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“Nobody tosses a dwarf!” The relation between the empirical and normative reexamined

C. Leget, P. Borry, and R. De Vries

Abstract

This article discusses the relation between empirical and normative approaches in bioethics. The issue of dwarf tossing, while admittedly unusual, is chosen as point of departure because it challenges the reader to look upon several central bioethical themes – including human dignity, autonomy, and the protection of vulnerable people – with fresh eyes. After an overview of current approaches to the integration of empirical and normative ethics, we consider five ways that the empirical and normative can be brought together to speak to the problem of dwarf tossing: prescriptive applied ethics, theorist ethics, critical applied ethics, particularist ethics and integrated empirical ethics. We defend a position of critical applied ethics that allows for a two-way relation between empirical and normative theories. The approach we endorse acknowledges that a social practice can and should be judged by both the gathering of empirical data and by the normative ethics. Critical applied ethics uses a five stage process that includes: (a) determination of the problem, (b) description of the problem, (c) empirical study of effects and alternatives, (d) normative weighing and (e) evaluation of the effects of a decision. In each stage, we explore the perspective from both the empirical (sociological) and the normative ethical poles that, in our view, should operate as two independent focuses of the ellipse that is called bioethics. We conclude by applying our five stage critical applied ethics to the example of dwarf tossing.

Everything.com defines dwarf tossing as the “ancient art” of throwing a small person as far as possible.¹ This bizarre though relatively safe practice – in most cases the dwarves being tossed wear helmets – has created controversy in both the United States and Europe. Is dwarf tossing a threat to the dignity of dwarves? What about dwarves who make their living by strapping on a helmet and allowing themselves to be launched into the air by burly, slightly drunk men and women? What about dwarves that enjoy sailing through the air?

While admittedly unusual, the case of dwarf tossing illuminates several themes central to the field of bioethics including the issues of human dignity, autonomy, and the protection of vulnerable people. We prefer this issue over the more traditional topics of bioethics – like decisions to forgo medical treatment or the desire for active euthanasia – because it help us see the well-discussed issues of bioethics with fresh eyes. It also problematizes the relationship between empirical and normative methods and leads to fruitful reassessment of the value of each method for bioethics.

1. Why integrate the empirical and the normative?

Legislators and officials in locations as disparate as Florida, New York and France have prohibited the throwing of dwarves, finding it offensive to human dignity. Encouraged by members of the Little People of America – an organization “dedicated to improving the quality of life for people with dwarfism” – the Florida legislature banned the practice in 1989. The state of New York followed suit in 1990.² Likewise, in France, the mayor of a small town, Morsang-sur-Orge, used his administrative authority to declare dwarf tossing illegal. His decision was challenged by dwarves who found the law discriminatory – after all, they reasoned, there are no prohibitions on throwing those of normal height. The case was appealed,

making its way to the highest administrative court in France, the *Conseil d'Etat*, which found that an administrative authority *could* legally prohibit dwarf tossing on grounds that the activity “did not respect human dignity and was thus contrary to public order.” The case was also discussed at the United Nations High Commission on Human Rights, where the judgment of the French court was upheld. The commission found that the decision was not discriminatory with respect to dwarfs. It ruled the ban on dwarf tossing was not abusive, but necessary to protect public order, including considerations of human dignity.³

The Florida law was challenged in a lawsuit filed in 2001 against then-Governor Jeb Bush and Kim Binkley-Seyer, the head of the Florida Department of Business and Professional Regulations. David Flood, also known as “Dave the Dwarf”, alleged that his constitutional right to equal protection was violated by the law that prohibited dwarf tossing. Mr. Flood – who has been frozen in a block of ice, sent to live in a Dumpster (for charity) and stuffed inside a giant bowling ball – said, “This is serious, I don’t want the government telling me what I can or cannot do. They assume [people with dwarfism] don’t have a mind of their own. People confuse exploitation with capitalization. If I were 7 feet tall, I’d get paid to put a basketball through a hoop.”⁴

In legal decisions about dwarf tossing – as in decisions about more classical ethics cases – the normative ideas dictate empirical practice (or policy). In the cases described above, the courts began with an abstract conception of dignity, which was then used to condemn the practice. In making their judgment the courts did not seek, nor did they use, empirical evidence. This may be an efficient way to make moral decisions but for several reasons it is ethically problematic: 1) it is not clear which norms should be called upon to render a decision, 2) the use of norms absent empirical evidence creates the risk of losing touch with lived morality, an important foundation of bioethics, and 3) contemporary societies have no shared normative framework that permits an uncontested solution to the dwarf tossing dilemma.

Writing in the American weekly, *The New Republic*, Steven Pinker, professor of psychology at Harvard University, decries evidence-free assertions of normative principles.⁵ Pinker is particularly concerned about the use of dignity as an *a priori* norm for making ethical judgments. Until we have evidence, Pinker argues, we do not know how dignity operates. He uses the case of dwarf-tossing, among others, to illustrate his point.

Could there be cases in which a *voluntary* relinquishing of dignity leads to callousness in onlookers and harm to third parties--what economists call negative externalities? In theory, yes. Perhaps if people allowed their corpses to be publicly desecrated, it would encourage violence against the bodies of the living. Perhaps the sport of dwarf-tossing encourages people to mistreat all dwarves. Perhaps violent pornography encourages violence against women. But, for such hypotheses to justify restrictive laws, they need empirical support.

Can the content of dignity and the normative consequences then be determined by empirical research alone? The endorsement of the use of empirical data to determine the appropriate normative response might help avoiding theoretical paternalism, but it is also problematic. Empiricists claim that one can easily determine whether dwarf tossing is morally wrong or right by interviewing dwarfs and/or a representative sample of members of that society. The opinion of the majority expresses the collective conception of the good life, and if dwarf tossing plays a major role in that, it should be permitted. Not so fast, says the normative ethicist: have you forgotten the problems of slavery and the publicly sanctioned immorality of the Nazi regime?

How must one proceed then when neither normative ethics nor empirical research can help us to determine whether human dignity is really threatened by dwarf tossing? Would the solution

to this problem be an integration of these two ways of defining and resolving moral problems? Let us begin with a brief history of efforts to integrate empirical and the normative methods in bioethics.

2. The recent interest in empirical ethics

Over the past two decades there has been increasing interest in, and funding for, empirical research on bioethical questions: sociologists, anthropologists, epidemiologists, and psychologists now join philosophers and theologians in the study of ethical issues.⁶ In fact, this area of research is so new that those who do this work are not quite sure what to name it. The systematic, data-driven investigation of problems in bioethics has been variously called: social sciences perspectives on bioethics⁷, empirical research in bioethics⁸, empirical-ethical research⁹ and ethics-related empirical research.¹⁰

Empirical bioethicists use research methodologies (qualitative, quantitative, or some mixture of both) to gather data relevant to judgments concerning moral matters in medicine and medical science. Not surprisingly, empirically oriented bioethicists approach ethical issues differently than do normative bioethicists: empirical research attempts to describe the social world as it *is*, while normative research seeks to describe how the world *ought* to be. This innate difference has created a significant gap – and some tensions – between empirical and normative approaches to bioethics.¹¹ As a relative newcomer to bioethics, empirical ethics is often seen as ancillary to the “real” work of the field. Empirical research provides “just the facts”¹², while normative ethics does the difficult and important work of resolving value questions by defining concepts, building valid arguments, and reaching practical conclusions. In this vision of bioethics, empirical research deserves only a marginal position: moral justification occurs by the rational and deductive application of norms, theories, and principles, not by the description of social worlds.

Recent initiatives, however, have urged bioethics and social sciences to go beyond the false separation between facts and values and to reflect upon the necessary relationship between empirical and normative approaches.¹³ The best evidence of this new effort to integrate the empirical and the normative in bioethics is offered by a number of international and national research projects funded over the past decade:

- Søren Holm¹⁴ coordinated the project “Empirical Methods in Bioethics” (2000–2003), funded by the European Union Quality of Life and Management of Living Resources research program.
- In Finland, Tuija Takala¹⁵ directed a project on the identity of bioethics and the place of empirical approaches in the discipline (2002–2004) funded by Emil Aaltonen Foundation and Helsingin Sanomain 100 Years Foundation.
- In the Netherlands, the National Organization for Scientific Research (NWO) funded a multidisciplinary and multi-university project – “Ethiek en Beleid” (Ethics and Policy) – examining a number of ethical issues using both empirical and normative perspectives (1995–2004).
- In Belgium, the National Fund for Scientific Research Flanders (2002–2003) sponsored a project on the relation between empirical and normative approaches in bioethics.
- In 2001, The Regional Program on Bioethics of the Division of Health and Human Development of the Pan American Health Organization/World Health Organization (PAHO/WHO), organized a conference and publication on the theme “Interfaces between bioethics and the empirical social sciences”.¹⁶

- In the United States, the Greenwall Foundation funded a project, “The scope of Empirical Research in Bioethics” at the Duke University Medical Center.

As a result of these projects and other, individual initiatives, (bio-)ethicists, academic nurses, physicians, ethnographers, social scientists, economists, philosophers and theologians have been searching for better ways to integrate the empirical and the normative in bioethics. Others, however, have rightly pointed to the limits of empirical approaches to ethics. Based on Foucauldian ideas, Richard Ashcroft has argued that the collection of qualitative and quantitative social research evidence plays its part in the construction of social order and leading to paradoxes that concern the freedom of the ethical subject and the definition of the public that is researched.¹⁷ Maya Goldenberg has shown how the empirical turn in bioethics runs the risk of obscuring normative content by seemingly neutral technical measure: the ‘evidence’ being proposed to adjudicate between competing claims.¹⁸

This search has yet to reveal a definitive method for combining the empirical and the normative, but it has yielded a number of different approaches to the integration of empirical and normative bioethics. Review of these approaches allows us to assess the value of different methods of empirical/normative integration (ENI) and to examine whether ENI offers new and useful ways to resolve moral problems, among which is the ethics of dwarf tossing.

3. How to better integrate the empirical and the normative?

Departing from the discipline of sociology, De Vries¹⁹ developed a continuum that describes empirical work in bioethics. There are four stops on this continuum, stretching from empirical studies that do bioethical work to research that does sociological work:

1. *Descriptive ethics*: studies that describe popular attitudes about ethically-fraught issues; this can be called sociology *in* bioethics – where social science skills and methods are used to answer the questions posed by bioethicists;
2. *The consequences of moral advice giving*: the evaluation wing of empirical ethics, studies that measure the effects of bioethical policies;
3. *The context of moral advice giving*: refusing to acknowledge a bright line separating facts and values research of this type examines the “implicit normativity” of clinical facts and medical technologies²⁰;
4. *The context of bioethics*: studies that regard bioethics as an interesting arena for sociological study: nothing less, nothing more; a sociology *of* bioethics – where these same skills and methods are used to answer *sociological* questions about bioethics;

The typology developed by De Vries is descriptive, it does not explore the ways the empirical and normative might work together. A second typology, developed by Molewijk²¹ et al., focuses on five different methods for integrating empirical research and normative ethics: prescriptive applied ethics, theorist ethics, critical applied ethics, particularist ethics and integrated empirical ethics. Review of *their* continuum suggests ways of bringing the empirical and normative together, allowing us to consider how each model might be used to resolve the ethical dilemma of dwarf-tossing..

The first position is *prescriptive applied ethics*. Those who hold this position are interested in moral practices, but consider moral theory to be the final arbiter. The fit between moral theory and a given social practice is not relevant for deciding what is right or wrong. Empirical data have no bearing on moral theory: data are useful only as a measure of the extent to which people are behaving properly. Applied to dwarf tossing this approach would call for a normative viewpoint based on philosophical theories (about, for example, human dignity and equality). Supporters of dwarf tossing may argue that it is an “ancient tradition” and even, perhaps, that

it is an important element for the functioning of society. An advocate of this position would respond that those empirical facts may be true, but they are also true of the immoral practice of human slavery. From a normative perspective the decisive question is whether the practice is an affront to human dignity – and definitions of human dignity are based on philosophy (in particular the work of Kant) rather than interviews with dwarf tossers or dwarves. This approach, in fact, does nothing to integrate the empirical and the normative; furthermore it suffers from the problem of paternalism, giving outsiders authority to determine what is morally wrong and right in the practice of a given culture..

The second position is occupied by ethicists characterized as *theorists*.²² Like prescriptive applied ethics, theorists begin with moral theory, but unlike advocates of the first position, they allow theory to be *improved* by data from empirical research. The relationship between empirical data and normative theories is instrumental and one-way. Empirical data can help refine moral theory, but only to a certain extent. Theorists are more interested in the perfection of their theory than in the practices that require moral judgement. Dwarf tossing is interesting to theorists because it can serve as a test case to help them rethink the theory of human dignity. For example, serious consideration of dwarf tossing can: 1) clarify the relation between dignity and social practices, 2) promote reflection on the question of whether the dignity is an attribute of human beings *and* practices, and 3) challenge the notion that self respect is a sufficient guarantee for human dignity. But data from the study of dwarf tossing will not lead to the abandonment of the moral theories based on human dignity – theorists open the door to empirical research, but they are not interested in a thorough-going integration of data and normative theory.

The third position described by Molewijk and his colleagues is *critical applied ethics*.²³ This position allows for a two way relation between empirical data and normative theories: a social practice can and should be judged by both the gathering of empirical data and by the normative ethics. Both methods of looking at a social practice are open to readjustment and refinement and each can perform this role for the other. For critical applied ethicists dwarf tossing might begin as a challenge to their theoretical account of intrinsic human dignity. Empirical study of the practice – involving interviews with various groups of little people (tossed and untossed), people who find dwarf tossing agreeable, and other members of society – will yield important data vital to the testing of moral theory. Researchers may discover that many little people experience the practice as confirming their dignity – allowing them to use an otherwise stigmatized identity in a positive way. In turn, this discovery will call for a modification of the original concept of intrinsic dignity in order to allow for “extrinsic” or socially-attributed dignity: dignity that is defined by the way people are treated by others (a reality open to empirical research) instead of being attributed from a theoretical framework (e.g. a specific concept of human nature) that cannot be subject to empirical research. This new concept of dignity will generate new research questions about the relation between bodies and social dignity, leading to useful comparisons with body builders, top models and Sumo wrestlers. Comparing studies might help gain more insight into how bodies that are not considered as normal by a majority of the population might be both a source of dignity and a source of humiliation, dependent on a variety cultural factors that need to be clarified before one can come to a normative conclusion.

But critical applied ethics also leaves room for normative ethics. The central term ‘dignity’ in empirical research asks for conceptual clarification and insight on how different concepts of dignity are related to different normative ethical theories, one of which will eventually be guiding in the ethical position developed. Unlike the previous approaches, critical applied ethics represents a serious attempt to integrate empirical data and normative theory in a way that is useful for making ethical judgments. While precise determination of the ways research

and normative theory interact have yet to be specified, this position holds much promise. We will come back to this position later in our paper.

The fourth position on the continuum is held by the *particularists*. Like the descriptive ethicists described by De Vries²⁴, these researchers are interested only in the empirical study of behavior; they are not interested in relating their data to ethical theory. Particularists view morality as intrinsically related to the particular situation of a practice. Their work begins and ends with the provision of a solid empirical description of the reality. In the case of dwarf tossing particularists will do empirical research to gain insight into the lived morality of this practice, but they will offer no judgment beyond the context of the actual practice they described. They may discover that dwarf tossing is considered morally acceptable in south of France, but this observation will not, and indeed cannot, speak to the morality of the practice in Amsterdam or Ann Arbor. The opposite of the first position – prescriptive applied ethics – particularists give so much weight to *social context* that *moral theory* no longer performs a critical role. General acceptance of a practice by a community suffices as ethical justification of that practice. The history of slavery and the suppression of women has taught us, however, that morally unacceptable practices can become internalised by victims of that practice – pointing to the necessity of the external and critical input that ethical theory provides.

The fifth position described by Molewijk and his colleagues is their preferred position. Labelled *integrated empirical ethics* (IEE)²⁵, this is the approach De Vries²⁶ called “the context of moral advice giving.” it is an intensified version of *critical applied ethics*, an ongoing dialogue between descriptive social scientists and ethicists in which the distinction between fact and value eventually disappears. As Molewijk *et al.* rightly point out, facts always contain and generate values, and values are based on facts.²⁷ In their view this sociological truth demands a theoretical hybridisation of the normative and empirical disciplines where the cores of the two disciplines are combined to form a new field of research. Although we agree with the idea of the mutual co-determination of facts and values, we think that the position of IEE continuously runs into a logical contradiction. On the one hand it stresses that fact and value cannot be distinguished, and that the empirical and the ethical should form a new hybrid. In order to explain what this hybrid is like, however, it cannot but fall back on the distinction between fact and value. This logical contradiction has a far reaching methodological consequence. For when this distinction is blurred, the critical interrelation – the conversation – between the social science and normative ethics is lost. The normative can no longer be critically studied by empirical researchers (cf. the sociology of ethics of De Vries) and empirical research cannot be critically examined for its normative implications (cf. Ashcroft’s criticism of the construction of a social order). Thus the position of IEE ends up being both logically contradictory and methodologically impaired and, we think it cannot be recommended as the best way to integrate the empirical and the normative.

Of the five positions on the Molewijk et al. continuum, we find the third to be the most fruitful for bioethical work. Although we are sympathetic with efforts to integrate the empirical and the normative into a new hybrid we cannot see how the disappearance of the fact-value distinction can help solve ethical problems like the one presented by the case of dwarf tossing. We must continue to distinguish the normative and the empirical as two independent focuses of the ellipse that is called bioethics. In our view this double independency together with close interdisciplinary cooperation generates the tension that drives bioethics. As in a good friendship or marriage, preservation of the partners’ distinct individuality makes fruitful interaction possible.

If we choose the position of *critical applied ethics*, however, we must answer one important question: how do both poles of the ellipse influence one another? In order to describe this interaction we present our *critical applied ethics* as a five stage process comprising (a) the

determination of the problem, (b) the description of the problem, (c) the study of effects and alternatives, (d) normative weighing and (e) the evaluation of the effects of a decision. In each stage, we explore the perspective from both the empirical and the ethical poles. In our view one pole is not subservient to the other. Both help to have a double (and mutually clarifying) critical look to the moral issue at stake.

4. Critical applied ethics revisited: our five stage position

a. The determination of the problem

The importance of a mutual critical relation between normative ethics and empirical research is already clear from the very first question in bioethics: the question as to what counts as a moral problem? To identify something as a moral problem is to invoke conflicting moral values by which a practice or an act is measured. But who invokes moral values and in what terms are they framed? From the point of view of ethics, norms or ethical concepts (like dignity or autonomy) can sometimes perform the critical function of bringing to moral problems a sensitivity that is not felt by the majority of society's members. In other situations they may help to give voice to moral intuitions that are felt by a group in society that is not able to articulate or defend their case. Moral theory can inspire a fresh outlook on the morality of a society when it is able to offer a new perspective on practices that are, or may be, ethically problematic.

Seen from the side of empirical science, empirical research, whether done using qualitative or quantitative methods, contributes to the identification of ethical issues and to the accurate description of the processes used for dealing with these issues. In short, empirical research pinpoints the areas where normative analysis is most needed, acting as guide to bioethicists who may be inclined to focus on more esoteric problems and ethical puzzles that are interesting to them.²⁸ Empirical research can also make a critical contribution to theoretical ethics by showing how ethical norms are embedded in culture and by revealing the ways society can conceal ethically questionable practices. For its part, moral theory can help empirical science discover implicit and otherwise invisible moral values present in their work.

Where this five stage process begins, either in normative ethics or empirical research, is not an important question in our model. Important is that the identification of moral problems by normative ethics is critically followed by empirical research and vice versa. In this way neither empirical research nor normative ethics are subservient to the other. Both are equally important and co-determining the process without both approaches being blurred or fused. Indeed, in each of the five stages of the process of our critical applied ethics the ellipse has a double centre producing a fruitful tension. Because of this tension all conclusions are provisional.

b. The description of the problem

The description of a moral problem begins, but does end, with its identification. The categories used in the discovery of a moral problem import values into the analysis of the problem; those values determine conceptions of the who, what, where, when, and how of the practice under analysis. Theoretical ethicists start their description of the problem with a critical look at the vocabulary used. Words like 'murder', 'steal', 'deceive' imply normative content. The critical hermeneutic function of theoretical ethics calls attention to way one's view of a practice is partial or limited because of one's social situation or experience in life.

The role of the social sciences in the description of the problem is more extensive. A good description of an ethical problem – one that does not unwittingly and prematurely head toward a normative evaluation – requires careful and disinterested study of what is actually going on. Social scientists have the skills to discover the motives that drive people's actions, underlying intentions, the nature of moral deliberation, how relevant actors experience a practice, and the

impact of the place and time where practices take place. It is the duty of theoretical ethics to make sure that researchers remain disinterested, pointing out when evaluative content enters their empirical descriptions: “Empirical research often is able to cross-check, verify or ‘fine tune’ the applicability of theoretic analysis, guidelines and policies in real world practice. Theoretical research not only identifies value choices in clinical practice and informs empirical researchers of ethical issues, it sets forth rigorous analyses to guide clinical practice involving ethical concerns.”²⁹

Apart from helping with the description of the moral problem, social sciences can also perform a critical function by situating both ethical concepts and ethical problems in their broad social context.³⁰ Bioethicists have the habit of using a variety of cognitive techniques to create distance between an ethical dilemma and its setting. This serves to reduce the complexity and ambiguity of a moral problem and its limits the number and type of morally relevant factors to be juggled, but it also diminishes the value of moral advice.³¹ Normativity is always and everywhere socially situated: “The decision to become ethical is not made in a vacuum: Ideas about right and wrong, proper and improper, are shaped by social context.”³² Interesting studies have shown that governing ethical concepts as informed consent that are embedded in law and bioethics do not function in clinical practice.³³ Research³⁴ has shown that people have problems with processing information about risks and correct estimation of potential benefits, and that these problems may lead to distortions in the assessment of risks when making choices. In normative bioethics, the criterion of informed consent has been developed as a cornerstone in healthcare delivery and human experimentation. Informed consent is the process by which a fully informed patient can participate in choices about his health care. It originates from the principle of respect for persons, the right of the patient to direct what happens to his or her body, and the ethical duty of the physician to involve the patient in health care decisions. However, empirical research has shown repeatedly that the conditions for informed consent are often not met and are sometimes difficult to fulfill in practice. According to Musschenga³⁵, this raises the question whether the doctrine of informed consent has to be rejected because of the limits of patients’ actual capacity to understand information and assess risks.

c. Effects and alternatives

The effects of (intended or not, foreseen or not), and possible alternatives to, actions are morally relevant. Empirical research can provide an overview of the consequences of a decision or policy. Brody points out that “even if one is not a consequentialist, one can at least agree that consequences are morally relevant and are part of the basis for evaluating policies. In this way, then, discoveries about what *is* the case are relevant for deciding what *ought* to be the case.”³⁶ He continues: “Moreover, [empirical research] can contribute to that normative analysis by discovering relevant consequences which become the consequentialist component of that normative analysis.”³⁷

Empirical research can also test important aspects of normative arguments. Perhaps the best example of this is the idea of a ‘slippery slope’. Researchers can test when and where ‘slippery slopes’ actually occur (and when and where they do not) and they can explore the factors that encourage and discourage the creation of these dangerous and slippery slopes. Further, empirical studies can identify possible alternative solutions to moral problems. In many cases, the best route to the resolution of an ethical dilemma is to make an inventory of possible solutions: researchers can help with this task by interviewing experts in a field – who know both the possibilities and the limits of the practice in question – or by soliciting the opinions of non-experts, who can offer a fresh look and creative thinking about an ethical problem.

But there is a limit to the role of empirical data. Empirical data about consequences of actions are especially helpful for those who favor a consequentialist ethics. As Brody notes: “When

the moral issues are fundamentally non-consequentialist, empirical data will largely be irrelevant and may even confuse the discussion by drawing attention to the wrong issues.”³⁸ Here is the place for theoretical ethics pointing to the fact that deontological approaches are sometimes a help. Not only can normative ethicists offer a critical appraisal of the causal relations assumed in the description of the case, they can also point to the disjunction between moralities supported by data and those supported by (deontological) ethical theory. For example, an empiricist may claim that capital punishment (the death penalty) is morally indefensible because, empirically, it does nothing to deter crime, provoke remorse, or save the state money. But to someone whose moral evaluation of capital punishment is based on the notion that life is *so* precious that those who unjustly take a life must forfeit their own life, data about deterrence and costs are irrelevant.

d. The normative weighing

With the phase of normative weighing we enter the very heart of normative ethics. But here too we see critical reciprocity between the empirical and the normative. The most important contribution of theoretical ethics is to make sure that the normative power of the factual is put in its proper place. When a practice is described and analysed and is discovered to be widespread and judged as moral by a majority of the members of a society, statistical normativity begins to work. Normative theory stands over and against the simple idea that the majority creates the moral rules: in the end ethical theory (empirically informed) renders moral judgment.

But empirical research also has a role to play. By critically examining the ethical theories brought into play, empirical research can bring to light the values present in the wielding of moral ideas. The choice for liberalism, for example, can be very much in tune with the position of the well-to-do upper middle class bioethicist. And the lack of actual experience in a certain area – e.g. the practice of dwarf tossing – or the simple fact that one’s friends or relatives are directly affected by the outcome of a moral decision, can be of great importance to the process or moral deliberation. In this way the social scientific examination and analysis of bioethics (e.g., bioethics committees, research ethics committees, ethical decision making, allocation choices) by non-bioethicists will foster the critical self-reflection necessary for the intellectual development of the field.³⁹

Since our critical applied ethics is a model in which theoretical ethics and empirical research provide us with a double (and mutually clarifying) critical look to the moral issue at stake, the normative weighing is preceded by three stages in which already normative judgements have been made. From the very moment a problem has been identified and described a normative position has been taken, or rather: the implicit normativity of the identification and description has been brought to light. By doing this the researchers already take a normative position themselves, even when their position is one of non judgemental clarification. In this phase of normative weighing again there is no handmaiden role for either empirical research or normative ethics. By clarifying one’s own moral position a transparency is achieved on both the normative ethical theory that is chosen and the social position and motives of the researchers involved. Thus even in its most normative phase our model of critical applied ethics honours both poles of the ellipse, achieving choice and critical clarification of this choice at one.

e. The evaluation of the effects of a decision

Bioethics is a never ending process of evaluation and re-evaluation. Once a decision has been made, it is the moral responsibility of the decision-makers to be sure that the decision has no unforeseen and unintended effects of side-effects. The critical function of theoretical ethics here is to make sure that the attention to effects does not, in the end, result in a victory of

consequentialism (if that is not the appropriate moral theory). Empirical researchers must map out the actual effects of a decision and provide data that can foster further ethical reflection.

5. Dwarf tossing: empirical and normative ethics in practice

All of which brings us back to dwarf tossing. The courts that were asked to rule on the permissibility of dwarf tossing relied on “prescriptive applied ethics”, the first position described by Molewijk et al.: the decisions of the courts were based on a theoretical conception of dignity, which led them to ban the practice as demeaning to little people. Empirical evidence played no part in these court decisions. How would our five stage version of *critical applied ethics* deal with this case?

The first stage concerns the determination of the problem. In this case the discussion on dwarf tossing is already going on: it does not need to be identified from a theoretical point of departure. It could be illuminating, however, to study empirically how and in what context the problem was determined as such, and how and when not. From the perspective of normative ethics a first critical question would concerning the concepts appear to play a central role in this discussion. Where authorities in our example focus on dignity, for ‘Dave the Dwarf’ concepts like autonomy, freedom and equality are at stake. Although referring to the same physical reality, from a theoretical perspective the question is at stake whether the two parties identify the same moral problem here. Empirical research might help to clarify how the identification of the problem is related to the culture in which the authorities and their challengers are imbedded in order to understand the differences in determination.

The second stage, related to the first, concerns the description of the problem. Here theoretical ethics will help to map out and conceptually clarify the various meanings of keywords like dignity, autonomy, equality and freedom in which the question is framed. Empirical research will be helpful in order to lay bare the experiences, motives and intentions of those involved in the conflict. Different groups are involved here: authorities, people throwing dwarfs, little people being thrown, people watching this activity, etc. Empirical researchers can help finding out how experience shapes the way people relate to reality. Have the authorities ever been present or taken part themselves in the ‘ancient art’ of dwarf throwing? Does it make difference for the moral position of people whether they judge dwarf tossing from an outside perspective or from a participant perspective? What moves and motivates ‘Dave the Dwarf’ for being so active in this area? Why is this activity differently appreciated in New Zealand, France or the United States? Is it a morally different thing to organize this event in one country rather than another? Both poles of the ellipse are related here, because in every empirical description and analysis the issue of the conceptual and normative clarification comes up again.

The third stage concerns the determination of effects and alternatives. Although the question of alternatives does not seem to impose itself immediately, empirical research can help here to map out what consequences this activity has. Is it harmful to the people being thrown? Theoretical ethics might help specifying different types of harm related to physical, psychological, social or spiritual damage. Empirical ethics may help to clarify what the impact on the general public is in terms of respect for little people in countries where dwarf tossing is an accepted practice. It may also address the question of whether there is a possible danger of a logical or empirical slippery slope involved here. Normative ethics might focus on the limits of the consequentialist approach that is favored when in this stage the effects of dwarf tossing are at the centre of research. It might introduce a critical reflection on whether dwarf might be ethically questionable, e.g. in terms of actions expressing a certain view of life in an undesirable way, even when there are no direct consequences in terms of harm, or people are willingly accepting possible harms.

In the fourth stage a normative weighing takes place. Normative weighing presupposes the preceding stages, and thus here our application of the example begins to become more formal. In this stage different routes can be taken. Researchers might choose to map out different appreciations of dwarf tossing according to different ethical theories, because they want to be in service of others who have to develop an ethical point of view. Or researchers might choose one ethical theory and clarify what according to their analysis this means for evaluating this practice. But empirical research has also an important role in this stage. Any ethical position on dwarf tossing can also be read as an expression of a certain way of life including (and excluding) certain experiences. The three authors of this article, for example, are white middle class males of average or more than average height in their own countries and not familiar with the actual practice of dwarf tossing and have no particular (consciously aware) motives to promote or reject this practice on beforehand. This shapes the way they address this topic and contributes to define a reality that is value loaded. Being aware of this fact and communicating it in a transparent way is a methodological and ethical choice that is at the heart of our critical applied ethics.

Finally, responsibility for one's impact on the public debate requires an evaluation of the effects of a decision. If this article in *Bioethics* were to promote a great increase of the tossing of dwarves resulting in a social devaluation of the position of little people – to mention but one unintended and unforeseen side-effect – this would have impact on both our position and the our responsibilities as members of society. Although theoretical ethics will be critical in challenging the consequentialist nature of our evaluations, empirical research is also required in order to clarify the effects of our article, including whether a slippery slope is present and to what degree we can be held responsible for that slipperiness. In this way new moral problems arise and the whole five stage process begins again with the determination and description of what is at stake ethically.

The critical applied ethics approach is the only one among the five positions identified by Molewijk et al. that allows this necessary dialogue between empirical and normative ethics. Our five-step application of this approach allows fruitful and necessary conversation between facts and values, that can help create innovative, practical, and useful solutions to the moral dilemmas of medicine, medical science, and yes, dwarf-tossing.

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