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Inside Baseball and Ethics Consultation: A Comment on "Ethics Been Very Good to Us"

Norman Quist

For the function of language in speech is not to inform but to evoke.
—Jacques Lacan, *Écrits*

ABSTRACT

In response to the article by Scofield,¹ I consider the *that*, *how*, and *why* of ethics consultation, moral expertise, and the rules of the game. The question still to be engaged is, how does all of this work out for patients and families?

In his commentary, Giles Scofield makes the most of his opportunity. The commentary is witty, sly, refreshing, and challenging: it shows that the author understands inside baseball—he calls them like he sees them. And, we can safely bet that some readers will disagree with the calls, perhaps with chants like “the umpire needs glasses.” But Scofield does not don the uniform of an umpire. Is he perhaps a player? Or is he a fan for the opposing team? We just don’t know. Yet, those in attendance at baseball games are not called spectators, but fans. Are there any disinterested fans?

This brings to mind the story about the three umpires discussing how they officiate games. Each was bragging as to who did the best job. Said one: “I call them as I see them—and no one can do better than that.” The second re-

torted, “That’s nothing: I call them as they are.” The third paused a moment, and finally added: “They ain’t nothing until I call them—and then that’s what they are.”² The story, in the telling, serves umpires, players, and fans alike: it is a comment or joke about power, identity, and, arguably, hubris—it is self-defensive. For players, and for the fans, who are just as much in the game, the joke works because it relies on a common frustration, uncertainty, and tension about the “rules of the game”; how umpires apply the rules and sometimes make the calls that they do—how they get it wrong.

So here are the questions that Scofield’s article raises for me, and for the game itself—and this is where the competing methods for umpiring figure significantly on how the game is played, if it is fair, and in managing disagreements and outcomes.

What is it that we know, don’t know, or are uncertain about what ethics consultants do—Scofield’s “whatever *that* is”? Is this an open question, or a rhetorical foil? We need to be clear on this. It seems to me that the greater uncertainty is not what they do, *per se*, but how they do some of the things that they do (perhaps a question of method and theory). Several articles have highlighted that there is a family resemblance to the *that* they are doing—and these

activities have been reported quantitatively and qualitatively (sometimes to my dismay). Are there stronger unifying features to these activities? If the reply to these questions is yes, then is it reasonable to inquire if what's being done can otherwise be done well or poorly? In other words, what are the fundamentals of the game and how ought it to be played? And when might we confidently say to the players, "good game"?

The specter of an "ethics disaster" may well be a ruse to frighten the players or the fans, but then, it does seem to have some content and context. Have we not read about newly minted ethics consultants who, lacking in clinical experience, had some measure of book knowledge but no patient knowledge, and no knowledge of patients? "Yes, I know the four principles . . . so. . . ." (pitched without a unifying theory). And if we talk about practicing "safe ethics," it must be because ethics consultation is not auto-erotic. Like sex, *pace* Lacan, we do it with others, but whether we do it well or poorly—or just think that we do—is only known when several features of the interpersonal relationship are considered. In other words, we can always ask, "Was it good for you?" And what harm was done, if any, is difficult to get at, especially given the emotional and interpersonal stakes. Do we know the other well enough to presume that the consult was a home run—or a foul ball? If it was the latter, might there be unspoken or latent harms? Given how the game is currently played, Scofield may infer that absent an expression of harm there is no foul—and he may be right. But one can wonder, did the consult help? Moreover, can we confidently say, following Scofield, "there is no reason to believe the public is at risk. . . ."? What would it mean, and require, to successfully field these questions?

Now, on the question of antitrust and guild practices, it remains unclear how different the move to credential ethics consultants is from a similar move in medicine for physician licensure and educational standards, from early efforts by doctor-practitioners themselves and appeals to state legislators to the Flexner Report³ of 1910, where legislative action followed, which was then followed by later control by the American Medical Association. The develop-

ment and evolution of these efforts and practice, and the implied motivation, are too detailed and intertwined to take up here. It seems, however, that efforts begin as early as the 17th century.⁴ Similar critiques to those made by Scofield against licensure of ethic consultants—and their motives and interests—have also been made against the AMA as protectionist and engaging in cartel-like practices. Read: there may be more similarities than differences on this front (granting that Flexner was also focused on quality of training and outcomes, and a response to extant harms).

Scofield's taunts to the players on the field about "a small group of ethics consultants [having] a better 'truth trap'" recall questions about moral experts⁵—how to make sense of this claim, what it implies or requires. Would "experts" require know-how or know-that, both—or something more (know-why)? Scofield puts tough questions. He wants to protect the "free market of ideas, especially moral ideas. . . ." A market where the atmosphere is the "rough and tumble of a democratic society." Here it's unclear when, and whether, Scofield's concerns are with efforts to field a team, join a league, or simply play a game of catch. I will set aside, for now, these questions, and the interests of the crowd—legitimate interests in a democratic society—and turn to practice: how can a conversation at the bedside best accommodate, if not encourage, the "free market of ideas"? When, if ever, should it become "rough and tumble"? Stepping back: even if we are guided by the beacon of moral pluralism (or is it a strobe light?), for the sake of argument, it remains in bounds to inquire about reasons and reasoning—and perhaps to put in practice, when asked, how one might go about thinking (structurally and methodologically) through ethical questions (whatever they are) and addressing uncertainty. It is unfortunate that some practitioners—and some critics—may see this activity as more like throwing thunderbolts from Olympus than as a conversation between equals.

When Scofield warns that ethics consultation is "not simply the philosopher-king's new clothes . . . it's also the new philosopher's stone," we can legitimately wonder if he has gone too

far, imagined too much. Surely Scofield and any philosophically aware ethics consultant will recall that the true philosopher eschews being king. And, if there is a “philosopher’s stone” to be uncovered anywhere in our discussion, its evidence is certainly in the comments quoted from Callahan: these are pure gold (and, parsed, deserve hours of reflection). Callahan pitches his role as a specialist in ethics: “people pay money to hear me . . . they visit me to solicit my views, and buy my books with the expectation that I will have something useful to say about making good moral judgments.”⁶ But the gold here is in the association that Callahan makes next (as quoted by Scofield), when he says, “I like this kind of life [as a specialist in ethics], but I’ve never been entirely comfortable with it.”⁷ Callahan has thrown us a curve—an insight.

Stepping away from the game, we wonder, what is the source of Callahan’s discomfort—his distress? After all, from the context provided, those who seek out Callahan are not so different from those who sought to have a conversation with Socrates—or the Sophists; they thought, or had heard, that he, or they, had something useful to say about making good moral judgments. Presumably they, like Socrates, were preoccupied by the same question, the same desire: how best to live. Callahan surely made these connections. Perhaps his discomfort was an expression of humility: an appreciation of the complexity and uncertainty of living—the creative challenge of living well, and the irony in being sought out as “one who is supposed to know.”⁸ Perhaps he was uncomfortable for the very reason that he was thinking about Socrates. What would Socrates make of a specialist or expert in ethics?

While I have highlighted, with obvious limitations, questions raised or evoked in my reading of Scofield, my intention has been to keep these questions, and the conversation itself, in play—the call on moral experts, who officiates, how the game is played and played well, and the process of writing the official rules of the game; in all, the that, how, and why of ethics consultations. The question I have not engaged is, how does all of this work out, on game day, for players and fans: patients and families? As announcers at the ballpark frequently remind

us, “it’s about the fans.” Which reminds me, have you heard the story about the three ethics consultants who are discussing . . . ?

NOTES

The epigraph is from J. Lacan, *Écrits: The First Complete Edition in English*, trans. B. Fink (New York: Norton, 2005), 247.

1. G.R. Scofield, “Ethics Been Very Good to Us,” in this issue of *JCE*.

2. J.T. Doby, *An Introduction to Social Research* (Harrisburg, Pa.: Stackpole, 1954). Dave Wilton notes, “the phrase, ‘it ain’t nothin’ until I call it,’ is commonly attributed to one of two baseball umpires, either Bill Klem (1874-1951) or Charlie Moran (1878-1949),” http://www.wordorigins.org/index.php/site/comments/comedy_and_philosophy/, accessed 15 May 2012.

3. A. Flexner, *Medical Education in the United States and Canada* (Boston: Merrymount, 1910).

4. See P. Starr, *The Social Transformation of American Medicine* (New York: Basic Books, 1982).

5. As it is raised in this commentary, a reader might easily come away with the impression that the nature of moral expertise—if there is such a thing—and a discussion of moral experts or expertise in applied ethics has been a neglected question: it has not. Rather, the conversation has been extensive and engaging. A sampling of the literature includes: P. Singer, “Moral Experts,” *Analysis* 32, no. 3 (March 1972): 115-7; R.W. Burch, “Are There Moral Experts?” *Monist* 58, no. 4 (October 1974); H. Tristram Engelhardt, Jr., “The Ordination of Bioethicists as Secular Moral Experts,” *Social Philosophy and Policy* 19, no. 2 (Summer 2002): 59-82; D. Archard, “Why Moral Philosophers Are Not and Should Not Be Moral Experts,” *Bioethics* 25, no. 3 (March 2011): 119-27; B. Gesang, “Are moral philosophers moral experts?” *Bioethics* 24, no. 4 (May 2010): 153-9; K. Tobia, W. Buckwalter, and S. Stich, “Moral Intuitions: Are Philosophers Experts?” (6 September 2011); L.M. Rasmussen, *Ethics Expertise: History, Contemporary Perspectives, Applications* (Dordrecht, The Netherlands: Springer, 2005); J.D. Moreno, *Is There an Ethicist in the House?: On the Cutting Edge of Bioethics* (Bloomington, Ind.: Indiana University Press, 2005).

6. D. Callahan, “Professional Morality: Can an Examined Life Be Lived?” in *Philosophical Perspectives on Bioethics*, ed. L.W. Sumner and J. Boyle (Toronto: University of Toronto Press, 1996), 9.

7. *Ibid.*

8. Reminiscent of Lacan’s “subject supposed to know” (le sujet supposé savoir).