influenced people as damaged. Therefore, one cannot justify the protection of free distribution and consumption of violent expression through media due to the free speech principle, because consumers of media violence may possibly have only limited sound capability for autonomous deliberative control over their aggressive behaviors possibly enhanced by the consumption of media violence.

This conclusion can be interpreted within the framework of bioethics as follows; in the case of the consumption of media violence, the principle of respect for audience's autonomy is overridden by the principle of nonmaleficence, because audience's autonomy tends to be damaged by the consumption of media violence. This conclusion has an important meta-bioethical implication. According to the standard interpretation, what the principle of nonmaleficence prohibits is giving direct physical or mental insults to others. People are in principle not allowed to give direct harm to others, and, in this respect, people's autonomy is not completely respected. The problem of media violence addresses the question concerning priorities in the system of these bioethical principles. The principle of nonmaleficence may prohibit not only direct harms but also virtual harms, because violent expression distributed through virtual realities may impair people's autonomous capacity for deliberative control over aggression to the third parties. In this case, the principle of respect for autonomy is more restricted, while the principle of nonmaleficence takes precedence.

In any respect, all the discussed arguments are based on empirical findings, whose theoretical foundations and methodologies are not firmly established. Scientific researches are lacking in this field. Therefore, I believe, time is not ripe for any political actions concerning the legal restriction of media violence.

References

Anderson, C.A., et al. 2003. "The influence of media violence on youth", *Psychological Science in Public Interest* 4. 81-110.

BBC News. May 1, 2001. "Columbine families sue computer game makers".

Beauchamp, T.L., Childress, J.F. 1979. *Principles of Biomedical Ethics*. Oxford University Press.

Bushman, B.J. Anderson, C.A.. 2001. "Media violence and American public". *American Psychologists* 56, 477-89.

CSAPH Report 12-A-07, 2007. "Emotional and behavioral effects, including addictive potential, of video games".

Daw, N.D., Niv, Y., Dayan, P. 2005. "Uncertainty-based competition between prefrontal and dorsolateral striatal systems for behavioral control", *Nature Neuroscience* 8, 1704-11.

Fuster, J.M. 1997. *The Prefrontal Cortex: Anatomy, Physiology, and Neuropsychology of the Frontal Lobe*, 3rd Edition. Lippincott-Raven.

Gallese, V., Goldman, A. 1998. "Mirror neurons and simulation theory of mind-reading". *Trends in Cognitive Sciences* 2,

439-501.

Hurley, S. 2004. "Imitation, media violence, and freedom of speech", *Philosophical Studies* 117, 165-218.

----- 2006. "Bypassing conscious control: unconscious imitation, media violence, and freedom of speech" in: Pockett S. et al. (eds.), *Does Consciousness Cause Behavior?* MIT Press, 301-337.

Iacobini, M. 2004. "Understanding others: imitation, language, empathy" in Hurley S., Chater N. (eds.), *Perspectives on Imitation: From Neuroscience to Social Science*, *Vol.1*, MIT Press.

Joint statement on the impact of entertainment violence on children: Congressional Public Health Summit. (2000, July 26).

Kass, L., Safire, W. 2003. *Beyond Therapy: Biotechnology and the Pursuit of Happiness, A Report of the President's Council on Bioethics*. Dana Press.

Metzinger, T., Gallese, V., 2003. "The emergence of a shared action ontology: building blocks for a theory", *Consciousness and Cognition* 12, 549-71.

Matsuda, G., Hiraki, K. 2006. "Sustained decrease in oxygenated hemoglobin during video games in the dorsal prefrontal cortex: A NIRS study of children". *NeuroImage* 29, 706-11.

Post, S.G. (ed.) 2004. *Encyclopedia of Bioethics*, 3rd edition. Macmillan Reference USA.

The Sunday Times, March 27, 2005. "Hilary opens up morality war on violent video games".

Wood, J.N., Grafman, J. 2003. "Human prefrontal cortex: processing and representational perspectives", *Nature Review Neuroscience* 4, 139-47.

Chapter 17

Noncombatant Immunity and Restorative Justice:

A Constructive Critique of Just War Theory

Shunzo MAJIMA

Introduction

The Protection of civilians during armed conflicts is one of the most discussed and debated topics in war ethics as well as international ethics. It is one of the most important issues in the discussion on the ethical aspects of war and international relations, not only because war usually causes civilian casualties, but also because the number and proportion of civilian casualties has dramatically increased over one hundred years (Sivard 1985, 11). Despite the fact that civilian protection is stipulated in the laws and customs of armed conflict, the large number and high proportion of civilian casualties are observed in many contemporary armed conflicts (Meddings 2001).

Ethical issues surrounding civilian protection are predominantly debated in the context and discourse of *just war theory,* in which civilian protection is discussed as part of the overall consideration for the morality of war (Walzer 1992, 138-75). Just war theory is useful for macro level analysis of the justifiability of a particular war undertaken by States and other political communities: however, this theory does not sufficiently serve to provide adequate protection for civilians. While many just war theorists pay attention to the requirements of civilian protection to a greater or lesser degree in different versions, civilian protection is often submerged under the other principles in just war theory.

In this essay, we will critically examine just war theory in relation to civilian protection in order to consider the scope and limitations of the theory. Specifically, we will investigate how civilian protection is envisaged in the framework of just war theory, which is currently a dominant framework for deliberating and contemplating ethical issues concerning civilian protection in armed conflict, in order to assess whether or not it provides an adequate ethical framework for considering civilian protection.

This essay is divided into two sections. In Section 1, we will outline the structure of just war theory in order to demonstrate how civilian protection is envisaged in this framework. In Section 2, we will examine the problems of ambiguity in the principles used to judge the issue of civilian protection in just war theory to explore whether it provides an adequate framework to consider these ethical issues.

1. Civilian Protection in Just War Theory

In Section 1, we will outline the structure of just war theory in order to demonstrate how civilian protection is envisaged in this framework. Initially, in order to explore the definitions of just war theory, we will survey several variations of this theory made by different commentators. We will then outline just war theory in relation to civilian protection in order to demonstrate how the framework of this theory is related to their protection.

There are several different views on just war theory, and they vary quite widely among the leading commentators. For example, Oliver O'Donovan, a theologian, defines just war theory as 'a practical proposal for the radical correction of the praxis of war', which offers a moral guidance 'for those who wish to learn *how to engage in* the praxis of judgement - to engage in it in *these* days and *these* circumstances, where we actually find ourselves, here and now' (O'Donovan 2003, 12-3). James Turner Johnson, a historian, insists that just war theory is 'a mode of reasoning attached to religious, legal, military and political discourse'(Johnson 1999, 25). In contrast, Jean Bethke Elshtain, a political and social ethicist, considers that just war theory is 'a complex amalgam of normative principles and

pragmatic evaluation' on the ethics of war (Elshtain 1992, 44n1). Chris Brown, a leading political scientist on just war theory, comments that the theory is a common moral language in order to discuss the moral and ethical aspects of war (Brown 2003, 45). Terry Nardin, another leading political scientist, proposes that just war theory can be broadly conceived as 'a label that embraces a diversity of views holding that war is subject to moral constraints' (Nardin 1996, 9). Despite the fact that these commentators propose diverse definitions of just war theory, it is generally agreed that it is an ethical framework for considering whether and why war may be just.

Having listed different views on just war theory, we will now consider the overall structure of the theory in relation to civilian protection. Just war theory can be divided into two main parts: the first part is concerned with the ethical considerations that need to be taken into account when going to war (*jus ad bellum*) and the second deals with the ethical considerations of just conduct in war (*jus in bello*) (McMahan 2004, 693). Ethical issues concerning civilian protection can be examined with reference to the two principles of *noncombatant immunity* and of *proportionality* in the *jus in bello* framework (Johnson, 18-9). In addition to these two criteria, *the principle of double effect*, which will be discussed in greater detail in Section 2. 3, can also be used as an ethical framework when considering in the *jus in bello* framework (Walzer, 151-6).

2. Just War Principles in relation to Civilian Protection

In Section 2, we will examine in detail the principles used for considering civilian protection in the *jus in bello* framework in order to consider how the ethical issues concerning civilian protection can be contemplated and judged in just war theory. In Sections 2. 1 and 2. 2, we will examine the principles of noncombatant immunity and proportionality, in order to demonstrate that the main problem of just war theory in relation to civilian protection is in the flexibility of interpretation and application of these principles. In Section 2. 3, we will investigate how the principle of double effect is applicable when considering ethical issues concerning civilian protection, in order further to demonstrate the limitation of just war theory in civilian protection.

2. 1. The Principle of Noncombatant Immunity

The principle of noncombatant immunity, or *discrimination*, as it is often known, stipulates that noncombatants should not be *directly* attacked (McMahan 2004, 693). It is worthy of note, however, that this does not prohibit incidentally harming noncombatants in military operations. This principle, working in tandem with the principle of proportionality, which stipulates that needless harm and destruction should be avoided in order to achieve justified ends (Johnson, 36), implicitly allows that noncombatants may be harmed incidentally on condition that the harm inflicted is proportionate to the military advantage anticipated. This raises the question: to what extent is the principle of noncombatant immunity considered to be independent of the principle of proportionality?

Regarding this question of the principle of noncombatant immunity, some just war theorists see it as being less dependent on the principle of proportionality whereas others (Johnson, for example) tend to see it as more so. The first group of commentators may be referred to as *rule-oriented just war thinkers* since they tend to emphasise the value of rules and principles over considerations of consequence when making judgements on civilian protection in the *jus in bello* framework. They often place greater emphasis on the idea that it is wrong to kill harmless persons (i.e., civilians) than on the idea that civilian lives may sometimes need to be considered as *collateral damage* in order to gain military advantage (Harries 1986, 85-6). For example, Harries emphasises the importance of the principle of noncombatant immunity as a rule to be strictly observed in war. He argues:

> The harmless on the side of the enemy have just as much right to protection as the harmless on one's own side. Killing a harmless person on one's own side without due cause would be a murder. Killing a harmless person on the enemy side is no less murder (86).

These comments do not necessarily mean that all rule-oriented just war thinkers argue for an absolute prohibition on harming civilians. By referring to the principle of proportionality, many consider that harming civilians may be permitted under such conditions that the harm is incidentally caused as an unintended consequence and is considered to be proportionate to the military advantage. Johnson justifies this position on the grounds of *lesser evil*:

> The horrible events and actions confronted in war must be divided between those evil in all aspects and those that can be set into a relationship of priorities along with other relative evils. When this is done, one may still be outraged at a particular horror of war, yet may morally accept it in order to avert or control a worse evil (18).

Nevertheless, from this rule-oriented point of view, the principle of noncombatant immunity is considered to be less dependent on the principle of proportionality. This point of view is confirmed by supporters who consider that the idea of the protection of noncombatants in the *jus in bello* framework is not primarily aimed at justifying a certain war conduct that risks harming noncombatants but at reigning it in. For example, Bailey argues that 'just war ethics is composed of restriction and prohibition rather than permission' (Bailey 1987, 3). In the same vein, Harries also argues that the 'purpose of just war is to protect the harmless [i.e. noncombatants]', not primarily to justify military operations (86).

Contrary to the rule-oriented just war theorists, there is another group of just war thinkers who predominantly emphasise ethical values of consequence over the values of rules and principles, whom we may call *consequence-oriented* just war thinkers. These theorists tend to apply the principle of noncombatant immunity less strictly in light of consequence than the rule-oriented just war thinkers. For example, O'Brien argues that 'the moral, just-war principle of discrimination is not an absolute limitation on belligerent conduct', because this principle has not been 'seriously advanced by the church, and it is implicitly rejected when the church acknowledges the continued right of self-defence, a right that has always been incomparable with observance of an absolute principle of discrimination' (O'Brien 1981, 45). Following this line of argument, O'Brien suggests that 'discrimination is best understood and most effectively applicable in light of the *interpretations* of the principle in the practice of belligerents' (Ibid., stress added). This consequence-oriented point of view implies that the principle of noncombatant immunity is considered to be less independent of the principle of proportionality, and is thus more likely to be subject to it.

To summarise, the gap between the above-considered two views on the principle of noncombatant immunity indicates that this principle has the potential to be flexibly interpreted and applied. In addition, this flexibility is likely to give rise to ambiguity in the *jus in bello* framework in relation to civilian protection. Therefore, although just war theory is supposed to protect civilians, this theory does not do so adequately in practice, because the ambiguity of the principle of noncombatant immunity can allow this principle to be used for political/military purposes that are not necessarily compatible with civilian protection.

2. 2. The Principle of Proportionality

In Section 2. 2 we will consider the other principle in the *jus in bello* framework, the principle of proportionality, in order further to examine the limitations of just war theory in relation to civilian protection.

In summary, the principle of proportionality stipulates that incidental damages to civilians and civilian objects must be proportionate to the military advantages anticipated if and when attacks against military targets are considered or actually undertaken (Johnson, 36). The purpose of this principle is to incorporate considerations of the values of consequences as in relation to civilian protection in just war theory.

The key problem with the principle of proportionality, just as with the principle of noncombatant immunity, can be found in the ambiguity arising from flexible interpretation and application, because this

principle only stipulates that incidental damage to civilians must be proportionate to the military gains. Being flexible *per se* does not necessarily mean that the principle of proportionality is problematic. Because of this flexibility, however, the principle can be seen as ambiguous since it does not indicate any definitive ideas about the degree and scale of what may be considered proportionate. Bailey explains that the judgement of proportionality 'is inevitably a subjective test', which 'requires difficult decisions by military commanders'; consequently, 'a cool Cartesian calculation' is required (28-9). In this sense, the equilibrium of the cost-benefit calculation of proportionality is subject to the users' interpretations and applications of the principle. This characteristic of the principle of proportionality allows a wide range of interpretation, and can lead to arbitrary judgements concerning the permissibility of the scale and degree of harm inflicted upon civilians.

In addition to the above-discussed potential consequences, the ambiguity of the principle in interpretation leaves the application of this principle open to manipulation. In fact, the ambiguity of the principle of proportionality raises the serious concern about the potential of politically motivated use of this principle to justify causing harm to civilians in military operations. In practice, the principle of proportionality is often at risk of being manipulated by users who intend to exploit this principle for political and/or military purposes. Coates points out that 'the application of the principle in an exaggerated and uncritical way is commonplace' (Coates 1997, 182).

In order to shed light on the problem of the political/military manipulation of the principle of proportionality, let us consider the legal principle of proportionality in IHL, whose structure is almost identical to the *jus in bello* principle, making the problems outlined applicable to either. In IHL, the judgment of the principle of proportionality—how incidental losses are considered proportionate in relation to the military advantage anticipated—is 'based to some extent on a subjective evaluation', according to the ICRC *Commentary* (ICRC 1987, 683). The subjective nature of the legal principle of proportionality is somewhat problematic at least in the legal-exegetical context because IHL is based on the presumption that the legal provisions are correctly interpreted and applied on a *bona fide* basis (Pictet 1952-60, 308). This position of IHL is described in the *Commentary*: 'the interpretation [of the principle of proportionality] must above all be a question of common sense and good faith for military commanders', who 'must carefully weigh up the humanitarian and military interests at stake' (ICRC, 683-4).

The above-described legal prescription for the principle of proportionality, however, raises a concern about an arbitrary application of the principle in favour of military necessity. Take the issue of so-called *collateral damage,* a euphemism for 'excusing civilian casualties as unintended but foreseen side effect' (Norman 1995, 203) of legitimate military operations. Apologists in the armed forces might argue that the military takes the maximum care over the protection of civilians. For instance, commenting on the Iraqi War, a spokesman for the UK Ministry of Defence was quoted as saying: 'During the conflict we took great pains to minimise casualties among civilians' (Jeffrey 2003). Contrary to this assertion, it is alleged that thousands of Iraqi civilians were killed during the major combat phase (March to May 2003) and thereafter by the Coalition forces, according to the Iraq Body Count, a non-governmental organisation's webpage (http://www.iraqbodycount.org/database/bodycount_all.php?ts=1149597599. Accessed on 6/6/2006). It would be arguable whether that scale of civilian victims could be justified on the grounds of the principle of proportionality. We might also have to consider whether or not the principle of proportionality was indeed undertaken in good faith. In fact, there are several allegations against the US-led coalition forces in Iraq over the harming of noncombatants, such as a massacre of Iraqi civilians in Haditha by the US Marines in November 2005 (Goldenberg 2006). These examples, just two of many, seem to indicate difficulties in *bona fide* applications of the principle of proportionality in military operations.

In Section 2. 2, we have critically investigated the principle of proportionality for civilian protection articulated in the *jus in bello* framework of just war theory. Through this investigation, we have found that the principle of proportionality is envisaged as a principle to limit the number and proportion of civilian casualties in armed conflicts. However, we have also found that this principle does not set any definitive

scale or ratio that constitutes being proportionate. We have then argued that the judgement of proportionality, therefore, is subject to the interpretation and application of the users of this principle. We have also argued that the flexibility of the principle of proportionality gives rise to ambiguity in the interpretation and application of this principle, which in turn puts it at risk of being hijacked and manipulated for political and/or military purposes. To clarify the problem of the principle of proportionality, the issue is not that this principle would not be applicable in practice, but that it is open to interpretation and manipulation and can potentially be abused by users for political/military purposes.

2. 3. The Principle of Double Effect

The principle of double effect, also known as the *doctrine of double effect*, is often used in tandem with the two *jus in bello* criteria for the justification for war conduct that may involve civilian casualties. While there are a number of variations, one of the authoritative versions of the principle of double effect in relation to civilian protection may be found in Paul Ramsey's definition. He spells out four conditions of the principle of double effect to be met concurrently so that an agent is not 'to be held accountable' for 'the evil consequence of his action' (Ramsey 1961, 47-8). These four conditions are as follows:

> (1) the action itself must be good in its nature and object, or at least sufficient, (2) a good effect and not an evil effect must be intended, (3) the good effect must not be produced by means of the evil effect, but both effects must arise simultaneously from the (at least) morally indifferent action as cause, and (4) there must be in the good effect a proportionately grave reason for permitting the evil effect (ibid).

In the *jus in bello* framework, the principle of double effect, together with the principles of noncombatant immunity and proportionality, can be used for the justification for harming civilians under certain conditions. Reasoning for harming civilians is divided into three stages. Initially, the principle of noncombatant immunity stipulates that civilians should not be unjustly harmed. At this stage, directly harming civilians is considered wrong under any circumstances and impermissible. Secondly, the principle of double effect stipulates that harming civilians (an evil effect) is permissible under such a condition that such harm is unintended when the attack against legitimate military targets is undertaken with an intention to neutralise them (a good effect). At this stage, indirectly harming civilians can conditionally be permitted if it leads to a good effect (i.e. neutralising enemy targets) with a proportionately grave reason, say, incapacitation of a strategic command and control structure, that overrides an evil effect. Thirdly, the principle of proportionality gives such a proportionately grave reason for permitting harm to civilians in that the unintended harm is permissible, provided it is in proportion to military advantages. At this stage of our discussion, we can summarise that the principle of double effect, combined with the principles of noncombatant immunity and of proportionality, stipulates that that harming civilians is permissible if and when such harm is an unintended side effect of a legitimate military attack and is proportionate to the military gains made by the attack.

The principle of double effect in relation to civilian protection imposes a heavy burden of proof on attackers. Initially, the principle rejects directly harming civilians not only as an end but also as a means of military operations. The principle prohibits targeting civilians as an end of military operations because direct attacks against civilians cannot be considered to be a good action outlined in Premise (1) or a good effect outlined in Premise (2). Indeed such attacks may be called acts of terror. The principle of double effect also prohibits directly targeting civilians as a means to a good effect in Premise (3). Despite the prospect that direct, intentional attacks against civilians may lead to a victory, for example, the principle prohibits harming civilians as a means to winning the war. Thirdly, the principle imposes on attackers a further burden of proof by requiring them to provide a proportionately grave reason for permitting the evil effect in (4). In the case of civilian protection, such a grave reason is explained by the principle of proportionality in such a way that military advantages are proportionate to harm on civilians.

The principle of double effect is often considered as a useful framework for civilian protection in the

jus in bello framework by several just war thinkers. The followers of the principle often hold the premise, which is common to the principle of noncombatant immunity; that it is 'a moral certainty that the unjustified taking human life is evil', and 'common human characteristics—age, gender, physical condition, mental capacity—can never be justification for killing' (Noonan 2001, 10). However, war almost inevitably causes harm to human beings, and civilians are often killed despite the fact they are supposed to be immune from attack. If this is the case, then those supporters who hold the above-described view need an ethical guideline to consider under what circumstances the taking of human life can be justified. They may regard the principle of double effect as one of the most promising ethical tools for the justification for harming civilians because this principle allows the harming of civilians under certain conditions. Fisher argues: 'The doctrine of double effect has thus enabled modern just war theorists to soften the otherwise unyielding rigour of the absolute status accorded non-combatant immunity' (Fisher 1985, 30). By incorporating the principle of double effect into the *jus in bello* framework, those just war thinkers who hold the view that the innocent may not be killed can avoid such a possible dilemma between the absolute prohibition of killing the innocent and the frequently repeated practice of killing them in many armed conflicts. C. A. J. Coady also supports the principle of double effect since if just war theorists 'speak of the need for the evil foreseen side effect not to be disproportionate to the good sought by the action, they clearly have in mind the matter of likelihood as well as danger of evil' (Coady 1989, 176). In this context, the principle of double effect may be seen indispensable to justify harming non-combatants in just war theory.

Contrary to the above-developed positive account, however, the problem of the principle of double effect in civilian protection arises from the issue of how the principle is used in practice. In other words, the problem of this principle also seems to be that it is open to manipulation and can be misused and even abused. In particular, when the principle of double effect is used to judge the permissibility of harm to civilians, the interpretation and application of proportionality is often likely to be at the users' disposal. What may be considered proportionate is often ambiguous, and can be subject to the interpretations and applications of its users

The problem of ambiguity in the principle of double effect, moreover, may amount to an idea contrary to the spirit of just war theory—to limit causing harm to civilians—because this principle is excessively *user-friendly* when being applied. For this reason, the principle can be used not primarily for protecting civilians but to justify harming them. For example, O'Brien argues that the principle of double effect can effectively be used if the principle of noncombatant immunity is not regarded as an absolute prohibition on direct attacks against civilians; he envisages that direct, intentional attacks against civilians are permissible within this principle. In O'Brien's words:

> But if the principle of discrimination is viewed as a relative principle enjoining the maximization of noncombatant protection, it seems possible to employ double-effect explanations for actions wherein the major intention is to effect counterforce injury on military objectives while acknowledging an inescapable intention of injuring countervalue [i.e., civilian] targets and thereby predictably violating the principle of discrimination to some extent (O'Brien, 47).

O'Brien's comments indicate that the principle of double effect can be used to make direct, intentional attacks against civilians legitimate, or at least morally acceptable. This way of interpreting the principle of double effect seems debatable because the crux of the principle is based on the prohibition of causing any intentional harm (i.e. direct attacks against civilians) despite the fact that a good outcome may result, or expected to result from these evil actions. Furthermore, O'Brien's application of the principle of double effect seems to countermand the crux of just war theory on civilian protection, which prohibits direct, intentional attack against civilians.

To summarise, the principle of double effect raises an issue of concern in relation to civilian protection due to the fact that it raises the question of application; whether or not the principle has been correctly applied for the purpose of civilian protection is widely subject to the intention of the person who

uses this framework. As a result, the principle of double effect is capable of being flexibly applied, which raises the possibility of its misuse and abuse for promoting such political/military ends that are not compatible with the standard idea of civilian protection envisaged in just war theory. The virtue of the principle of double effect is, however, in that this principle is aimed at strictly restraining harm caused to civilians, and this idea does seem to be in accord with the spirit of just war theory.

In Section 2. 3, we have critically examined how the principle of double effect works for civilian protection in *jus in bello* framework in order to demonstrate the limitations of just war theory. We have argued that the problem with the principle is that it is not only likely to be subject to misuse and abuse, but also opens up the possibility of being manipulated for political/military purposes. As a result, we may conclude that the principle of double effect is in danger of being politically hijacked and not serving civilian protection in practice.

Conclusion

In this essay, we have critically discussed the scope and limitations of just war theory in civilian protection, by focusing on how the prohibition on, as well as justifications for, harming civilians are examined in the *jus in bello* framework. In Section 1, we have set out general observations of just war theory and how this theory is related to civilian protection. We have observed that just war theory is an ethical framework for considering whether war is just or not and that ethical considerations concerning civilian protection are undertaken in the *jus in bello* framework. In Section 2, we have critically examined how civilian protection is undertaken in the *jus in bello* framework, by considering the three principles in this framework. During the course of our discussion, we have shown that the key problem of just war theory in relation to civilian protection can be found in the ambiguity of the principles used, and that such ambiguity arises from the flexibility of interpretation and application of these principles. We have also argued that the ambiguity of the principle of proportionality can be problematic because this characteristic can potentially lead to manipulation of the principle for political/military ends.

These limitations of just war theory in civilian protection seem to indicate that the issue of reparation to civilian victims needs to be incorporated into the theory if it claims to serve the protection of civilians while neglecting civilians who are harmed in justified attacks. One of the most promising measures to complement the current framework of just war theory might be reparation as part of justice. This measure, a reparatory element of justice to civilian victims, might not entirely solve the problem of just war theory in relation to civilian victims. It may be our moral imperative, however, to consider the incorporation of the concept of reparation within the framework of just war theory if we wish to use just war theory as a framework for normative argument and discussion concerning ethical issues concerning the protection of civilians in armed conflict.

References

Brown, C. 2003. 'Selective Humanitarianism: In Defence of Inconsistency', in Chatterjee, D., Scheid, D. (eds.), *Ethics and Foreign Intervention,* Cambridge: Cambridge University Press, 31-50.

Chatterjee, D., Scheid D. (eds.) 2003, *Ethics and Foreign Intervention,* Cambridge: Cambridge University Press.

Coady, C. 1989. 'Escaping from the Bomb: Immoral Deterrence and the Problem of Extrication', in Shue, H. (ed.), *Nuclear Deterrence and Moral Restraint: Critical Choice for American Strategy*, Cambridge: Cambridge University Press, 163-225.

Coates, C. 1997. *The Ethics of War*, Manchester: Manchester University Press.

Decosse D. (ed.) 1992. *But Was It Just?: Reflections on the Morality of the Persian Gulf War*, New York: Doubleday.

Elshtain, J. 1992. 'Just War as Politics: What the Gulf War Told Us About Contemporary American Life', in Decosse, D. (ed.), *But Was It Just?: Reflections on the Morality of the Persian Gulf War*, New York: Doubleday.

Ficarrotta, J. (ed.) 2001. *The Leader's Imperative: Ethics, Integrity, and Responsibility* (West Lafayette, IN: Purdue University Press.

Fisher, D. 1985. *Morality and the Bomb*, London: Croom Helm.

Goldenberg,.S. 2006. 'Marines may face trial over massacre', *Guardian* (27/5/2006), http://www.guardian.co.uk/frontpage/story/0,,1784387,00.html, accessed on 3/6/2006.

Johnson, J. 1999. *Morality of Contemporary Warfare*, New Haven: Yale University Press.

Harries, R. 1986. *Christianity and War in a Nuclear Age,* London: Mowbray.

ICRC 1987. *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, (eds.) Sandoz, Y., Swinarski, C., Zimmermann, B. with Pictet, J. Geneva: Martinus Nijhoff.

Jeffery, S. 2003. 'War may have killed 10,000 civilians, researchers say', *Guardian* (13/6/2003), 18.

McMahan, J. 2004. 'The Ethics of Killing in War', *Ethics* 114:4, 693-733.

Meddings, D. 2001. 'Civilians and war: a review and historical overview of the involvement of non-combatant populations in conflict situations', *Medical Conflict Survival* 17:1, 6-16.

Nardin, T. 1996. 'Introduction', in Nardin, T. (ed.), *The Ethics of War and Peace: Religious and Secular Perspectives* Princeton, NJ: Princeton University Press.

Nardin, T. (ed.) 1996. *The Ethics of War and Peace: Religious and Secular Perspectives* Princeton, NJ: Princeton University Press.

Noonan J. 2001. 'Three Moral Certainties', in Ficarrotta, J. (ed.), *The Leader's Imperative: Ethics, Integrity, and Responsibility*, West Lafayette, IN: Purdue University Press, 3-14.

Norman, R. 1995, *Ethics, Killing and War*. Cambridge: Cambridge University Press.

O'Brien, W. 1981.*The Conduct of Just and Limited War,* New York: Praeger.

O'Donovan, O. 2003. *The Just War Revisited,* Cambridge: Cambridge University Press.

Pictet, J. (ed.), 1952-60. *The Geneva Conventions of 12 August 1949: Commentary* vol. 4. Geneva: ICRC.

Ramsey, P. 1961. *War and Christian Conscience: How shall Modern War be conducted justly?* Durham, NC: Duke University Press.

Shue, H. (ed.) 1987. *Nuclear Deterrence and Moral Restraint: Critical Choice for American Strategy*, Cambridge: Cambridge University Press.

Sivard, R. 1985. *World Military and Social Expenditures 1985*, Washington D.C., World Watch Institute.

Walzer, M. 1992. *Just and Unjust Wars: A Moral Argument with Historical Illustrations* 2nd ed., New York: Basic Press.

Chapter 18

Social Entrepreneurship: Ethical Response to Social Inequality

Gladius KULOTHUNGAN

Introduction

The majority of people today feel powerless, and lack effective agency in their own lives (Blunden, 2005). There is the prevalence of injustice characterised by mal-distribution, which encompasses not only income inequality but also exploitation, deprivation, and marginalization or exclusion from labour markets (Fraser, 1997). The major institutions in modern society today find themselves operating in a capitalist environment that has come to a very different post fordist phase premised on niche production, declining unionization, and increased female labour-force participation. Yet social exclusion is on the increase. The gap between the rich and poor has been increasing dramatically as well.

We are living in a knowledge society, premised on the information technologies yet there is a huge 'digital divide'. This is complimented by institutionalized value patterns that deny some people the status of full partners in interaction-whether by burdening them with excessive ascribed "difference" or by failing to acknowledge their distinctiveness. The contradictions in today's modern world are getting sharper in spite of a globalizing order in which huge trans-national flows of capital undercut national state steering capacities.

This essay postulates that in this back drop a new understanding of social justice is emerging. No longer restricted to the axis of class, contestation now encompasses other axes of subordination, including gender, "race," ethnicity, sexuality, religion, and nationality (Fraser, 1997). This new sense of social justice is not about just income parity and economic prosperity from the distributive perspective but it is also about recognition, identity and difference, premised on the realisation that justice requires a politics of recognition.

There is emerging a new reflexive awareness of "others," hence a new stress on identity and difference. I argue that these developments are taking place within the third sector specifically, especially in the form of the growing number of social enterprises and there is a general tendency to support these developments both in the public and private sectors in recent years. My own assessment of these social enterprises and the social entrepreneurship that spawns them – both as a researcher and facilitator of social entrepreneurship – indicates that these developments can be considered ethical responses to the growing inequalities in modern societies.

Ethical responses to social injustice and inequality

If we want to evaluate ethical responses to social injustice and inequality, it is quite helpful to begin with the Rawlsian notion of "justice as fairness" (Rawls, 1971, 1993). In the Rawlsian framework, fairness for a group of people involves arriving at rules and guiding principles of social organization that pay similar attention to everyone's interests, concerns and liberties. Rawls talks of the "original position" which is an imagined state of primordial equality. Individuals are seen as arriving at rules and guiding principles through a cooperative exercise in which they do not yet know exactly who they are going to be – ensuring they are not influenced, in selecting social rules, by their own vested interests related to their actual situations, such as their respective incomes and wealth (Sen, 1997).

Rawlsian analysis proceeds from the original position to the identification of particular principles of justice. These principles include the priority of liberty (the "first principle") giving precedence to maximal liberty for each person subject to similar liberty for all. The "second principle" deals with other matters, including equity and efficiency in the distribution of opportunities, and includes the Difference Principle.

Nussbaum takes this further. Martha Nussbaum affirms a "liberal" view that is compatible with the feminist affirmation of the value of women as persons. "At the heart of this tradition [of liberal political thought] is a twofold intuition about human beings: namely, that all, just by being human, are of equal dignity and worth, no matter where they are situated in society, and that the primary source of this worth is a power of moral choice within them, a power that consists in the ability to plan a life in accordance with one's own evaluation of ends." (Nussbaum, 1997:57). To these two ideas is linked one more, that "the moral equality of persons gives them a fair claim to certain types of treatment at the hands of society and politics. . . . [T]his treatment must do two . . . things [:] respect and promote the liberty of choice, and ...respect and promote the equal worth of persons as choosers."(Nussbaum, 1997:57)

Amartya Sen, as a way of addressing questions of justice and human development developed this notion – the concept of substantial freedoms or capabilities. Nussbaum develops this further and classifies capabilities into three types (Nussbaum, 1997:44). The first ones are the 'Basic capabilities', which are the innate equipment of individuals that is the necessary basis for developing more advanced capabilities. Next come the 'Internal capabilities' which are states of persons that are sufficient conditions for the exercise of the corresponding function (given suitable complement of external conditions). Internal capabilities build on pre-existing basic capabilities by processes such as exercise, education, and training. The last are 'Combined capabilities' that are defined as 'internal capabilities plus the external conditions that make the exercise of a function a live option'. The aim of public policy and the efforts of the third sector that complements it should be the promotion of combined capabilities; this requires two kinds of efforts (1) the promotion of internal capabilities (say, by education or training) and (2) the making available of the external institutional and material conditions.

Just as John Rawls is concerned to promote the just distribution of a qualitatively diverse set of "primary goods" among the members of a well ordered society, Nussbaum is concerned to promote a just distribution of a qualitatively diverse set of capabilities among members of every society on earth. Now which are the initiatives, institutions or oragnisations that promote these type of capabilities in society today? The answer to the question, I argue, is 'social enterprises'.

Individuals live and operate in a world of institutions and our opportunities and prospects depend crucially on what institutions exist and how they function. As Amartya Sen(1997) argues 'not only do institutions contribute to our freedoms, their roles can be sensibly evaluated in the light of their contributions to our freedoms'. I want to argue that social enterprises, as a new form of emerging institutions, contribute to people's freedom and build the 'capabilities' Nussbaum is talking about.

Introducing Social Entrepreneurship

Social entrepreneurship (SE) is a term used to describe innovative approaches to solve social problems. Over the past decade and a half social entrepreneurship, and its organisational expression social enterprise, has gained increasing interest on the lecture circuits of public administration and business schools and has become the focus of sustained academic research. As Paul Light, a professor of public administration wryly stated, "There appears to be plenty of evidence that social entrepreneurship exists, particularly when measured by the rapidly increasing number of conferences, case studies, and funders interested in the topic" (Light 2005:1).

It has been posited that social enterprises have a unique role to play in society as they are 'better able to organise the efficient production of particular goods than are for-profit enterprises, public agencies, and traditional non-profit organisations' (Bacchiega and Borzaga, 2001).

Social Enterprises can be situated within the evolutionary trajectory of the 'social economy' which 'began in the nineteenth century and incorporated organisations such as co-operatives, mutual benefit societies and associations' (Laville and Nyssens, 2001, p. 312). This spectrum of organisations which are, from an international perspective, part of the 'Third Sector' seem to have a unique set of characteristics – when compared   to capitalist firms – which is that ' the material interest of capital investors is subject to limits, and in which creating a common patrimony is given priority over a return on individual investment'(ibid, p. 315).

There have been some interesting discussions on how social enterprises hybridise the three different poles of our economies to serve social needs. The three poles are posited as:

1) *The market economy* where circulation of goods and services take place in a market setting

2) *The non-market economy* where the circulation of goods and services takes place under the auspices and jurisdiction of the welfare state, where there is a redistribution   and

3) *The non-monetary economy* where goods and services are exchanged on the basis of reciprocity. (Laville and Nyssens, 2001). It could be argued that social enterprises are a hybridised form of capitalism and that they probably represent a higher evolutionary form of capitalism.

The other important feature that distinguishes social enterprises from capitalist firms is that social enterprises focus on 'the collective benefit', benefits that accrue to the whole community in which they operate and not just for the ownership. As argued by Laville and Nyssons(2001) the 'collective benefits are not simply induced by economic activity but are, rather, a dimension claimed by those who promote and actually undertake the activity'9p. 319). The very pursuit of collective benefits acts as the spur and motivation to setting up of social enterprises and the very incentive of initiating them. While in capitalist enterprises 'the positive externalities discourage the private investments by socialising the benefits' (Callon, 1999), in 'social enterprises the positive externalities are among the reasons why stakeholders join a collective action to create economic activity' (Laville and Nyssons, 2001).

Why Social Enterprises now?

The corporate world has begun to give due importance to ethical behaviour. 'Ethics is one of the oldest projects of humanity and there can be no end to *rethinking ethics* in our economic affairs.' (Zsolnai, 2002). Major corporations and multi nationals are beginning to take the stand that 'we have a chance to improve the general quality of our economic activities only if our motivation is *genuinely ethical.'* (ibid). Those at the top of the corporate ladder are beginning to look at the world differently these days. Global warming and the limits to exploitation of natural resources have made them look at the future market in a distinct perspective.

Capitalist thinkers are articulating ideas that for the very first time talk about 'sustainability', not just in terms of profitability but in terms of the global environment and reaching out to and lifting up the poor of the world – language and ideology that is embedded with ethical imperatives and very close to that of social enterprises." The corporate sector can be the catalyst for a truly sustainable force of global development for all on the planet" (Hart, 2004, p. xxxi)

Capitalism is straining at the seams to look at the disadvantaged and offer goods and services that will not only serve their unmet needs but give them livelihoods and lift them out of their poverty traps. There seems to be an ethical edge to the emerging trends in the corporate world. As Hart argues, "you cannot purely pursue greater profitability every quarter and have that be an acceptable mission statement". (ibid, p. xxxi). It is becoming fashionable in the corporate world to make statements like how it is unacceptable when 'improving the lives of workers in one country while degrading the environment in another' and it is definitely not a good 'demonstration of civic responsibility' (Hart, 2004).

Hint of a move towards a social enterprise thinking in statements like "there is no inherent conflict between making the world a better place and achieving economic prosperity for all" (Hart, 2004); and there definitely can be 'a scenario in which business can generate growth and satisfy social and environmental stakeholders'(ibid). There is an argument made for "…a new business paradigm… (with) the unassailable truth that shareholder value can be created while solving social and environmental problems" (ibid, p. xxxiii).   This is in line with the 'multiple bottom-line approach of social enterprises.

This has occurred at this historical juncture mainly because of the point of no return that has been reached in the march of human progress where everyone – irrespective of their socio-economic position in relation to each other – realises that 'we are all fundamentally linked, dependent on the same finite sources and driven by the same hopes for ourselves and our children'. (ibid). This has led to a cry for 'a new private sector-based approach to development that creates profitable businesses that simultaneously raise the quality of life for the world's poor, respect cultural diversity, and conserve the ecological

integrity of the planet for future generations'.(ibid, p. xxxxvii).

The other driver in this direction is this whole notion of and concern about Corporate Social Responsibility. Debates about the social responsibilities of corporations are not new. However, 'the degree to which CSR has been embraced, represents a significant development in redefining the relationship between capital and civil society' (Andriof *et al.*, 2002; Weiser and Zadek, 2000).

In the recent years the evolution of CSR has become a 'two-way process of interaction between business and civil society' (Burchell and Joanne, 2006). Big corporations want to be seen as having a soft side. Greater public concern over their activities – the aggressive pursuit of maximum profits - has highlighted the importance of protecting the brand-image, as well as the need to demonstrate a corporation's socially responsible attitude in its interactions with consumers and suppliers - and the communities in which they operate, in order to maintain its social capital (Nahapiet and Ghoshal, 1998). This has led to more serious attempts at better handling the process of "stakeholder management", focusing in particular upon the identification and management of relationships with stakeholders beyond the traditional confines of shareholders and employees. (Blair, 1998; Donaldson and Preston, 1995).

The East London Business Alliance – ELBA – an association of major corporate companies operating out of London is working closely   with Voluntary and Community organisations(NPOs) as part of their CSR agenda. Senior managers and corporate leaders get into the communities and work with different sets of user groups and communities and offer their skills and expertise to the organisations at the grass roots – hinting at a growing tendency in the corporate world to 'give something back to the communities'.

Emergence of new forms of ethical institutions:

Non Profit Organisations - voluntary and community organisations and especially social enterprises – are developing new forms of institutions with ethical imperatives. These institutions are promoting 'capabilities' for the underprivileged and disadvantaged and these developments can be seen as ethical responses to social injustice and inequalities. These organisations are dealing effectively with some major dichotomies in society today.

One form of the dichotomy is the idea of two "levels" or "domains" of activity. A well-argued form of this dichotomy is that of Habermas (Habermas, 1987) and others: on the one hand, activity in the *public sphere*, in which the actors are institutions and other social formations, governed by laws, rules and social expectations; on the other hand, individual activity, manifested for example in the ever-shrinking *private sphere*. While a dichotomy between private and public domain has merit, it cannot provide a foundation to resolve the problem before us, because it leaves out the cultural landscape which conditions the relations between public and private spheres.

Another form of the dichotomy is that formulated by Agnes Heller (Heller, 1988, p. 164) and Robert Putnam (Putnam, 1993, p. 175, Putnam, 2000, p. 21) among others, between the 'thick ethos' which pervades and regulates the activity within institutions, and the 'thin ethos' which extends across the entire society, regulating interactions between strangers.

In my study of and involvement in social enterprises I see that they are beginning to deal with these dichotomies and are creating processes whereby there is 'empowerment' of communities that is characterised by the 'thin ethos' of social capital acting as the glue. At an institutional level the thick ethos is beginning to thin because of the active participation of the multiple stake holders in managing and running those institutions. New sets of norms and rules that govern these institutions are emerging and these are emerging as a result of collective and in fact broad based involvement of communities and user groups.

Characteristics of social enterprises

The ethical-institutional response of social enterprises to social injustice and inequality is alluded to in the statement that "Social enterprises have a triple foundation: people's daily practices, the symbolic exchanges and relations which provide the everyday framework of community life and the aspirations,

values and desires of the people who use them". (Laville and Nyssons, 2003, p. 321)

Let us look a little more closely at how social enterprises build people's freedoms and capabilities and work at both the levels of economic parity and recognition of differences.

Proposition 1

Social enterprises nurture multiple stakeholders, including whole communities.

Renooy (2001) gives a good account of the Neighbourhood Development Schemes of the Netherlands called Buurt Beheer Bedrijven(BBB). These schemes inspired by the Regies de Quartier of France have the following goals:

- enlarging participation of the residents in the management of the neighbourhood;
- improving the income position of people of minimum incomes;
- breaking the social isolation of certain groups(long-term unemployed, migrants, the elderly);
- improving the daily upkeep of the neighbourhood. (Renooy, 2001)

The activities of the BBBs which include commercial activities that achieve social goals and community activities like collection of waste essay, recycling centres, running of bicycle stores, collection and disposal of injection-needles (for drugs), garden maintenance and graffiti removal. These are complemented by other activities that provide work experience to marginalized groups, offering a way out of social isolation. These comprehensive set of services and initiatives exhibit a nurturing element for the whole community.

Closer to home(UK) there is the Asian Restaurant in East London run and managed by Bangladeshi housewives. These completely excluded women – about 12 of them - who were facing complete isolation because of language issues and dependency were picked up by Ms. Ruhan Chowdhury who trained them in industrial cooking, waitering and restaurant management and got them going as an enterprise. These women are a testament to the nurturing they received as part of setting up the enterprise. These women were not just 'factors of production' but human beings in need of nurture and care. With the accruing profits Ruhan is planning to set up two other such restaurants.

Proposition 2

Social enterprises build activities on relationship based networks – social capital and mutualities

There are lots of discussion on how social enterprises are primarily dependent on inter-personal relationships they have created and nurtured. Evers (1995) talks about how social enterprises crate a dimension of 'public space in civil societies' with networks of relationships. Laville and Nyssons(2001) take this idea further; "By placing citizens in a situation different from the one conferred upon them as consumers or as recipients of assistance, these(public) spheres allow them to organize activities that they judge relevant to the problem they are facing. Such spheres are organized on the basis of inter-personal relations and from the very start form part of the 'concrete sphere of inter-subjectivity" (p. 320)

This sphere of inter-subjectivity allows exchanges that are denied in other spheres and they 'open up spaces for public dialogue and force into the discursive domain aspects of social conduct that previously went undiscussed, or were "settled" by traditional practices' (Giddens 1994, p. 120). This is demonstrated in the area of personal services, where this service sector facilitate 'equity of access and are responsive to user demands' (Laville and Nyssons, 2001). Here the elderly and their carers/families are involved in defining the 'contours of home assistance and professional interventions is based on the picture that emerges from this. The role played by the users is quite decisive in the creation of the enterprise itself and as Laville and Nyssons(2001) point out the " three pronged relationship that brings together the association, its users and its salaried workers not only give families an active role but also enables them to step back and evaluate the situation collectively" (p. 321).

Thus social enterprises not only have relationships as their starting point but are continuously and constantly dependent on these relationships to survive and succeed. It is their ability to mobilize social capital and grow it that sets them apart from capitalist firms and indicative of their push for social justice.

Proposition 3
Social enterprises take care of the developmental aspects of various stakeholders in them. Process becomes more important than product.
Social enterprises not only take care of local development like economic and social development of local areas they also cover some of the other categories like 'community services, environmental improvement/development, cultural development(media and entertainment), transport services with a local orientation and special educational services)e.g. for ethnic minorities'. (Spear, 2001, p. 260. in Borzaga and Defourney). There are social enterprises actively engaged in regeneration of areas, focusing on developing the area so that the benefits are enjoyed by the community. Some of these are engaged in a variety of projects like managed workspaces for small enterprises, improving the environment, community transport, business advice to small businesses, city farms and housing improvements.

And when it comes to some special groups like the disabled and those with learning difficulties social enterprises focus on their intellectual, emotional and mobility/communication development. Training these groups for employment means not just a matter of giving them specific job skills training but to help them pick up other key life skills like people skills and communication. The enterprises in this area give a lot of emphasis for the process – the process of transformation of the users – while the employability skill acquisition is important as well. Many social enterprises thus have a 'transformational' quality and these organizations can thus be categorized as 'transformational organisations' – an argument that this author is interested in developing further.

Proposition 4
Social enterprises 'keep it all in the family', by the mechanism of asset lock or no-profit distribution
It has been established well how social enterprises are organizations that belong to stakeholders other than investors (Laville and Nyssens, 2001). They also incorporate specific goals of 'service to the community'. What distinguishes them from normal capitalist firms is their 'diffused ownership', as discussed earlier, and the surpluses accrued are ploughed back into the community initiatives. Here "collective benefits are not simply induced by economic activity but are, rather, a dimension claimed by those who promote and actually undertake the activity" (ibid. p. 315). Bacchiega and Borzaga (2001) argue how this limited profit distribution criterion is very important for social enterprises and this powerful mechanism sends a 'signal for the stakeholders and the outside world, of the real objectives of the organisation' (p. 289).

This established practice and norm of no-profit distribution of social enterprises has been now institutionalized from the state's point of view by the recently introduced legislation on Community Interest Companies (CICs) in the UK, stipulating asset lock as mandatory for social enterprises.

Conclusion
Social entrepreneurs use language that is underpinned by ethical considerations. They speak of wanting to be 'fair and just' for every one and uphold the value of equality, while believing in Humanism. They are interested in 'changing lives' and 'empowering communities' and I find these to be strong ethical imperatives. The institutions they spawn have different set of norms and rules where recognition of difference, identity and participation are paramount. I argue therefore that social entrepreneurship is an ethical response to social injustice and inequality.

References

Andriof, J., Waddock, S., Husted, B., Sutherland Rahman, S. (Eds) (2002), *Unfolding Stakeholder Thinking: Theory, Responsibility and Engagement*, Greenleaf Publishing.

Sheffield.Blunden, (2007) "Mind, Culture and Activity" volume 14 (4), 2007

Blair, M.M. (1998), "For whom should corporations be run? An economic rationale for stakeholder management", *Long Range Planning*, Vol. 32 No.2, pp.195-200.

Donaldson, T., Preston, L.E. (1995), "The stakeholder theory of the corporation: concepts, evidence and implications", *Academy*

of Management Review, Vol. 49 No.1, pp.65-91

Evers, A. 2001, The significance of social capital in the multiple goal and resource structure of social enterprises, in Borzaga, C and Defourny, J (Eds.) *The Emergence of Social Enterprise,* Routledge, London

Fraser, (1997), *Justice Interruptus*, Routledge, London

Giddens, A, (1994), *Beyond left and Right, The Future of radical Politics,* Polity press, Cambridge

Habermas, J. (1987). *The Philosophical Discourse of Modernity*, MIT Press.

Hart, S. L. (2005), *Capitalism at the Cross Roads,* Wharton School Publishing, New jersey

Heller, A. (1988) *General Ethics*, Blackwell.

Laville, J.L. and Nyssens, M, 2003, The Social Enterprise: towards a theoretical socio-economic approach, Borzaga C and Defourney, J. (Eds) *The Emergence of Social Enterprise,* Routledge, London

Nahapiet, J., Ghoshal, S. (1998), "Social capital, intellectual capital and the rganizational advantage", *Academy of Management Review*, Vol. 23 No.2, pp.242-66.

Nussbaum, M, (1999) *Sex and Social Justice*, Oxford University Press, London

Putnam, R. D. (1993). *Making Democracy Work.*, Princeton University Press

Rawls J. (1972), *A Theory of Justice*: Clarendon Press. Oxford

-------. (1996), *Political Liberalism* Columbia University Press. New York:

Renooy, P.H, (2001), The Netherlands: Neighbourhood development enterprises, in Borzaga, C and Defourny, J (Eds.) *The Emergence of Social Enterprise,* Routledge, London

Sen, A.K. (1999.a), "Democracy as a Universal Value" *Journal of Democracy* vol 10, n 3, 3-17.

-------. (2002), *Rationality and Freedom* (Cambridge MA: Belknap).

Sen, A (1999): *Development As Freedom.*: Alfred A. Knopf. New York

-------. (1985a): *Commodities and Capabilities*: North-Holland . Amsterdam

Spear, R. (2001), United Kingdom: A wide range of social enterprises, in Borzaga, C and Defourny, J (Eds.) *The Emergence of Social Enterprise,* Routledge, London

Weiser, J., Zadek, S. (2000), *Conversations with Disbelievers: Persuading Companies to Address Social Challenges*, Ford Foundation, New York

Zsolnai, L (ed.) 2002, *Ethics in the Economy. Handbook of Business Ethics*. Oxford, Bern & Berlin:. Peter Lang Publishers.