



ARTICLES

EMPIRICAL ETHICS AND ITS ALLEGED META-ETHICAL FALLACIES

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*empirical ethics,
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ABSTRACT

This paper analyses the concept of empirical ethics as well as three meta-ethical fallacies that empirical ethics is said to face: the is-ought problem, the naturalistic fallacy and violation of the fact-value distinction. Moreover, it answers the question of whether empirical ethics (necessarily) commits these three basic meta-ethical fallacies.

1. INTRODUCTION

In the last two decades, applied ethicists have increasingly combined empirical (usually social scientific) research with normative-ethical analysis and reflection.¹ This approach is now commonly called ‘empirical ethics’. According to Borry et al.,² although there are various ways of doing empirical ethics, they all have some basic assumptions in common:

- empirical ethics states that the study of people’s actual moral beliefs, intuitions, behaviour and reasoning yields information that is meaningful for ethics and should be the starting point of ethics;

- empirical ethics acknowledges that the methodology of the social sciences (with quantitative and qualitative methods such as case studies, surveys, experiments, interviews, and participatory observation) is a way (and probably the best way) to map this reality;
- empirical ethics denies the structural incompatibility of empirical and normative approaches, and believes in their fundamental complementarity;
- in its overarching meaning, empirical ethics is not a methodology of doing ethics but a basic methodological attitude to using the findings from empirical research in ethical reflection and decision making.

An important criticism of this type of ethics is that it would not be able to avoid certain fundamental meta-ethical problems. By apparently deriving moral conclusions from factual premises, empirical ethics would disregard the is-ought gap, commit the naturalistic fallacy and/or violate the fact-value distinction. Borry et al., for instance, point out that:

[t]hese disciplines [sociology, anthropology, psychology and epidemiology] describe how reality is constructed – they describe what ‘is.’ However, they can never tell how people ought to behave, or what kinds of decisions are morally acceptable. According to most authors, this fundamental distinction stems from a small paragraph of David Hume’s *Treatise of Human*

¹ cf. D.P. Sulmasy & J. Sugarman. 2001. The Many Methods of Medical Ethics (Or, Thirteen Ways of Looking at a Blackbird). In *Methods of Medical Ethics*. D.P. Sulmasy & J. Sugarman, eds. Georgetown: Georgetown University Press: 3–18; S. Holm & M.F. Jonas, eds. 2004. *Engaging the World: The Use of Empirical Research in Bioethics and the Regulation of Biotechnology*. Amsterdam: IOS Press; P. Borry, P. Schotsmans & K. Dierickx. What is the Role of Empirical Research in Bioethical Reflection and Decision-making? An Ethical Analysis. *Med Health Care Philos* 2004; 7: 41–53; P. Borry, P. Schotsmans & K. Dierickx. The Birth of the Empirical Turn in Bioethics. *Bioethics* 2005; 19: 49–71; A.W. Musschenga. Empirical Ethics, Context-Sensitivity, and Contextualism. *J Med Philos* 2005; 30: 467–490.

² P. Borry, P. Schotsmans & K. Dierickx. Editorial. *Med Health Care Philos* 2004; 7: 1–3.

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Nature (1740), and is traditionally called the naturalistic fallacy.³

There turns out to be much confusion in the literature, however, regarding the exact nature of both empirical ethics and the fundamental meta-ethical problems. The twofold aim of this paper is, therefore, to clarify the nature of empirical ethics and the three meta-ethical problems, and to investigate whether the criticism that empirical ethics (necessarily) commits basic meta-ethical fallacies is justified.

2. EMPIRICAL ETHICS

In this section, we want further to clarify the nature of empirical ethics by describing the most important goals of empirical-ethical studies⁴ and providing illustrations of the corresponding types of reasoning. To ensure the generalizability of our conclusions, we selected studies from a variety of philosophical traditions, encompassing both more analytical and more continental approaches.

1. Description and analysis of the actual conduct of a group with respect to a morally relevant issue

Sulmasy & Sugarman⁵ mention two reasons to study the actual conduct of a group with respect to a moral issue: (a) describing compliance with existing moral norms and (b) determining whether policies or procedures designed to operationalize certain moral norms have been successful.

A good example of the first type of study is van Thiel & van Delden.⁶ They investigated to what extent nurses in Dutch nursing homes acted in compliance with the criteria relating to respect for patient autonomy as formulated by the Dutch Association for Nursing Home Care (NVVz). These criteria were based on a libertarian understanding of autonomy, which is tailored to agents who are independent and rationally competent, whereas most patients in a nursing home are not fully capable of

deciding for themselves. By means of a questionnaire, Van Thiel & van Delden discovered that in many cases the nurses did not live up to the criteria of the NVVz. They drew two conclusions from these results: (1) measures need to be taken to improve the implementation of the criteria based on the norm of respect for autonomy in daily care, (2) it should be investigated whether there are alternative interpretations of the norm of respect for autonomy, besides the libertarian one, that might be more suitable for the nursing home context.

2. Identification of moral issues that have escaped the attention of ethicists, but are relevant in a specific context

Braddock⁷ claims that perhaps the most important role for empirical research is to point out previously unrecognized ethical issues or the practical dilemmas of recognized ones that illuminate deficiencies in existing ethical theory.⁸

Maartje Schermer,⁹ for instance, aimed further to develop and refine ethical theory about patient autonomy by confronting it with empirical data on concrete situations and problems in hospital practice. According to Schermer, the current theories of patient autonomy strongly focus on (participation in) medical decision-making: the most important way in which patient autonomy should be respected is by letting patients make their own medical decisions. Inspired by case descriptions of two radically different types of patients – an assertive businessman who ‘buys’ his medical knowledge and uses that knowledge to make his own treatment decisions (thereby fully answering to the prevailing ideal of the autonomous patient), and a docile housewife who does not even know what she is in the hospital for and fully trusts her doctors to do the right things (thereby falling short of the same ideal) – Schermer challenges this focus. Her empirical data suggest that having control over one’s daily life and being allowed and enabled to make ‘small’ non-medical decisions for oneself (regarding personal care, meals, activities and company) can be as important for patients as being allowed and enabled to make medical decisions. According to Schermer, respect for autonomy should therefore be extended so as to include giving patients control over daily matters.

³ Borry et al. 2005, *op. cit.* note 1, p. 60; see also, for example, B. Brody. Assessing Empirical Research in Bioethics. *Theor Med* 1993; 14: 211–219; E.D. Pellegrino. The Limitation of Empirical Research in Ethics. *J Clin Ethics* 1995; 6: 161–162.

⁴ The goals we distinguish are mainly based on the analyses of Sulmasy & Sugarman, *op. cit.* note 1 and Musschenga, *op. cit.* note 1.

⁵ Sulmasy & Sugarman, *op. cit.* note 1.

⁶ G.J.M.W. van Thiel & J.J.M. van Delden. Dealing with Patient Autonomy in Dutch Nursing Homes. *Health Care in Later Life* 1997; 2: 177–186.

⁷ C.H. Braddock. The Role of Empirical Research in Medical Ethics: Asking Questions or Answering Them? *J Clin Ethics* 1994; 5: 144–147.

⁸ cf. Holm & Jonas, *op. cit.* note 1.

⁹ M. Schermer. 2001. *The Different Faces of Autonomy. A Study on Patient Autonomy in Ethical Theory and Hospital Practice*. PhD Thesis University of Amsterdam, pp. 178–182.

3. Description and analysis of the actual moral opinions and reasoning patterns of those involved in a certain practice

An important reason for studying the moral beliefs in a practice is indicated by Birnbacher:¹⁰ to be able to guide action, ethical recommendations must be sufficiently accepted by the people in a practice and should therefore be formulated in a way that stresses continuity with already accepted moral beliefs. There is also a type of empirical research, however, that takes an intrinsic interest in the moral beliefs in a certain practice, treating that practice not merely as a field of application of ethical theories and principles, but (also) as a genuine source of morality.¹¹

A good example of the latter type of study, starting from the theory of reflective equilibrium, is van Delden & van Thiel.¹² In order to develop an understanding of respect for autonomy that is more adequate to long-term care settings and that would (therefore) lead to more compliance,¹³ they wanted to incorporate the moral experience of the caregivers, who give shape to this principle in day-to-day practice. To that end, they performed an empirical study in which they investigated, on the one hand, to which view on patient autonomy nurses subscribe and, on the other hand, which approach they would choose when confronted with concrete case descriptions. The ideas of the nurses on how patients' autonomy should be respected turned out to be heavily dependent upon the circumstances of the case. Van Delden & van Thiel concluded that a multidimensional understanding of the principle of respect for autonomy best fits the context of nursing home care.

4. Making ethics more context-sensitive or realistic

As Birnbacher¹⁴ stresses, the role of the applied ethicist is not merely to inquire into the theoretical merits of a proposed norm of practical morality, but also to consider its practical feasibility, its psychological acceptability and its potential effectiveness in changing the attitudes and

behaviour in the desired direction. According to him, this translation of basic principles into practice rules requires empirical data.

An example of empirical research relevant to the practical feasibility of a moral principle is provided by Musschenga.¹⁵ In many countries, the law nowadays requires that researchers and doctors obtain the informed consent of subjects or patients before involving them in a trial or treatment. An important condition for informed consent is substantial understanding: a person must understand that he is authorizing and what he is authorizing. However, there is empirical research that suggests that this condition is hard to meet in practice. Musschenga mentions, for instance, studies by Kahneman and Tversky that show that people have problems with processing information about risks and that these problems introduce inferential errors and disproportionate exaggeration of risks in making choices. Given the empirical fact that the condition of substantial understanding often cannot be met, Musschenga suggests to reconsider the doctrine and the procedures of informed consent as well as the role and responsibilities of researchers.

5. Descriptions of facts relevant to normative arguments

As Sulmasy & Sugarman¹⁶ indicate, normative theories may depend upon assumptions that can be empirically tested. A good example is the theory of substituted judgement. According to this theory, the autonomy of patients who have lost their decision-making capacities should still be respected by asking relatives or other loved ones to (try to) make the decision that the patient would have made. However, a systematic review by Shalowitz et al.¹⁷ of studies on the validity of such substituted judgements showed that 'surrogates' are not very good at predicting patients' treatment preferences. As Shalowitz et al. point out, these results need not imply that the substituted judgement standard should be abandoned and replaced with a best interest standard. One might also argue that, given that surrogates are more accurate than physicians at predicting patients' treatment preferences, reliance on surrogates is still the best available method.

¹⁰ D. Birnbacher. Ethics and Social Science: Which Kind of Co-operation? *Ethical Theory Moral Pract* 1999; 2: 319–336.

¹¹ Cf. Musschenga, *op. cit.* note 1.

¹² J.J.M. van Delden & G.J.M.W. van Thiel. 1998. Reflective Equilibrium as a Normative-Empirical Model in Bioethics. In *Reflective Equilibrium*. W. van der Burg & T. van Willigenburg, eds. Dordrecht: Kluwer Academic Publishers: 251–259.

¹³ Cf. van Thiel & van Delden, *op. cit.* note 6.

¹⁴ Birnbacher, *op. cit.* note 10.

¹⁵ A.W. Musschenga. 1999. Empirical Science and Ethical Theory: the Case of Informed Consent. In *Reasoning in Ethics and Law*. A.W. Musschenga & W.J. van der Steen, eds. Ashgate: Aldershot: 183–204.

¹⁶ Sulmasy & Sugarman, *op. cit.* note 1.

¹⁷ D.I. Shalowitz, E. Garrett-Mayer & D. Wendler. The Accuracy of Surrogate Decision Makers. A Systematic Review. *Arch Intern Med* 2006; 166: 493–497.

6. Showing the normative aspects of science, technologies or organizations

Some empirical-ethical studies aim to show the normative aspects of scientific theories or technologies. A clear example of such a study is Molewijk.¹⁸ He investigated whether the use of individualized evidence-based decision support (IEBDS) for patients with an abdominal aortic aneurysm really enhances patient autonomy. One of the assumed advantages of this type of decision support is that, by making the individualized average survival per treatment strategy explicit, more clarity will be created for the patient to ask himself whether the treatment strategy is really compatible with his norms and values. Molewijk found that the introduction of IEBDS had considerable effects on the existing decision-making practice: it changed the definition of the decision-making problem as well as the role of both the surgeon and the patient. In particular, it made it more difficult rather than easier for patients to make the final treatment choice. Molewijk concludes that IEBDS, rather than supporting the current clinical decision-making practice, transforms this practice and is in this sense implicitly normative. According to him, the moral desirability of and the conditions for implementing such an individualized evidence-based decision support into clinical practice cannot be determined until the consequences of this normative metamorphosis of the decision-making process are better known.

3. THE META-ETHICAL FALLACIES

There has been a tendency in recent ethical literature to use the phrases ‘is-ought problem’, ‘naturalistic fallacy’ and ‘fact-value distinction’ interchangeably, as if they referred to one and the same problem.¹⁹ In fact, however, the is-ought problem, the naturalistic fallacy and the fact-value distinction are three distinct problems/theses with different rationales,²⁰ which, moreover, vary in the extent to which they may pose an obstacle to empirical ethics. In this section, we therefore discuss in detail the nature of the three meta-ethical problems that empirical ethics is said to face.

¹⁸ A.C. Molewijk. 2006. *Risky Business. Individualised Evidence-Based Decision Support and the Ideal of Patient Autonomy. An Integrated Empirical Ethics Study*. PhD Thesis Leiden University: 150–174. Other authors working in this tradition are, for example, Guy Widdershoven, Lieke van der Scheer and Annemarie Mol.

¹⁹ See for example the quotation from Borry et al. in the introduction.

²⁰ Cf. J. Dodd & S. Stern-Gillet. The Is/Ought Gap, the Fact/Value Distinction and the Naturalistic Fallacy. *Dialogue* 1995; 34: 727–745.

1. Is-ought problem

The classic formulation of the is-ought problem is to be found in a passage in David Hume’s *A Treatise of Human Nature*.²¹ The standard interpretation of this passage has its origin in the works of R.M. Hare²² and P.H. Nowell-Smith.²³ According to their interpretation, Hume is putting forward a general *logical* principle, called Hume’s Law²⁴ by Hare, to the effect that an ought-statement cannot be validly inferred from any number of is-statements alone. In other words, the is-ought fallacy is the fallacy of drawing an ought-conclusion from a set of is-premises.

What is meant by ‘ought-statements’ and ‘is-statements’ in Hume’s Law? The examples of is-statements that Hume mentions are assertions about God or about human affairs; in other words, what could be called nonmoral, descriptive statements. The context of the passage about the is-ought problem (‘Of Morals’) indicates that ‘ought-statements’ refers to moral judgements; in other words, to what could be described as moral, evaluative statements. This contrast between ought- and is-statements allows for two interpretations of Hume’s Law: it either states (1) that no moral conclusions can be derived from nonmoral premises alone or (2) that no evaluative conclusions can be derived from descriptive premises alone.

Hare and Nowell-Smith endorse the second interpretation. Both draw a sharp distinction in meaning and function between descriptive and evaluative discourse. Both regard moral discourse as an example of evaluative discourse. Moreover, both defend what Hare calls a nondescriptivist theory of evaluative discourse. Because of the nondescriptive character of evaluative discourse, value judgements can never be validly inferred from statements of fact. In other words, moral judgements cannot be deduced from statements of fact, not because the former are moral and the latter nonmoral, but because the former are evaluative and the latter are descriptive.²⁵

²¹ David Hume. 1740/1978. *A Treatise of Human Nature*. Edited by L.A. Selby-Bigge (1888). Second edition, revised by P.H. Nidditch. Oxford: Oxford University Press.

²² R.M. Hare. 1952. *The Language of Morals*. Oxford: Clarendon Press.

²³ P.H. Nowell-Smith. 1954. *Ethics*. Baltimore: Penguin Books.

²⁴ Calling the principle ‘Hume’s Law’ might be somewhat unfortunate, given that several authors have argued that the standard interpretation cannot be correct because it is incompatible with the context of the is-ought passage (see, for example, Part One of W.D. Hudson, ed. 1969. *The Is-Ought Question*. London: MacMillan).

²⁵ The validity of (this version of) Hume’s Law has been hotly debated. Searle, for instance, pointed out that certain ‘social facts’, like the fact that I made a promise to do something, seem to entail normative conclusions, in this case that I ought to do what I promised to do (J. Searle.

Frankena, among others, seems to subscribe to the first interpretation of Hume's Law. According to him, 'Hume's point is that ethical conclusions cannot be drawn validly from premises which are non-ethical'.²⁶ To indicate the difference between the two interpretations of Hume's Law: if one would want to derive substantial moral conclusions from normative (but nonmoral) claims about rationality (to base morality on the structure of practical reason), one would violate the Law in the interpretation of Frankena, but not in the interpretation of Hare and Nowell-Smith.

2. The naturalistic fallacy

G.E. Moore introduced the expression 'naturalistic fallacy' in his *Principia Ethica*.²⁷ His use of the expression, however, was far from unambiguous. The three most important senses in which he uses the phrase 'naturalistic fallacy' are:

- (1) The naturalistic fallacy as the fallacy of defining the predicate good.
- (2) The naturalistic fallacy as the fallacy of identifying the predicate good with any predicate other than good.
- (3) The naturalistic fallacy as the fallacy of identifying the predicate good with any natural or metaphysical predicate.

Ad (1): Moore believes it is a fallacy to define the predicate good because he contends, on the one hand, that good is a simple notion, which cannot be analysed into parts, and on the other hand, that, in the most important sense of 'definition', a definition states which parts invariably compose a certain whole. Consequently, if the predicate good is not complex, it is impossible to state of which parts it is composed. Therefore it is impossible to define the predicate good.

How to Derive 'Ought' from 'Is'. *Philosophical Review* 1964; 73: 43–58). Similarly, MacIntyre argued that certain facts about the role and purpose of something or someone, e.g. that something is a knife or that someone is a soldier, also seem to entail normative conclusions, in this case that the object ought to be sharp or that the person ought to be brave (A. MacIntyre. 1984. *After Virtue*. Notre Dame: University of Notre Dame Press). The counterargument most often brought forward against Searle and MacIntyre is that social facts and human purposes are already implicitly normative and that therefore derivations of normative conclusions from these types of 'facts' do not truly violate Hume's Law (cf. J.L. Mackie. 1980. *Hume's Moral Theory*. London: Routledge).

²⁶ W.K. Frankena. The Naturalistic Fallacy. *Mind* 1939; 48: 464–477, p. 467.

²⁷ G.E. Moore. 1903. *Principia Ethica*. Cambridge: Cambridge University Press.

Given Moore's rather idiosyncratic concept of definition, however, it is doubtful whether other moral philosophers who offer a definition of 'good' are really committing the naturalistic fallacy. In nearly all cases, these philosophers are not trying to state the parts of which the complex notion 'good' is invariably composed, they are rather claiming that two words, for example 'good' and 'pleasant', have the same meaning. And Moore can hardly object to this type of definition of 'good', because he himself uses various synonyms of 'good', e.g. 'intrinsic value', 'good as an end', 'ought to exist for its own sake'.

Ad (2): This brings us to the second sense of 'the naturalistic fallacy'. This sense is clearly recognizable in the passage in which Moore introduces the naturalistic fallacy:

It may be true that all things which are good are *also* something else, just as it is true that all things which are yellow produce a certain kind of vibration in the light. And it is a fact, that Ethics aims at discovering what are those other properties belonging to all things which are good. But far too many philosophers have thought that when they named those other properties they were actually defining good; that these properties, in fact, were simply not 'other', but absolutely and entirely the same with goodness. This view I propose to call the 'naturalistic fallacy' and of it I shall now endeavour to dispose.²⁸

It might be true that all things which are good are also pleasant, but it would be an error to conclude from this fact that pleasant and good are one and the same property. To show that good is not identical with any other property, Moore appeals to what has become known as the open question-argument. Take the definition 'Good is pleasant'. If good were indeed identical with pleasant, then the question 'This object is pleasant, but is it also good?' would not be an open, significant question, whereas in fact it is (according to Moore). As Moore sees it, the same goes for all such definitions of good.

It is doubtful, however, whether the open question-argument is sound.²⁹ Moore seems to assume that, if two terms refer to the same property, they must have the same meaning and that, therefore, if two terms do not have the same meaning, they cannot refer to the same property. But, although it is true that, if two terms have the same meaning, they also have the same reference, the reverse

²⁸ Ibid: 10.

²⁹ See, for example, Frankena, *op. cit.* note 26.

does not hold.³⁰ To give a well-known example, the terms ‘H₂O’ and ‘water’ do not have the same meaning, but they do refer to the same substance. In other words, even if the question ‘This object is pleasant, but is it also good?’ is an open question, this does not show that goodness and pleasantness are different properties and that it is a fallacy to identify the former with the latter.

Ad (3): In a draft for a preface to the second edition of the *Principia Ethica*, Moore states that the claim that good is different from any natural or metaphysical predicate comes much nearer to what he really wanted to say about the predicate ‘good’ than the claims that good is unanalysable or indefinable. To understand why Moore believes that it must be a fallacy to identify good with either a natural or a metaphysical property, it is necessary to examine his views on the nature of good and of natural and metaphysical properties. According to Moore,³¹ a natural property is a property with which it is the business of the natural sciences or psychology to deal, or which can be completely defined in terms of such properties (examples Moore mentions are: more evolved and pleasant). A metaphysical property he defines as a property which stands to some supersensible object in the same relation in which natural properties stand to natural objects (examples Moore mentions are: being willed and contributing to our true selves). The characteristic that, according to Moore, distinguishes good from natural and metaphysical properties – and that it only shares with other predicates of value – is that the predicate good depends solely on the intrinsic nature of the things which possess it, but is not itself an intrinsic property. It would fall outside the scope of this paper fully to explain Moore’s characterization of good. Suffice to say that Moore’s description closely resembles the concept of supervenience³² and that it is because of the described difference in nature between good (and other predicates of value), on the one hand, and natural and metaphysical properties, on the other, that defining the former in terms of the latter involves a fallacy.

Although Moore’s view of good as a non-natural property is by now rejected by most philosophers, many (e.g. R.M. Hare, Simon Blackburn, David Wiggins) still maintain that value predicates cannot be reduced to or be defined in terms of predicates referring to natural properties (for example, because the normativity of the former

cannot be captured by the latter). For this reason, we will hold to understanding the naturalistic fallacy as the fallacy of identifying the moral predicate good with natural (or metaphysical) predicates.

3. The fact-value distinction

The phrase ‘fact-value distinction’, when it is not used as a synonym for ‘is-ought problem’, refers not so much to problems or fallacies, but rather to certain meta-ethical views. We will distinguish three views that are often denoted by this phrase:³³

- (1) No statement or concept is irreducibly both evaluative and factual.
- (2) Evaluative discourse fails to have certain characteristics (such as truth-aptness, objectivity, rationality, etc.) essential to paradigmatic realistic discourses like, for example, scientific discourse.
- (3) (Scientific) facts do not presuppose values (or, alternatively, science is value-free).

The first view seems of a moral-semantic nature. A typical example of a debate in which such a view is brought forward is the debate on the nature of thick ethical concepts like cruel or brave. What is important to stress is that a proponent of the fact-value distinction in this sense (e.g. R.M. Hare) does not deny that thick ethical concepts are both descriptive and evaluative – or, more precisely, that terms like cruel and brave can be used to express both factual and evaluative statements. An advocate of this version of the fact-value distinction, however, would claim that these two components of the meaning of the concept can in principle be separated. An opponent of the distinction (e.g. H. Putnam) claims that the descriptive meaning of a concept like cruel cannot be stated without using a synonym or another term with evaluative force and that, in this sense, facts and values are entangled in this type of concepts.

The second view is partly semantic, partly epistemological. Advocates of the fact-value distinction in this sense (e.g. David Hume, A.J. Ayer, J.L. Mackie) claim that there is a distinction of kind between factual statements or assertions, on the one hand, and value judgements or prescriptions, on the other. In other words, descriptive and normative statements belong to (semantically) distinct classes. Moreover, according to defenders of the fact-value distinction, normative statements fail to have certain characteristics that statements from realistic discourse typically do have. As a consequence, normative

³⁰ Cf. A.N. Prior. 1949. *Logic and the Basis of Ethics*. Oxford: Oxford University Press; David Gauthier. Moore’s Naturalistic Fallacy. *Am Philos Q* 1967; 4: 315–320.

³¹ G.E. Moore. 1921/1993. Preface to the Second Edition. In *Principia Ethica* Revised edition, edited by Thomas Baldwin. Cambridge: Cambridge University Press: 2–27.

³² Cf. Thomas Baldwin. 1990. *G.E. Moore*. London: Routledge: ch. III.

³³ Cf. Dodd & Stern-Gillet, *op. cit.* note 20; L. Bergström. Putnam on the Fact-Value Dichotomy. *Croatian J Philos* 2002; 2: 117–129.

statements have a lower epistemic status. Opponents of the fact-value distinction in this sense, i.e. moral realists (for example, John McDowell, David McNaughton and Thomas Nagel), do not deny that there is a difference in meaning between statements of fact and value judgements, but they do deny that the latter have a lower epistemic status than the former.

The third view seems primarily epistemological. Someone who rejects the fact-value distinction in this sense (e.g. H. Putnam, H. Longino) claims that facts, particularly scientific facts, presuppose values; in other words that science is not value-free. To clarify what this claim might imply we follow van der Steen.³⁴ An advocate of the value-freedom of science (e.g. J.J.C Smart) might very well hold the following theses:

- (1) Empirical research about values has a legitimate place in science.
- (2) Scientific research is constrained by norms and values concerning, for example, the treatment of experimental subjects and animals.
- (3) Science cannot do without values of its own; it needs methodological values (like empirical adequacy, simplicity and coherence). These values may be called constitutive values.
- (4) Contextual values, e.g. social, cultural or political values, affect (the choice of) subjects of research.

Such an advocate, however, would deny that contextual values do or should determine *how* we investigate subjects of interest. Accordingly, someone who rejects the fact-value distinction in this sense, like Putnam and Longino do, claims that contextual values, at least as a matter of fact, influence the definition of the concepts used in an empirical study and the methods and instruments chosen to study these concepts.

4. EMPIRICAL ETHICS AND THE META-ETHICAL FALLACIES

In this section, we examine whether empirical ethics is necessarily confronted with the above-mentioned meta-ethical fallacies.

Before discussing in detail whether or not empirical ethics is necessarily confronted with the is-ought problem, the naturalistic fallacy and the fact-value distinction, respectively, we want to mention a general reason why it is unlikely that these meta-ethical questions pose a problem to empirical ethics: empirical ethics is a

normative-ethical endeavour, whereas the problems like the is-ought problem are of a meta-ethical nature. Empirical ethics is a type of applied and therefore of normative ethics. Empirical ethics wants to defend or criticize concrete moral principles or practices rather than make claims about moral concepts in general.³⁵ The problems like the is-ought fallacy, on the other hand, pertain to the meta-ethical level, i.e. they depend upon certain (broad) meta-ethical views. Given that normative ethics and meta-ethics are to a large extent independent domains – normative-ethical views are robust vis-à-vis meta-ethical views on the semantics of moral concepts or the epistemology of moral judgements – it would seem that empirical ethics need not deny the meta-ethical views upon which the meta-ethical fallacies are based.

1. Is-ought problem

Empirical ethics would be confronted with the is-ought problem, if it tried to derive a moral conclusion solely from empirical findings, for then it would derive a moral conclusion from non-moral premises alone (first interpretation of Hume's Law; see section 3.1) or a normative conclusion from descriptive premises alone (second interpretation). But, as became apparent in section 2, the conclusion of an empirical-ethical inquiry is not necessarily a moral judgement or principle. Nor are the conclusions of these studies necessarily based solely on empirical results.

In most types of empirical-ethical studies mentioned in section 2, the conclusion is not itself a moral judgement or principle, though it clearly is connected to such a judgement or principle. For example, studies aimed at describing the actual conduct of a group (2.1) often conclude from the fact that the conduct is not in accordance with the relevant moral principles that measures should be taken to increase the degree of compliance. Similarly, studies aimed at determining the feasibility of a moral rule (2.4) do not result in a moral conclusion as such, but merely in the conclusion that the moral principle in its current form does not hold for the context/situation studied. In fact, only studies that try to correct deficiencies in existing moral theories (2.2) and ones that describe the actual moral opinions of those involved in a practice (2.3) seem to result in a moral conclusion.

³⁵ This is an important respect in which empirical ethics differs from earlier approaches to ethics that were accused of committing the is-ought fallacy. Unlike naturalistic approaches to ethics, such as evolutionary ethics, or transcendental approaches, empirical ethics does not intend to provide a general foundation of morality. As explained by Musschenga (*op. cit.* note 1), its main aim is to make general moral principles, whatever the origin of their justification, more context-sensitive.

³⁴ W. van der Steen. 1995. *Facts, Values, and Methodology*. Amsterdam/Atlanta: Rodopi: 15–35.

The moral conclusion in such studies, however, is not exclusively based on empirical findings. Van Delden & van Thiel,³⁶ for instance, explicitly use a version of the method of reflective equilibrium, the so-called network model. In this model, the justification of moral principles is a matter of bringing coherence in a set consisting of moral intuitions (the empirical results), morally relevant facts, moral principles and ideals. Thus, the moral conclusion they draw, the multidimensional theory of autonomy, is not solely derived from their empirical findings. In other words, they found their moral conclusion not only on descriptive, non-moral premises but also on normative, moral ones, thereby avoiding violation of Hume's Law (in both interpretations).

Moreover, even if authors actually derived a moral conclusion solely from their empirical findings, they still would not necessarily be confronted with the is-ought problem. Hume's Law is after all a logical principle, so violation of it might be prevented by adding an extra premise, in which the factual/non-moral statement and the normative/moral conclusion are interconnected.³⁷ Given that the arguments from empirical premises to moral conclusions within empirical ethics are not meant as counter-arguments against Hume's Law and that empirical ethics does not intend to make general claims about the possibility of such derivations, these arguments would not be undermined if an extra normative/moral premise were invoked (or made explicit) to avoid the is-ought problem.

2. Naturalistic fallacy

Most types of empirical-ethical study discussed in Section 2 pertain to the application or formulation of moral principles like the principle of respect for patient autonomy, i.e. they are more about 'ought' than about 'good'. Nevertheless, the aim of some of these studies could be rephrased in terms of 'good'. Thus, the study by van Delden & van Thiel (see 2.3) could be taken as a contribution to the definition of 'good nursing-home care'. Even if these studies are thus characterized, however, it is still difficult to see why they would be in danger of com-

mitting the naturalistic fallacy. For these studies do not want to define the *concept* of good (they do not wish to make claims about what 'good' itself means); they merely want to criticize certain criteria of goodness and offer alternative criteria. And, as the passage in which Moore introduces the naturalistic fallacy showed, he is not opposed to offering criteria of goodness but merely to defining the concept of good itself. At most, these studies can be said to suggest redefining *the good*, i.e., the collection of things or states of affairs that are good. And, even though Moore might reject their definition of the good, he certainly is not opposed to trying to define the good as such (after all, that is exactly what he himself attempts in the last chapter of the *Principia Ethica*, *The Ideal*).

3. The fact-value distinction

As became apparent in Section 3, the fact-value distinction is not so much a fallacy or problem, but rather a certain meta-ethical view, which one might either endorse or reject. Therefore, it would not make sense to discuss whether empirical ethics can avoid committing this fallacy or not. Some authors, however, have argued that at least some approaches to empirical ethics presuppose rejection of the fact-value distinction. Bert Molewijk, for instance, pleads for what he calls integrated empirical ethics, which according to him 'assumes an interdependence between facts and values and between the empirical and the normative'.³⁸ If such an assumption did not remain restricted to integrated empirical ethics, the fact-value distinction could pose a problem for empirical ethics in the sense that one could not engage in this type of ethics without rejecting the fact-value distinction. For that reason, we will investigate whether or not there is a necessary relation between empirical ethics and (rejection of) the fact-value distinction in one or more of the three senses we have distinguished.

(i) Empirical ethics would imply a rejection of the fact-value distinction in the first sense, if it (necessarily) claimed that at least some statements or concepts are irreducibly both evaluative and descriptive. However, we do not see why empirical ethics would have to make such a claim. Mixed concepts – concepts that are both descriptive and evaluative – may certainly play an important part in empirical-ethical studies. A good example would be the concept of autonomy interpreted as a character

³⁶ Van Delden & van Thiel, *op. cit.* note 12.

³⁷ To give an admittedly simplified example: the inference 'The majority of the Dutch people believe that euthanasia is not morally wrong; therefore, euthanasia is not morally wrong' violates Hume's Law. But if the premise 'Morally wrong is what the majority of the Dutch people believe to be morally wrong' is added, the problem is gone. That the extra premise is implausible or false is irrelevant. After all, to say that an argument is valid is to say that *if* the premises are true, the conclusion is necessarily also true; the requirement of validity does not entail anything about the actual truth of the premises.

³⁸ A.C. Molewijk et al. Empirical Data and Moral Theory. A Plea for Integrated Empirical Ethics. *Med Health Care Philos* 2004; 7: 55–69, p. 55; see also: Lieke van der Scheer & Guy Widdershoven. Integrated empirical ethics: Loss of normativity? *Med Health Care Philos* 2004; 7: 71–79.

ideal:³⁹ to say of someone that he is autonomous in this sense is not only to state that he possesses and practises certain virtues like self-possession, authenticity and self-determination, but also to praise him for acquiring and executing these virtues. But there is no reason why an empirical ethicist would have to defend that these two aspects of the meaning of the concept cannot be separated. One may want to stress that these two aspects are intertwined in practice and that it is important to be aware of this when analysing interviews or conversations. Such a warning, however, pertinent as it may be in itself, would be beside the point. For, as previously explained (3.3.a), defenders of the fact-value distinction like R.M. Hare merely claim that the descriptive and evaluative meaning of these concepts can *in principle* be separated. In our view, empirical ethics as a discipline need not take sides in this meta-ethical debate.

(ii) Empirical ethics would involve a rejection of the fact-value distinction in the second sense, if it presupposed a realistic analysis of moral discourse. However, we see no reason why empirical ethics would have to make such an assumption. After all, just like the naturalistic fallacy, the fact-value distinction in this sense pertains to the analysis of the meaning and justification of moral concepts/judgements as such, not to the meaning and justification of specific moral judgements or principles, with which empirical ethics is primarily concerned. And the specific moral claims of empirical ethics are as compatible with, for example, Hare's universal prescriptivist analysis of evaluative language as with a realistic analysis along the lines of, say, John McDowell.

(iii) Empirical ethics would imply a rejection of the fact-value distinction in the third sense, if it necessarily assumed that scientific facts presuppose values. Would empirical ethics lose its point if the claim that fact and value are distinct were true? We would say that this only holds for a particular type of empirical-ethical study, namely the one discussed in Section 2.6 under the heading 'Showing the normative aspects of science, technologies or organizations'. This type of study is explicitly based on the assumption of the entanglement of fact and value. We do not see why other types of study would have to assume that facts and values are intertwined.

One might object that, given the aim of empirical ethics to increase the context-sensitivity of ethics,⁴⁰ the facts that this type of ethics discovers/produces presuppose the value of the practical feasibility of moral precepts (or a similar type of value) and that, in this sense, all empirical-ethical studies presuppose rejection of the fact-value dis-

inction. We do not take this objection as saying that the facts collected in empirical-ethical studies, e.g. the way nurses view patient autonomy, are logically dependent on (the validity of) the value of practical feasibility, but rather as claiming that the fact that and the way in which, for example, the nurses' views are studied, and the fact that and the way in which these views are incorporated in ethical theory, are determined by the researchers' subscribing to the value of 'practicality'. Does the objection thus understood imply that empirical ethics presupposes rejection of the fact-value distinction? We would be inclined to say: not necessarily. For a defender of the fact-value distinction may argue that the value in question is a methodological rather than a contextual one. After all, it would seem to be part of the goal of ethics that its principles should be action-guiding. If the principles developed are not action-guiding because they are too abstract or practically not feasible, this would seem to be first and foremost a methodological error. Moreover, the requirement of practical feasibility seems to apply to all moral principles and striving for feasibility therefore does not seem to indicate a preference for certain moral values over others. If practical feasibility can indeed be defended as a methodological value, then empirical ethics does not presuppose rejection of the fact-value distinction in the third sense, because, as explained in Section 3.3, rejection of the fact-value distinction pertains to the influence of contextual rather than methodological values.

5. CONCLUSION

Empirical-ethical studies, if carefully performed and reported, making their assumptions and reasoning as explicit as possible, need not be confronted with the is-ought problem or the naturalistic fallacy. Nor do such studies necessarily entail a rejection of the fact-value distinction. In other words, the criticism that empirical ethics is problematic because it involves committing basic meta-ethical fallacies is misplaced.

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³⁹ Cf. Schermer, *op. cit.* note 9.

⁴⁰ Cf. Musschenga 2005, *op. cit.* note 1.