Towards a Democracy-Centred Form of Ethics Review

LEVER, Annabelle

Abstract

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Towards a Democracy-Centred Form of Ethics Review

Annabelle Lever

Associate Professor of Normative Political Theory

The University of Geneva

Annabelle.lever@unige.ch

Presented Dec. 19, 2011

Cove Auditorium A2 0/12

Thank you for inviting me to this workshop on fundamentals in ethics review. I particularly appreciate the invitation because I have been thinking about questions of methodology in ethics for a while, but my experience with the ethics review of security proposals helped to convince me that the things I had been pondering were worth developing, and might be of practical use to non-philosophers. So the ideas I will be presenting today reflect my academic work on democratic theory – on problems of privacy, equality, security, justice and intellectual property - and my experience as an ethics evaluator last year.  

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1. INTRODUCTION

Three Problems make ethical life difficult for us, and explain the importance of an ‘ethics review’ of scientific research. The first is that we lack a table of weights and measures which would enable us to evaluate the relative importance of our different values and rights - such as rights to life and liberty. The second is that we lack a dictionary which can tell us what ‘life’ and ‘liberty’ mean, given than these words can have rather different senses, and which one we chose may well affect our conclusions about the value of research or of different public policies. Finally, we have no handbook, which tells us what to do when our values and rights conflict. Worse still, it is not as though we can wave some magic wand and make these problems vanish, nor can we make them go away by ‘trying harder’, ‘being less selfish’, or ‘more sensitive’ or ‘reading more’. Hence, the aim of this talk is to clarify the nature of these three problems, their significance for ethical review, and the ways in which a democratic approach to ethics might help us to address them.

1 Copies of my academic papers and of invited presentations on security can be found at www.alever.net. However, On Privacy (Routledge, 2011) is a short book, written for a lay audience, which provides the most accessible and developed example of the methodology which I will be sketching today, and of its implications for the evaluation of public policy.
The goal we are aiming for, I assume, is to help scientists to anticipate the ethical issues that will affect the review of their work, and their chances of having it funded, and to see how they might begin to address these in their proposals without having to rely on ‘ethics experts’ for help. Granted that special ethical expertise may be desirable, even necessary, when scientists carry out particularly complicated or sensitive research, scientists should not have to rely on special expertise in order to put together a successful research proposal and to show that they understand, and have plans adequately to handle, the ethical aspects of their work. So, I assume that my goal today is to help you to help them to anticipate and successfully respond to ethical requirements, through the way that you frame research calls and evaluate the results of those calls. After all, if their research is to help us, it is essential that we make it as easy as possible for them to write the applications that will show that their research will, indeed, benefit us all.

So, let’s start by looking at the three problems for ethical thought and action in a bit more detail, in order to see why they arise and why they will not go away. Then we will be in a better position to see how they can guide us in thinking about ethics, and how we can find ways to handle, or live with, the challenges that they present.

2. THREE PROBLEMS FOR ETHICAL THOUGHT AND ACTION

To reiterate: our three problems are:

1. No Table of Weights and Measures telling us how to evaluate competing ethical considerations, such as values or moral and legal rights.
2. No Dictionary to guide us when we are faced with competing interpretations of ethical considerations, such as values and rights.
3. No Handbook explaining what we should do when competing ethical considerations conflict – and, in particular, what we should do when rights conflict, given that rights are meant to pick out particularly important moral and legal considerations.

Why do these problems arise and why cannot we just get rid of them by thinking harder or trying to be more moral? The answer is that ethical life has an irreducibly pluralist dimension, which means that there are, inevitably, many different ethical considerations which we need to take into account when deciding how to act. Moreover, the moral weight we should attach to these different moral considerations is not always clear, so that ethical life, very often, feels more like an effort to evaluate incommensurables – to compare apples and oranges, say – than a set of calculations within a common framework, or sharing a common denominator, as when we add up the value of 20 apples plus 50 apples plus 2 apples.
So, our first problem is that when values conflict – the protection of life and liberty, say - we don’t always know what to do. And the reason why we don’t know what to do is that while protecting life is, clearly, an important ethical value, so too is protecting liberty. And as people are often willing to sacrifice their lives in order to secure liberty for others – and because we can understand and admire these sacrifices, even when we regret them – we cannot say that the protection of life is always worth more than the protection of liberty. That, in turn, has implications for our third problem: because if life isn’t always more important than liberty, we will have to abandon or significantly revise a common picture of rights that we may have in our head. (Anyway, I had it in my head for a long time, and think that this picture of rights may, partly, explain why scientists working on security find it difficult to see that there ARE ethical questions to be asked and answered about the justification of their research, even if it protects life).

2a. The Olympic Table of Rights, and Its Problems

Let’s call this intuitive, but misleading, picture of rights the ‘olympic medal table of rights’. It looks rather like this: In gold position we have rights to life; in silver, rights to liberty; in bronze rights to equality and, as runners-up, we have rights to solidarity and any other important rights you care to mention.

This picture of rights seemed to make sense of the disputes people have about rights – since people on the left, for example, seemed to be assuming that people’s claims to equality are at least as important, maybe more important, than their claims to liberty. Thus, some ethical disputes seemed to be over whether rights to liberty and equality should share the silver medal position, or whether we should accord a higher ranking to equality, rather than to liberty. It also seemed that we could understand disputes about taxation and economic policy in terms of questions about where to locate property rights on this grid – should they be slotted into silver position, say, because we think of them as included in our rights to liberty, or should they have a place of their own – in fourth position, perhaps, after equality, or in bronze position, after liberty? And then this way of thinking about rights also seemed capable of making sense of more corporatist or collectivist conceptions of morality, by interpreting their claims about ethics in terms of the medal position of social solidarity or community, as compared to liberty or equality.

If this picture of rights were correct, once we’d sorted out the correct way to rank our values – once we’d handed out our gold, silver and bronze medals– our three ethical problems would be fixed. We mightn’t always know how to classify a particular ethical problem – to decide if we’re looking at a case of liberty in tension with equality, or of property with solidarity, say - but once we have resolved that descriptive and classificatory, it would seem that we just need to apply our rankings of importance, and then act accordingly.

However, the difficulty with this intuitive picture is that it just doesn’t seem true that life is always more valuable than anything else. Nor is it at all clear that we can rank the
importance of liberty, equality, solidarity in the way that this intuitive picture supposes. So, the irreducibly pluralistic nature of ethical considerations seems to illuminate our first and third problems – the lack of a table of weights and measures, and the lack of a handbook which tells us what to do when rights conflict.

But if we return to the difficulties with the ‘Olympic medal table of rights’ we can see that the problem isn’t just that liberty sometimes seems more important than life, or that intelligent, morally sensitive people disagree about the relative importance of equality and solidarity, but that at least some of these disagreements reflect the fact that we think of the content of our values differently. Hence, the reasons to abandon the ‘Olympic medal table of rights’ have implications for the second of our problems in thinking and acting ethically: the lack of a dictionary to tell us how to understand the meaning of words such as ‘life’ and ‘liberty’ for ethical purposes.

2b. Chocolate Buttons v. Chocolate Mousse

For example, part of our difficulties in ranking values in a nice neat way – gold, silver and bronze, for example - is that we don’t have a common system for describing and categorising values which would enable us to say, ‘Oh, look over there! That’s an example of the value of life!’ Or ‘Look over there! There’s an example of liberty (or equality, solidarity etc)!’ So we often find it hard to know whether the right to vote is an example of a right to liberty, a right to equality or both, or whether laws against discrimination help to protect social solidarity, as well as liberty or equality. And the reason for these difficulties is that our values don’t come in nice neat parcels, like chocolate buttons, which can be easily distinguished. Instead, most of the time, we are faced with something more like a chocolate mousse, in which the eggs (liberty) are blended with the chocolate (life) and other ingredients (equality, solidarity etc.), and where the fact that they are blended is, in part, why the end result is so delicious…. or why our ethical life is so rich.

3. DEMOCRACY AS A GUIDE TO ETHICS

We’ve had a look at our three difficulties with thinking and acting ethically - the difficulty of ranking values, the difficulty of interpreting values, and the difficulty of deciding how to protect different values. And we have some idea why these problems cannot be wished away, or resolved just by trying to be more careful, more thoughtful, more hard-working, more altruistic....more moral. So, our problem now is what, if anything, can we do about these problems given that we still have decisions to make about the research we want and the best way to do it, and given that the decisions we make can affect people’s lives, liberties, equality and solidarity for many, many years to come? The answer to that question, I suggest, is to take democratic values, institutions and procedures as a guide to ethical problem solving. In the rest of this talk I will try to say something about what this involves, and how it may help you in your work. In Part 3 I will sketch the ways in which
democracy can help us to handle our ethical problems, and in Part 4 I will examine these in more depth and in Part 5 I will draw out their implications for ethics review. The conclusion briefly compares this method of ethical evaluation to more traditional conceptions of applied ethics.

3A. The differences between democratic and undemocratic governments can serve as a way to narrow down or constrain the ethical problems we need to handle, thereby limiting the disagreements about the interpretation and evaluation of values such as life, liberty, equality, solidarity. So, for example, we can reject as irrelevant for our purposes (because unacceptable morally) conceptions of life, liberty, equality or solidarity which are incompatible with the idea that people are entitled to govern themselves. This means that we do not need to worry about conceptions of liberty which ascribe it just to the wise or the virtuous – and therefore do not need to waste time interpreting and evaluating most paternalistic and authoritarian conceptions of liberty, any more than we need to worry about plutocratic ones, which imply that liberty is just for the rich.

This clearly has implications for formally egalitarian, but nonetheless substantively ingalitarian theories of liberty, such as the conception of liberty associated with Robert Nozick’s *Anarchy, State and Utopia*. Nozick supposes that our liberty is consistent with voluntarily enslaving ourselves, and with a great variety of forms of undemocratic government. So, Nozick’s conception of liberty is unsuitable for evaluating research which is concerned with preserving the freedom and rights of people who are entitled to govern themselves. Something similar is likely also to be true for the conception of liberty implicit in Milton Friedman’s famous defence of free market capitalism against more social democratic alternatives in *Capitalism and Freedom*. But fully to consider these points, and their implications for the ethical evaluation of research would require us to engage more fully with the details of these theories of justice....and we can leave that for another day.

3B. We can take the differences between democratic and undemocratic governments as a relevance test for the facts we have to consider when evaluating contrasting ideas about ethical action, or evaluating competing claims about the likely consequences of a given policy or piece of research. This is important, because institutions can shape behaviour, by structuring our preferences and motivations, and by creating opportunities as well as forms of punishment and reward. So claims about how people are likely to behave, and what they are likely to want or believe often depend upon a set of assumptions about the institutions within which people live and will interact. These assumptions are often implicit and it is therefore important to try to make them explicit and to consider how far they reflect forms of power, authority, opportunity and punishment which are consistent with democratic government.
For example, ideas about women’s desires and motivations need to consider the possibility that these are ‘adaptive preferences’, which make it easier to cope with unjust forms of male power (abusive or exploitative husbands, dominating and sexist fathers and brothers, unequal wages and prospects of job satisfaction, promotion etc.) Once one considers that only sixty years ago many black people in the United States were unable to vote, and that the same was true for women in some European countries, it becomes clear that a lot of social scientific research about the desires and capabilities of these two groups needs to be treated with circumspection.

Or consider claims about ethnic, religious or class antagonisms. While it is apparent that even established democracies have some groups who attribute their misfortunes and sense of alienation to the malevolence and misdeeds of ‘others’, characterised racially or in terms of their religion or class, it is equally apparent that people’s personal and political identities are more fluid in democracies than in societies which lack freedom of movement, of association, of expression and of political and personal choice. So assumptions about enduring or ‘natural’ hostilities, affinities, identities and alliances are ones that we can generally put to the side as irrelevant to the understanding of behaviour in democratic governments, and as ones that we need to treat with care, in so far as we wish to affirm the possibilities for self-government of peoples who do not yet live in societies with democratic governments.

3C. We can take the differences between democratic and undemocratic governments as a methods guide to the ways to investigate and resolve our ethical problems. In particular, we can use democratic ideas about representation, participation, accountability, mediation and judgement to help us think about the different institutional devices which might improve our ethical judgements and facilitate ethical action.

Very often, when thinking about ethics we tend to abstract from precisely the institutional devices which, in ‘real life’ we use to try to understand the dilemmas we face and the best way to handle them – and then we wonder why we find ‘ethical reflection’ so unhelpful and unsatisfying! Of course, ethics often requires us to ‘stand back’ or to ‘abstract from’ what we know, believe, desire and so on, in order to see whether we are right to treat our current beliefs, desires and intuitions as guides to ethical action. But the fact that this is necessary and desirable does not mean that we should forget that our familiar institutions and practices, with all their imperfections, may help us to think about what is ethical, and how to put what is ethical into practice. As we will see, this is particularly important for ethics reviews, where questions about participation, representation, accountability and mediation are often critical to the ethical differences between one proposal and another, or to the reasons why one proposal may require greater outside supervision, if it is to be ethically
acceptable, whereas another, seemingly similar scientific proposal, may not. In the rest of the talk I will say something briefly about the role of democratic government in ethical thinking and its significance for the ethical evaluation of scientific research before closing with some thoughts on why this way of approaching practical ethics may be preferable to those with which you (or I) may be familiar.

4. DEMOCRATIC ETHICS IN PRACTICE

Our starting point, I assume, is that we have ethically significant reasons to prefer democratic government to the alternatives. These reasons, in turn, suggest that we can and should treat the differences between democratic and undemocratic governments, as best we understand them, as a guide to handling the ethical problems that we face when framing and evaluating publicly-funded research and public policy.

Of course, democratic governments come in many forms, and it isn’t always clear whether a given government is democratic or not; or how we should interpret and evaluate different ideals, procedures, values and forms of social organisation. So a commitment to democratic government does not remove our three ethical problems. But it can help us better to handle them, because democratic government enables us to air our differences and to explore better ways to live with and to cope with them. So if our ethical difficulties arise, in large part, because of the irreducible plurality of our values, protecting our rights to be different, and our ability to respect and support each other despite our differences, can help us better to think about ethical dilemmas, and the best way to act in response to them.

However, there are some things we need to accept:

4A. **Democracy is not just about the right to vote**, but about the framework of civil, political and personal rights, institutions and conventions which make voting an acceptable way to resolve our differences, rather than a licence to do whatever we want. That is why not all votes, even with universal suffrage, are democratic. (Pinochet and Putin can call as many elections as they like, but without freedom of association, dissenting expression and basic civil liberties and rights we will still not judge the outcomes democratic). This is because democratic voting gets its ethical significance from the ways in which people’s different liberties, rights, opportunities and resources enable them to sort out what matters to them in life, and to join with others in pursuing those ends, even in the face of the opposing opinions and judgements of others.

4B. **Democratic takes many forms**, but at least two things are essential to them for our purposes.
1. That democracies are competitive as well as cooperative political and social systems, and the competitive aspects are as important to their democratic character as their cooperative aspects. Or, to put the point another way: one of the important things about democracies is that people cooperate together in part by competing for collective as well as personal goods, and cooperate in order to ensure that competitions are fair.

2. Almost all adult citizens with few exceptions, are entitled to participate in government. You do not have to be particularly wealthy, virtuous or intelligent to vote in a democracy, nor to stand as a candidate for the legislature or for other positions of power and responsibility. Nor for most positions is being born a citizen required, any more than evidence of an august national pedigree. Citizens are supposed to be equally entitled to participate in deciding collective matters, and equally bound by the results of those decisions.

How does this help us with our ethical problems?

4C. It narrows the conflicts of interpretation and evaluation that we need to consider. While it is clear that democratic citizens disagree about what equality requires, their equal right to share in government is a fixed point for resolving those differences, whether we consider the age of retirement, whether women as well as men should be required to do military service, or whether there should be minority quotas for jobs in order to remedy discrimination in jobs or in political representation. So no way of resolving these disagreements is acceptable which implies that women are less trustworthy than men, or that they are less clever, less truthful, patriotic, altruistic – or self-interested – if this would undermine their claims to political participation. The same is true for people of different races, religions, wealth, beauty and education. In short, while it is clear that people can and do differ on all these dimensions, the degrees of difference, from a democratic perspective, are not so large as to call into question people’s claims to share in collective decisions, any more than they call into question people’s obligations to be bound by the outcome of those decisions.

5. Implications for Ethics Review

5A. Proportionality and Equality

The differences between democratic and undemocratic governments highlight the importance of proportionality for ethics review, and the baseline for establishing its content. In order to ensure that people are treated as equals, and that their legitimate interests are given due consideration in public affairs, we often use ideas of proportional sacrifice or proportional benefit to help us. In this way we can avoid having to make a global ranking of life, liberty, equality and solidarity, but can still make practical judgements which
are essential to our ability to treat each other as equals, and to avoid imposing devastating sacrifices on some people while imposing only trivial ones on others. So, for example, if we want to know what sacrifices of freedom of movement, association and personal privacy might be justified in order to prevent terrorist threats, instead of trying to create a medal ranking of life, liberty etc., we can ask, more concretely, are these sacrifices of freedom or privacy proportionate to these gains to life, bodily integrity and security, if we are unable effectively to protect them all?

Answering this specific problem is still a complex matter, and one that will involve social scientific research as well as moral and political reflection. However, we can use ordinary democratic values, rights and institutions to help us decide which forms of freedom of association, expression, privacy and life really matter and which are irrelevant (e.g. the freedom to own slaves, to have segregated housing, etc.) - and, therefore, what levels of sacrifice are acceptable/unacceptable, proportionate/disproportionate from a democratic perspective.

Constraints on travel, expression and association for work or political purposes for instance, are more serious than constraints on our leisure activities. Likewise, from a democratic perspective protections for the right to protest are more important than protections for the right to advertise or to publicise one’s goods. Hence, much more is needed to justify limiting people’s ability to congregate for purposes of the former than for the latter.

Very often in bioethics and in practical ethics more generally we are asked to ensure ‘proportionality of sacrifice’ or to make sure that ‘costs and gains are proportionate’, but the ethical significance of this injunction is not always clear and how we are to know what is or is not proportionate tends to be obscure. We are therefore faced with a ‘black box’ and no real sense of how to illuminate it. By taking democratic government and the values that justify it as our backdrop, we can begin to turn that black box into a useful tool for policy judgements and for ethical comparisons in circumstances where we lack a table of weights and measures, or a set of rankings for the distribution of medals.

But for this to be possible we must realise that, from an ethical perspective, the demand for proportionality is a test of equality, not just of rationality in policy-making or in the evaluation of research. In other words, we care about proportionality not simply because we don’t want to waste public money, but because we do not want to use public money in a way that unjustifiably treats some people’s needs, desires and beliefs as more important than those of other people. If, therefore, we see the ethical importance of proportionality as a test of equality, we can start to fill in that black box.
1. First, we can note that there are some sacrifices of liberty or equality which we can never ask of democratic citizens – no asking people to give up their rights to a fair trial, or to fair elections, for example, or to worship as someone else demands. So, by implication, no gains can be sufficiently great to justify sacrifices of this sort, even though we may justifiably be asked to delay elections, or to accept limits on our ability publicly to worship in certain circumstances.

2. But secondly, we can note that, from a democratic perspective some forms of liberty or equality are more important than others - even though it is impossible to say that all liberties are more important than all forms of equality, or vice versa. Thus, it is much more serious to discriminate against people in the distribution of political offices, or in terms of desirable jobs, than in terms of leisure activities – though they may all be examples of the wrongful failure to treat people as equals. Or we could note that the freedom to leave and return to one’s country is a fundamental democratic freedom, whereas the freedom to drive at 100 miles per hour (or 170 km/h) on the motorway is not.

Though the intuitive idea needs to be worked out more fully, its essential point is this: that there are some forms of liberty and equality which are necessary to any democratic government, others which are generally very helpful, though usually not necessary for democratic government, and others which are desirable, because they are good things to have, but which are not particularly significant from a democratic perspective, (e.g. some forms of recreational, sporting, artistic, or scientific achievements) and so on.

Treating people as equals, therefore, means that we do not sacrifice liberties and forms of equality which are essential to democratic government in order get better transport systems, a better educated population; nor do we sacrifice forms of liberty and equality which are related to people’s ability to exercise basic democratic freedoms for ends which have, at best, only a loose connection to these. Hence the priority of primary and secondary education, from a democratic perspective, over education at doctoral level – because deficiencies and inequalities in the former directly affect people’s ability to see and treat each other as equals, whereas deficiencies and inequalities at the doctoral level, though perhaps undesirable economically or scientifically, generally have no such direct connection to the differences between democratic and undemocratic governments.

5B Constrained Maximisation v. Trading-Off Values
This method reminds us that the ethical challenges we face arise from the need to be faithful to many different values at the same time. It is therefore wrong, when faced by conflicts between basic democratic values to think that we should try to trade off one for the other. Even when we cannot maintain our desired level of protections for privacy and for
life/bodily integrity, for example, we want to avoid sacrificing one to the other completely, because both are critical to democratic government.²

Faced with difficulties in maximising (or even satisficing) the protection of both, we need to ask ourselves what specific forms of privacy (or of confidentiality) are at odds with what specific forms of security (or protections for life), and what we can do to lessen the difficulty of protecting both? For example, would better information help us, or more police on the streets? Would these mean that we would need fewer wiretaps on phones?

**There are a variety of ways in which we can protect security**, but these may have quite different implications for the degree to which we can also protect people’s privacy. Conversely, there are a variety of ways in which we can protect privacy (such as blanket prohibitions on access to information; sunrise and sunset requirements on general access to sensitive information; different types of identification or anonymity, etc.) and these may have quite different implications for the degree to which we can also protect people’s security. What we want to avoid is sacrificing important forms of privacy for trivial gains to security, or sacrificing important forms of security in order to secure types of confidentiality or anonymity that have no moral or political significance for the differences between democratic and undemocratic governments.

Hence it is essential to remind ourselves that there is no league table of democratic values which means that life is always more important than privacy or equality. It would therefore be a mistake to suppose that there can be threats to our lives and bodily integrity which show that privacy is unimportant, even if there are forms of privacy that we may justifiably be required to give up in order to ensure some critical protections for people’s lives and bodily integrity. Likewise, the fact that we have to accept risks to our lives and bodily integrity because we cannot deprive prisoners of all privacy, does not mean that protecting life is unimportant, nor even that it is less important than protecting privacy.

To put the point in a nutshell: **democracy involves the constrained maximisation of a variety of different values**. Natural disasters, man-made disasters, war or terrorism do not change that. In particular, they do not mean that we must sacrifice privacy to security, equality to liberty, or liberty to life and bodily integrity.

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5C. Equality and the Distribution of Costs and Benefits:

We have had a quick look at the significance of proportionality and the way a democratic perspective on ethics can help us to understand its importance and to think about how to operationalise it. We saw that proportionality matters because we have many different ethical considerations to consider and these are generally not reducible to each other. The reasoned justification of collective decisions, therefore, means that citizens cannot be asked to make great sacrifices of important democratic liberties for even large gains to goals which have no particular relevance to democratic government, or to the ways in which it differs from the alternatives.

But this reminds us that questions of distribution, not just of proportion, are essential to our judgements about equality, and therefore essential to the ethical evaluation of scientific research. And thinking about the distributional aspects of research, as of public policy more generally, highlights the importance of the first feature of democratic government which we examined: namely, the fact that democratic government requires us to protect people’s competitive, as well as their cooperative, interests, because people are under no obligation to think alike, act alike, or desire alike.

It is very important for the ethical evaluation of research, then, that we remember that democracies are characterised by legitimate conflicts of interest and values, as well as by the legacies of our undemocratic pasts, which create forms of difference in the opportunities, resources and status of citizens which are unjustified, and which we may find it difficult to correct or remove. We must take account of both types of difference between people when evaluating research, because we don’t want to exacerbate forms of injustice that we already find hard to fix (racial, sexual, economic, religious) but nor do we want to suppress legitimate differences of opinion, of goals and of needs amongst citizens. For example, we cannot automatically assume that the sacrifices of privacy which I find acceptable are acceptable to you, or that a threat to life which strikes me as especially horrifying is especially horrifying for you.

It is therefore critical to examine how the costs and benefits of proposed research are to be distributed across citizens and, in particular, how they are likely to affect the least favoured groups in our society - the ones who are most often treated as threats, or seen as immoral, unpatriotic, untrustworthy, undeserving etc. This is especially important because the really difficult democratic duty is to see others as people who are entitled to govern themselves, and who are as entitled as we are to participate in governing others. It is essential to a democratic approach to research that we do not make this task harder than it is already. Hence we must be wary of research which is likely to stigmatise minorities, or which assumes that the destruction of lives and liberties through the failure to prevent terrorism is
always worse than the destruction of lives and liberties consequent on the *wrongful identification* of people as terrorists.

In framing research calls, and in evaluating the resulting proposals, then, it is appropriate to ask researchers to consider the distribution of the likely costs and benefits of their research, as well as the proportionality between costs and benefits. It is also appropriate to ask them to make explicit and to justify the *relative evaluation of risks* (e.g. the risk of false positives *as opposed* to the risk of false negatives) implicit in their research, because this is necessary in order to show that their research is important from a *democratic* perspective – whatever importance it may otherwise have.

### 5D Procedures and Ethics Review

Democratic principles, practices and institutions are not just a constraint on the ways we can evaluate research. They are also a *resource* that we can draw on in making difficult decisions. When we think of ‘Ethics’ with a capital ‘E’ we often forget that our daily life is full of tips about how to approach difficult decisions, and that political life is full of devices for arriving at collective decisions which are reasoned and command broad, if not universal, approval in the face of seemingly irreconcilable differences, and of uncertainty about, or downright ignorance of, relevant causes and effects.

Of course, most democracies are imperfect in all sorts of ways, and so our practices of representation, participation, accountability, mediation, compensation, punishment and reward are imperfect, often gravely so. Nonetheless, they remind us that the *procedural aspects of ethical decisions* are often as important as the outcomes and, in some cases are ethically inseparable from the outcome. The legitimate winner of an election, after all, cannot be specified independently of actually holding an election; the lawful policy is that policy which has been selected by the legally relevant procedures.

The ethical evaluation of research, therefore, needs to attend not only to the goals of the proposed research, but to the ways in which those goals were formed *and to the ways in which they will be carried out.* In other words, it matters ethically that research which might harm the lives, liberties or social standing of some individuals or groups - however compelling the reasons - seeks to involve those people as much as possible in assessing the risks that they face, in minimising those risks, and perhaps, in determining what forms of compensation, if any, might be appropriate.

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3 What follows applies, for example, to proposals which seek to create *intermediaries* which will collect scientific data, or distribute research funding, scientific advice etc. Clarity about the duties of these intermediary bodies – for example, of accountability, equality and fairness – is as essential to the ethical quality of the proposal as it would be if the proposers had planned *themselves* to collate or distributive information and funds.
Scientists are not policy-makers and it would be unreasonable to expect scientists to work out complex models of consultation, representation and so on, merely in order to get a research grant. But it is appropriate to ask them to consider the way that they treat their research subjects and, more particularly, people who, though not themselves involved in the research, may nonetheless be adversely affected by it. At a minimum, they can be asked to consider the make-up of any ‘ethics board’ in light of the need to represent the interests of those who might be harmed by the conduct of their research - whether those risks arise because of the dangers and inconvenience of scientific tests in their vicinity, the creation or unification of sensitive personal information, or because of the possibility of exacerbating unwarranted fears and prejudices.

Democratic representation and participation matter not simply because they may generate needed information and expertise, but because they mark respect and recognition for our agency, for the fact that we are people with lives to lead, not just tools to be moved around for other people’s purposes. Something similar is true also for democratic accountability: that what is at issue is not just prudence but respect and recognition. Hence, it is desirable and appropriate when framing research calls, and when evaluating them, to be sensitive to the scope for lay representation, participation and accountability in the conduct of research, and to the variety of forms which these may take.

A board of ethics experts, in other words, is not always necessary in order to ensure that research is conducted in a respectful manner, and in some cases it is not sufficient. Above all, even where such a board is necessary, democratic ideas about representation, participation and accountability show that we cannot create such a board by naming a couple of lawyers, however distinguished, or even by adding a few people with specialised ethical expertise.

Just as ethical problems cannot be reduced to legal problems, so the relevant ‘expertise’ necessary for an ethics board must reflect the conflicts of legitimate interest and belief surrounding the research in question, and, where necessary, it must reflect the need not to exacerbate long-standing problems of inequality, discrimination or injustice. The ethical expertise which scientists need to draw on, in other words, needs to reflect the fact that democracies have important competitive, as well as cooperative, aspects, and that no particular knowledge, virtue or experience is required for citizens to deserve a say in the use of public resources, in the avoidance of public harms, and in the pursuit of collective goods.

5. CONCLUSION: DEMOCRACY-CENTRED ETHICS

I have briefly sketched an approach to ethics and the evaluation of publicly-funded research and public policies which uses the differences between democratic and undemocratic
governments, as we best understand them, as a guide for ethical evaluation. It is an approach which combines respect for social sciences with respect for the distinctive character of normative reflection, and which supposes that political morality needs to take politics as seriously as it does morality. By way of conclusion I want briefly to say something about each of these points, and the reasons this gives us to prefer this explicitly political perspective on ethics evaluation to more traditional ones.

5A. Social science and Ethics If we care about democracy, and wish to improve and build upon the democratic features of our different countries and of the EU, it is essential that our ethical evaluations incorporate the best that social science has to teach us about the ways of the world. This is essential to ensure that steps which we expect to foster liberty or social solidarity will, indeed, do so; and to ensure that our efforts to treat each other with respect have some chance of succeeding.

The point seems basic – it is basic – and yet it bears emphasis, because our models of moral reflection, so often, denigrate the importance of empirical and social-theoretic information in the understanding and choice of our moral principles, as well as in our efforts to apply them. Granted that the precise way in which empirical and social-theoretic information should figure in ethical evaluation is contested, at the level of ethical evaluation with which we are concerned we need principles to govern the behaviour of people like us – human beings – rather than angels or devils. It is therefore essential that the principles we select, and the ways we seek to interpret and apply them, reflect our interests and capacities for self-government, as well as the obstacles to the realisation and protection of these capacities and interests. This is impossible without good social scientific and historical research.

5B. Politics and Morality in Political Morality A common picture of the way we should think about the ethical dimensions of public policy goes like this: first we abstract from politics (and from familiar facts about the world) in order to find and formulate the relevant moral principles which should govern our actions, and then we bring politics and facts in when we decide how to interpret and put those principles into practice.

Personally, I do not think that this is a good way to do political philosophy – or to decide the principles which should govern the use and distribution of power in a society. But, whether or not you agree with me at this general level, I assume that you will agree that we cannot decide what democracy requires of us without attention to the nature and justification of

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4 For one example see G. A. Cohen’s critique of Rawls’ methodology which, Cohen believes, confuses moral principles with principles of regulation, in Rescuing Justice and Equality (Harvard University Press, 2008). Personally, I find Cohen’s conception of fact-independent moral principles problematic. But for our purposes the differences between Rawls and Cohen do not matter, in that we are interested in what Cohen calls principles of regulation or that level of moral principle applicable to the regulation of ethics review within the EU.
power, not just in applying our principles but in identifying them in the first place. After all, even when we try hard to adopt principles which take our claims as citizens seriously, we are often mortified to discover that we have failed adequately to recognise the different needs, or interests, or beliefs of some of our fellows, and that they are therefore faced with treatment as second-class citizens, and consequently at risk of marginalisation, alienation, exploitation, impoverishment and coercion. There is, therefore, almost no chance that the moral principles we select for ethics review will appropriately reflect people’s rights and duties unless we deliberately build a commitment to democratic government into our methods for ethical evaluation.

How we categorise or describe democracy-centred ethical reflection does not much matter. So, for those who suppose that moral principles have to be fact-free and politics-free, the method I have just described can be called ‘applied ethics’, whereas for others it may just look like ‘political philosophy’ or ‘ethics and public policy’. The point, for our purposes, is that we can use the differences between democratic and undemocratic governments as a guide to ethical reflection, and doing so may make it easier for us to think about both the principles that should guide ethics review and about the best way to apply them.

The reason, roughly, is this: that democratic ideas, values and principles mark an intermediate point from which we can work upwards or downwards when faced by uncertainty about the ethical evaluation of scientific proposals. We can work upwards from a commitment to democracy towards more general ethical principles, if and when we need to think about them in order to resolve a particular ethical problem. On the other hand, as we have seen, we can work downwards from a commitment to democracy towards a more detailed understanding of our values and rights as and when that is necessary.

Of course, talk of ‘upwards’ and ‘downwards’ is metaphorical – but if we think of democratic principles as lying between the most particular and the most general levels of ethical ideas, it becomes clear why the differences between democratic and undemocratic governments provide a helpful perspective on the ethics of research, and one that is likely to be of more practical help than more traditional approaches to research or ‘applied’ ethics.

Traditionally, the latter takes the differences between consequentialist and deontological moral theories as the axis around which ethical reflection must pivot. Crudely, it asks us to treat the differences between Utilitarians and Kantians as definitive of the ethical choices with which scientific research confronts us and, therefore, as the appropriate framework for resolving them.

But why should we do this? Ethics seems to require us to attend to both the consequences of our actions and the ways in which they manifest respect for the agency and humanity of other people. Generally, what is difficult is to decide how to combine these two features of
ethical thought and action, and how to evaluate different consequences and different claims to respect.

Our problems, here, are precisely the problems we examined at the start of this talk: the difficulty of knowing how to combine different ethical considerations and what to do when different values conflict (e.g. respect and happiness; equality and freedom from suffering). Choosing between deontological or consequentialist moral theories, in other words, does not remove the three ethical dilemmas we examined. On the other hand, choosing between these two families of theory is no substitute for examining the implications of our ethical ideas for democratic government.

So, if one thinks that democratic governments have claims to legitimacy that the alternatives lack, it makes sense to take the differences between democratic and undemocratic governments as our guide to ethics, and to use that distinction to determine (where necessary) the significance of other ethical factors.

5C. Knowledge A final point is worth considering: most of us have clearer ideas about the differences between democratic and undemocratic governments than we do about the differences between different types of moral theory. Granted, our understanding of democracy is necessarily imperfect, because none of us live in perfectly democratic societies, and most of us are familiar with only a few forms, at most, of democratic government. Still, our ordinary lived experience gives us resources which we can draw on to flesh out ideas of the differences between democratic and undemocratic forms of equality, liberty, solidarity, rights and so on. That is generally not the case with the sorts of theoretical distinctions which form the stuff of academic moral and political philosophy.

So the advantages of democracy-centred ethical evaluation can be summarised like this:

1. that it puts front and centre moral and political commitments to democratic government which we all have reason to accept and
2. it mobilises ethical knowledge which all of us have - whether we are scientists, members of the research directorate of the EC, or people who spend their lives trying to understand ethics.

Thank you.