



Applied Ethics

Challenges for the 21st Century

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Introduction

This collection of essays is the final summation of the Fourth International Conference on Applied Ethics held at Hokkaido University on November 13-15, 2009. The conference was organised by the Center for Applied Ethics and Philosophy, Graduate School of Letters, Hokkaido University (Sapporo, Japan).

The purpose of this collection is to bring together the wide-ranging papers on various fields of applied ethics presented at the conference.

It is our hope that this collection will contribute to further developments in research on applied ethics and promote our Center's mission, which is 'to bridge the gap between theory and practice'.

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Applied Ethics : Challenges for the 21st Century

Chapter 1

How Can Images of Aging Have Policy Implications?

Bethany SPIELMAN

Introduction

In 2007 the United Nations Office on Ageing, along with the International Association of Gerontology, published “A Research Agenda on Ageing for the 21st Century.” The purpose of the report was to support the implementation of the Madrid International Plan for Action of Ageing, adopted by the Second World Assembly on Ageing. The research agenda identified areas in which further research on ageing is needed. Along with the expected scientific and social scientific areas of inquiry, the report identified “images of aging” as a “research area of special concern” [United Nations 2003, p. 17]. The report posed several research questions about images of ageing including, What are the implications of changing images of older persons for policy on ageing?

This paper examines one of the assumptions embedded in the report’s research question: the assumption that images can have implications for policy on ageing. It seems odd at first to say that images can “have policy implications.” But this paper shows that certain visual images, or metaphors – in particular, “disaster” and “enemy”—have become images of demographic aging; and argues that these images tend to shift our priorities toward those that would be appropriate only in emergency or crisis situations. As a result, these images can be said to have general implications for policy on aging, and the appropriateness of their use should be considered a moral matter.

1. What Metaphors are Used for Demographic Aging?

Metaphors such as “life is a journey” or “time is money” are figures of speech, that add color and liveliness to verbal communication. But they are not just figures of speech. They are modes of understanding, powerful ways of constructing reality. They map patterns of thinking from one domain of experience – (the source domain) onto a second domain of experience (the target domain) and thereby structure thinking about the second domain [Lakoff 1993, p. 207]. During approximately the last two decades, discussion of demographic or population aging has been peppered with metaphors. Politicians and government officials, think tanks, the media, and religious groups, particularly in the U.S and the UK, have frequently used them. Two kinds of metaphors are appearing more and more frequently in the demographic aging literature: “demographic ageing as a disaster” and “demographic ageing as an “enemy.”

The disaster metaphor in demographic aging most often draws upon a source

domain of natural catastrophe and uses language such as avalanche, tsunami and iceberg. For example, Daniel Callahan has written, “medicine’s triumphant reconstruction of old age has unwittingly created a demographic, economic, and medical avalanche” [Callahan 1987, p. 20].

On the title page of his book *Gray Dawn*, Pete Peterson, former Secretary of commerce in the U.S. included this warning: “There is an iceberg dead ahead. It’s global aging” [Peterson 1999, title page]. And a U.S. church document, titled “The Age Tsunami and 21st Century Congregations” warned: “What [we will face in the first half of the 21st century is not an age wave but an age tsunami, and we are already well on the way. Wave language conjures up images of delightful, welcoming days at the beach. Mass-aging is a wave of a different intensity. Mass-aging is a tsunami that threatens every structure in society” [Pederson 2007, p. 9]. A less frequently used version of this metaphor is the accidental disaster. A report of the Center for Strategic and International Studies states, “global aging is pushing much of the developed world toward fiscal and economic meltdown” [Jackson & Howe 2003, p. iv].

In addition to natural, accidental, and human made disaster metaphors, metaphors of an enemy have begun to appear in the literature. The enemies alluded to may be warriors, terrorists or monsters who invade, set time bombs or eat humans alive.

Robert Powell on CBS’s Marketwatch online wrote, “The war has begun. No, its not the war of poor against rich. Rather it’s the battle of young vs. old. It’s the intergenerational battle that we have long feared [Powell, 2007]. Margaret Thatcher famously commented that Britain faces a time bomb over social security [Sharples, 1985].

Perhaps most imaginatively, writers on demographic aging have begun to use the cannibal metaphor. Bill Strauss and Neil Howe complain, “Seniors suck the marrow from our bones through Social Security” [Schulz & Binstock 2008, p.13]. And Pete Peterson urges Americans to “picture retiring boomers with inflated economic expectations and inadequate nest eggs, voting down school budgets and cannibalizing the nation’s infrastructure” [Peterson 1999, p. 209].

2. What is Mapped by “Disaster” and “Enemy” Metaphors?

What is mapped by “disaster” and “enemy” metaphors? These metaphors map a pattern of thinking. The pattern these metaphors map has several features that structure thinking about demographic aging. The features structure thought, not in a strict sense, by requiring or prohibiting some thoughts, but in a looser sense, by encouraging some ways of thinking and discouraging other ways of thinking about demographic aging.

One feature of the pattern being mapped is that of two significant forces: society and the elderly. If the pattern included only one force, the elderly could be seen as part of society, (a part that had been there, by definition, for many decades). If the pattern included three or more forces, then it would draw attention to other significant factors that play important roles in creating the situation. (e.g.

public expenditures for the military or for corporations well as for the elderly, or unemployment rates as well as numbers of elderly, for example). But two, and no more than two forces are mapped by these metaphors.

A second feature of the pattern is that the two forces oppose each other. The two forces do not share goals, act jointly, support each other, or move in the same direction. This thinking pattern discourages one from imagining that elderly persons could cooperate with society, or that demographic aging could be something that society could appreciate or even benefit from.

Another feature in this pattern of thinking is that one force (demographic aging) is so strong that it is expected to overcome the weaker force (society). The thinking constraint here is focusing on the possible destruction of society, rather than its modification, or cultural deepening.

These features of the pattern fit the prototype of the conceptual system that Leonard Talmy calls “force dynamics.” Force dynamics deals with the linguistic representation of how entities interact with respect to force. Although force dynamics includes many similar, related patterns, the prototype of force dynamics is “a stronger force opposing a weaker force head on, with all-or-non-conditions” [Talmy 2000, p. 466].

To clarify this prototype, we can compare its features to those mapped by two other metaphors of population aging that map force dynamics: “climate change” and “wave”. Britain’s daily Telegraph, only slightly exaggerating comments about aging by Britain’s health minister, alluded in a headline to a problem that may affect the entire planet: “Britain’s ageing population ’as big a threat as climate change” [Beckford 2008].

The climate change metaphor has some but not all of the features of the prototype of force dynamics. As in the prototype, there are two forces: society and climate change. And as in the prototype, one force (climate change) may some day be powerful enough to destroy the other (society). But climate change is understood as something that that is profoundly affected by, and can be changed by, society. What the metaphor of climate change maps onto demographic aging is therefore quite different from what the metaphors of cannibal or tsunami map. The problem of climate change must be addressed immediately, but its most serious, life-threatening consequences may be avoided by learning about it and working with it.

Another metaphor that maps force dynamics and shares some, but not all of the features of the prototype found in Shripad Tuljapurkar’s recent demographic work, titled *Riding the Age Waves* [Tuljapurkar 2006]. The title and the work present a picture in which two forces –demographic aging and society --- are not opposed. As one of several kinds of age wave, demographic aging can be skillfully worked with, or “ridden” by society. This metaphor leaves open the possibility that society could survive and perhaps even be strengthened by, rather than harmed by demographic ageing.

3. Are there Policy Implications of Shaping Thought in This Way?

So far, I have suggested that two kinds of metaphors map the prototype of force

dynamics onto thinking about demographic aging. The prototypical pattern of force dynamics does not in itself result in any policy implications. If the weaker force in this pattern were something whose destruction policy makers didn't care about, the features of force dynamics would be all that were mapped, and it would make no sense to say that these images actually have policy implications. The metaphors would shape thinking about demographic aging but not imply that anything be done about it.

But because policy makers generally do care about whether society survives or not, the patterns that metaphors of "disaster" and "enemy" create also carry implications about whether, how, and why policy makers should act with respect to demographic aging. "Disaster" and "enemy" metaphors, in addition to mapping force dynamics, also map an imperative: something should be done to defend society. Further, it should be done quickly. Finally, it should be done because someone's -- perhaps everyone's-- existence depends on it. This is the point at which policy implications become apparent, if not entirely specific, in these metaphors.

When facing a potentially lethal enemy such as a cannibal or an invading military force, or a potentially fatal disaster such as an avalanche or tsunami, some action is required, and quickly. Further, because society's existence is at stake, some actions that in other circumstances would not be morally acceptable could be morally justified. In other words, by mapping a sense of crisis or emergency these images imply that emergency policies and ethics apply.

In an emergency, action must be taken quickly to save lives. Policy makers are expected to deal head on, and quickly, to ensure survival. They are not expected to treat extraordinary situations as if they were ordinary. In emergencies that threaten lives or whole societies, ethics and policy often reflect these changes.

Ethical thinkers have acknowledged the difference between ordinary and emergency situations since at least the time of Aquinas. They, along with legal thinkers, have identified situations in which justifications for making exceptions to moral rules in life-threatening crises can be used. I will give several brief examples.

In a public health crisis professionals may be considered justified in taking some actions that would not be justifiable in other circumstances. Public health professionals may quarantine individuals who present a health threat to the community, and may violate individual rights that otherwise would have to be protected. They may be justified in not carrying out their less critical public health obligations during this time.

In his work on medical ethics in the aftermath of Hurricane Katrina, Ken Kipnis argues that even medical professionals, who have a professional moral obligation not to abandon or euthanize their patients, may justifiably do so when certain stringent catastrophic conditions are met. The conditions are that the health system has collapsed; patients are not expected to survive with the available treatments; no supplemental resources are expected in time to improve their prognoses; and it is not possible to evacuate the patients. Under these circumstances a physician may be morally permitted to either to abandon or to euthanize patients, Kipnis argues [Kipnis 2007]. Following Hurricane Katrina, the Louisiana legislature passed a statute that, though not so explicit, could be said to incorporate similar ideas.

The much debated ticking time bomb scenario is another example. Some would argue that, although torture is always prohibited in other circumstances, one is morally permitted to torture if the conditions of the ticking time bomb scenario apply. In this extraordinary hypothetical, one can save others by torturing an individual who has critical knowledge of a plan that would result in the loss of others' lives [Dershowitz 2002]. The prohibition on torture is lifted in this case if torture is thought "necessary" to save others' lives.

Law has developed in England, the U.S. and Canada so that the "necessity defense" in criminal law can be a justification (not merely an excuse) for breaking the law. For example, the necessity defense was allowed for a Texas prison inmate whose violent cellmates had planned an escape and threatened to kill him if he did not accompany them. His defense for escaping from prison with them was permitted because of the life-threatening emergency circumstances under which he had to make his decision [Spakes v. State, 1996].

These examples illustrate that policy makers (at least in the English speaking West) have available a very general framework which opens the possibility that violating certain prohibitions or refraining from carrying out certain ordinary obligations can be justified. That framework can be used when a situation is characterized to fit it.

I am not suggesting that the metaphors of "enemy" and "disaster" encourage policies of quarantine, abandonment, euthanasia or prison escape. The policy implications are not so specific. It is likely that practices such as financial abandonment of vulnerable older persons will be considered justifiable, and even considered a public service if demographic ageing is considered a crisis. (Most, but not all of those who use the disaster and enemy metaphors in the West use them to market a neoconservative agenda that recommends such policies). What I have tried to draw attention to here is the shift in ethical and policy frameworks that takes place when certain metaphors effectively characterize a social situation as an emergency or crisis requiring swift action to save lives or whole societies. That shift in frameworks is itself a policy implication of the choice to use these images.

Conclusion

In summary, the metaphors of demographic ageing as a "disaster" and an "enemy" are images that map patterns of thinking from our experience with disasters and with enemies onto our thinking about demographic aging. Because policy makers purport to care about whether society survives the attacks of forceful enemies and disasters, these images have implications for whether and how society should act with respect to demographic aging. Practices toward older persons that are ordinarily prohibited could be considered justifiable, and practices that are ordinarily considered obligatory could be considered optional when the moral and policy frameworks for thinking about them shift toward emergency frameworks. These are general rather than specific implications for policy on aging. Nevertheless, the use of these images has potentially profound consequences. The work that the disaster and enemy metaphors do as they shift policy thinking toward a framework compatible

with emergencies is itself moral work, opening up for consideration possibilities that otherwise would be objectionable.

Barry Hoffmaster reminds us that “considerable moral work gets done in deciding how a situation is to be characterized” [Hoffmaster 1994, p. 1157]. Although it initially seems peculiar for the United Nations Research Agenda on Aging to imply that images have policy implications, these images have them. Because they do, it is critical, that the work of deciding whether these metaphors mischaracterize or properly characterize demographic ageing be recognized as moral task.

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Chapter 2

Goldstone and Gaza: The Justice of the Conduct of the Inquiry

Howard ADELMAN

1. Prolegomena

This prolegomena connects this paper with Seumas Miller's paper on "Collective Responsibility, Epistemic Action and Global Climate Change"¹ and Peter Schaber's paper on "Human Rights without Foundations?" and his critique of Joseph Raz as well as Charles Beitz. This paper also builds on my own previous work and publications about methodological issues such as objectivity, impartiality and explanation², especially those focused on international commissions of inquiry³, and my own experience as a member of an international commission investigating crimes against humanity and the tensions between rights, self-protection and military intervention.⁴

I begin with the Seumas paper because it provides an excellent framework for evaluating the Goldstone Report.⁵ The Goldstone Report is clearly about global change, more specifically about altering the *political* climate in which states operate, particularly in military terms.⁶ The Goldstone Commission or Mission was part of one layered epistemic enterprise set up by the United Nations Human Rights Council as itself a collective *epistemic* enterprise to examine another layered collective *behavioural* enterprise, the Gaza War that took place between 27 December 2008 and January 18 2009 as well as the events leading up to and following the war. The treatment of rights in Israel and the West Bank was also included as part of the mandate.

This paper will concentrate *not* on the *behaviour* of one of the principle actors, the State of Israel and the Israeli Defence Forces (IDF), but on the examination of that behaviour by the Goldstone Commission. The behaviour of Israel, and the IDF more particularly, constitute a layered structure of joint *behavioural* action that is examined by another layered structure of joint *epistemic* action, the UN Human Rights Council and the Goldstone Commission more particularly. To repeat, this paper is not about the joint *behavioural* action of Israel and whether it did or did not commit humanitarian and war crimes⁷, but about the joint *epistemic* action of the Commission itself in providing evidence for such a determination. A related paper focused on the constitution of the commission itself, the background on the UN Human Rights Council and its pattern of selecting targets for investigation, the mandate assigned to the commission and the selection of the commissioners themselves as well as the shared belief set of both the HRC and the commissioners about the blockade and the characterization of Israel as an occupying power with respect to Gaza even after Israel withdrew its settlements and armed forces from

Gaza.⁸

As a layered action, the collective agencies included both the Human Rights Council that authorized the commission, provided its mandate and the selection of its members as well as the four commissioners and the support staff provided by the UN Human Rights Commission. Different duties attach to these different layers. This analysis concentrates on the commission's epistemic analysis and its foundation in the methodological and substantive belief network of the commissioners themselves. That epistemic analysis included clear statements of intentions with both explicit and implicit statements of moral beliefs and obligations, including statements of the collective intentions and goals which I isolate and clarify.⁹ The analysis tries to clarify how this set of beliefs structured and influenced the interpretations of "facts" that were collected by the commission.

More specifically, this paper analyzes the relationship between the underlying beliefs of the commissioners and the methods of observation, interpretation and analysis used to derive conclusions to assess whether and to what degree the process lived up to its stated impartiality and objectivity criteria. The analysis reinforces Seumas' contention that the "true beliefs" purportedly established by the Commission were, in effect, a product of the dialectical interaction (my phrase not that of Seumas) between the pre-existing network of beliefs shared by the commissioners, and likely that of the support staff as well, the specific *modus operandi* that went along with those beliefs that led the commission to draw conclusions about the *modus operandi* of the IDF and the Israeli government about its macro strategy, namely that the Israeli government and the IDF deliberately set out to target and punish the civilian population of Gaza based on the evidence gathered that purportedly led to that epistemic decision.

I am not questioning the intention of the Commission to determine the truth but rather analyzing the belief network and methods it used to reveal its version of the "truth". The issue is not the sincerity or integrity of the commissioners but the assessment of whether their version of integrity and process did yield a report that was unbiased and objective in conformity with standards of independent international commissions. As Seumas noted, mutual true beliefs lead to collective epistemic ends, including joint epistemic actions, and those actions have important consequences for the political life on this planet.

What were the epistemic norms that governed the procedures and reasoning of the commission? This takes us to Peter Schaber's paper, "Human Rights without Foundation?" and his critique of Joseph Raz as well as Charles Beitz. I did not and will not critique that paper directly or defend Raz and Beitz, but I believe this paper provides an indirect critique by challenging the foundations for and the efforts to establish the catholicism of rights and the role of rights as the papal adjudicator of other systems of ethics. Let me summarize *my* epistemic central position.

The Goldstone Report presumes the primacy of human rights, most basically, the rights of each individual to life and liberty. War, on the other hand, accepts no such goal. It discriminates between combatants and civilians to the best extent possible *within* the goals of the war. However, killing and defeating the enemy are the name of the game. Civilian protection is a subsidiary, not a central or primary

concern. Goldstone embarked on a human rights mission to undercut the foundations for fighting war and not just an examination of Israeli and Hamas conduct in the war. This is clear when one reads in the Report, ‘The State of Israel is therefore also failing to protect its own citizens by refusing to acknowledge the *futility* [my italics] of resorting to violent means and military power.’ (1711)¹⁰ It is an odd conclusion after conceding Israel’s right to go to war to counteract the rocket attacks.

The foundation for this difference can be found in the interpretation of the laws and ethics of fighting war which emerge in Goldstone’s own questions about how Israel could destroy so many factories, farms, the water supply, hospitals, etc. These were clearly NOT error strikes. So was it not obvious that the response by Israel was disproportionate?¹¹ This is the nub of the Commission’s reasoning.

Further, proportionality is a norm applied both to *ius ad bellum* and *ius in bello*. In the former case it means adopting a military strategy proportionate to the military objective. In the latter case, it means using specific military means in a proportionate way to implement the military strategy. Though the Report said it was dealing only with proportionate conduct, it explicitly dealt with the decision to go to war and the strategy adopted by Israel to fight the war. “[T]he Mission concludes that what occurred in just over three weeks at the end of 2008 and the beginning of 2009 was a deliberately disproportionate attack designed to punish, humiliate and terrorize a civilian population.” (1690; see also 1662; 1156; 5117) This conclusion about macro-strategy and the method of determining the characteristics of that strategy is the central theme of this paper.

Elsewhere I discuss the issues of proportionality and discrimination, in particular, tactical events in detail, but this paper is about proportionality with respect to *ius ad bellum*. Let me be succinct here to adumbrate the central element in the debate. According to the Report and Goldstone’s NYT op-ed that he wrote¹², his central point is that Israel’s response was disproportionate and *contrary to international law*, and, in terms of the latter, *every* precaution was not taken in the protection of civilian lives. This is based on the central thesis of the Report that the protection of civilian lives is and must be primary, a position repeated numerous times in the Report. But in war, and I argue in just war ethics, there is an acceptance that for each side, the primary goal is the defeat of the enemy. The secondary goal is the protection of its own soldiers. The third goal, not the first, if ethics of just war are to be effective, is to ensure as much as possible the protection of civilians while each side pursues those first two goals. I suggest that the standards of proportionality *ius ad bellum* in accord with international law are different when you take just war ethics to be a different ethical framework in competition with a rights framework than when you make a human rights framework as a supreme deity ruling *über alles*.

In addition to suggesting that there is a key link between the catholicism of rights and a papacy of rights doctrine that refuses to accept a pluralistic ethical system and competing systems of ethics but wants to subsume all other ethical doctrines within a human rights framework, I suggest that this has influenced the methodology used. It is not the only influence. I suggest, but do not attempt to prove, that the training as lawyers in an adversarial framework, as prosecutors rather than social scientists, has also led to the deformations of reasoning and explanation that I

try to document.

2. Framing the Debate: *ius ad bellum* and Asymmetrical Warfare

It is customary to distinguish between the ethics applicable to whether it is just to go to war (*ius ad bellum*) and the ethics of the conduct of the war itself (*ius in bello*). The key ethical norms of *ius in bello* are the principle of discriminating between combatants and non-combatants and the principle of proportionality related to the weapons and targets of choice. There are more ethical principles related to *ius ad bellum*: right authority; just cause; necessity; proportionality and last resort. In the case of the Gaza War, there is very little dispute that Israel was a lawful authority entitled to go to war and also had just cause to go to war given the 8000 rockets targeting southern Israel over the last five years.¹³ There is even very little debate on whether war was a necessary option in responding to the rockets. There is some debate of whether it was the truly last resort but an enormous debate over the issue of proportionality both in going to war and in the conduct of the war.¹⁴ Proportionality with respect to going to war generally applies to the theatre level of battle in *jus ad bellum* considerations and, with respect to the conduct of the war, generally refers to conduct of war at the tactical level used by brigades, companies and platoons in the field of battle for *jus in bello* considerations.

Proportionality is often used in common parlance in relationship to the relative losses on each side measured by objective *consequences* – how many died on each side. Other legal scholars relate proportionality to objective *preconditions*. An intended act to be proportionate cannot aim at anything other than the *status quo ante*, that is, the restoration of the state of affairs before the violence commenced.¹⁵ What pre-status situation? To the situation where Hamas aims to exterminate Israel but lacks the means to do so? Or to the situation where Israel with the most professional and technologically advanced military force in the region¹⁶ is impotent to use its military might to quash Hamas? It is a dramatic case of asymmetrical warfare in which the inherent disproportion makes the whole situation unstable.¹⁷ If allowed to, Hamas will inflict greater damage as a matter of course since Hamas's war aim is entirely out of proportion to Israel's. Israel wants to halt the incoming rocket fire, while Hamas seeks the destruction or evacuation of Israel/Palestine by Jews. So the issue for Israel must be how much damage must it inflict on Hamas while minimizing the damage to itself to achieve its far more limited war aim.

The counter-intuitive principle in asymmetrical warfare rests on two propositions, though both are questionable. The greater one's ambition as a "terrorist" state or non-state combatant, the less actual damage one need do in any one encounter. For the ultimate aim of strategically rational terrorism is to maximize the spread of fear.¹⁸ A state to be effective in countering such threats, on the other hand, needs to calibrate how much damage it must inflict on the other side to deter future actions that in the overall scale of warfare appear as mere irritants. For the overall goal in the long run requires an appeal to the hearts and minds of the inhabitants (of Afghanistan or Gaza) to ensure a government is in place that opts for long term stability rather than the elimination of those defined as its enemy. The enemy must

become primarily self rather than other directed and replace the reliance on hope with the quest to inflict fear in the other.¹⁹

Beehner's proportionality doctrine²⁰ is, therefore, unhelpful when it comes to asymmetrical warfare. Each side's ends and means are disproportionate to the other. So a third sense of proportionality comes into play that is usually the preeminent one anyway. The issue is not the proportion of results or re-establishing the relative proportionate positions before, but the disproportion in intent on each side and the proportion of force necessary to achieve one's war aim. Military strategists must consider the results of the war and the advantage anticipated relative to alternative actions just as military commanders on the ground have to consider the advantage anticipated of a specific action relative to the overall war strategy. This is why the application of proportionality in this type of warfare is so closely related to last resort.

Let us make these abstractions concrete. Hamas has a limited number of options: kidnapping soldiers, sending suicide bombers into Israel, sending rockets to terrorize the population. The most effective may be suicide bombers but they have the effect of alienating world public opinion as well as being relatively easily reduced by creating barriers to entry that, in turn, hurt one's own population.²¹ Kidnapping soldiers steals the enemy and allows disproportionate responses that disrupt the command and control apparatus of one's own side. Rockets are most effective because they instil fear in the enemy civilian population without causing enough real damage to alienate world public opinion while ensuring that reprisal attacks against the launchers will at best be totally ineffective since the launchers will be long gone and at worst the return fire will hit innocents, thereby alienating world public opinion on a much greater scale than its own relatively ineffective rockets.

That is why Israel's tit-for-tat strategy was ineffective. It even explains the ineffectiveness of the boycott effort as a strategy to reduce rocket fire. Cease fires and trading prisoners as positive incentives only provided time for Hamas to rebuild its arsenal of weapons. Targeted killings aimed at the command and control structure had the best results. However, this was not a strategy for accomplishing a war aim but was only a defensive gesture to temporarily disrupt the ability of the enemy to achieve its aims. The strategy also had the disadvantage of being ethically questionable and, in the overall scheme of things, ineffective.²²

Israel could have adopted as its goal regime change warfare and aimed to replace Hamas with a government more amenable to Israel that, as a minimum, would desist in sending rockets. Most military strategists thought that this goal was unachievable for a number of reasons that I have no time to go into. But the basic reason relates to proportionality – if one thinks the strategy used in the Gaza War in 2008-09 was too extensive, it is clear that regime change warfare produces much more short term predictable harm while the long term benefits are unpredictable. Israel had to adopt a more nuanced strategy that had to measure the sacrifice that its enemies would bear for the sake of its own self-defence with minimal risk to its own security and the security of its own soldiers but maximum risk to its reputation in the eyes of international public opinion. Given Israel's past performance under very

different governments, from 1948 to the Suez crisis to 1967 and the attack on the Iraqi nuclear reactor, Israel has always been willing to sacrifice world public opinion for the defence of its own interests as it sees it.

The measure of proportionality is then to choose the optimal course of action that will result in the optimal effect and benefit at the least cost, including the least cost to the civilians on the other side. This presumes, of course, a belief that the principle of necessity has been fulfilled and that warfare has been determined to be not only marginally the most effective option in the strategy adopted, but the only effective option compared to non-war strategies. That is why the issue of proportionality in both *ius ad bellum* and in *ius in bello* reflection becomes so central. Further, it is central to only one side in the following formulation. What strategy is best adopted that provides the desired response relative and proportionate to the injury *inflicted*? For the relatively weak side the issue is: What strategy is best adopted that provides the desired response relative and proportionate to the injury *absorbed*. The calculus is as asymmetrical as the warfare.

With respect to *ius in bello*, the tactical ethical measure for the stronger side remains the standard one: only use force proportional to the overall end of the military strategy adopted; restraint is incumbent to ensure only sufficient force is utilized to achieve the requisite aim. However, when the battle ground shifts to the thinking of the weaker side, Hamas must inflict maximum damage on the military of the other side *without* the constraint of hurting enemy civilians, but must ensure that any harm absorbed by its own population is tolerable. That is why in the ethics of *ius ad bellum* applied to asymmetrical warfare the key issue is reduced to proportionality.²³

This is very clear in the Goldstone Report. The size and extent of the Israeli response upsets Goldstone. But the issue remains open: what kind of cause justifies what kind of response? Any cause imposes constraints on the way arms may be used. Some causes are too trivial to warrant going to war at all. Other causes may warrant going to war but limit the scope, length and type of battle. The key issue is that if war is determined to be necessary – and Goldstone tends to suggest it may have been though without making a determination on the question - what military action or strategy is necessary and proportionate in waging war given that just cause and a just authority? As Condoleeza Rice posed the question in her testimony before the National Commission on Terrorist Attacks²⁴, do you respond in a tactical or a strategic sense by either responding to every attack with minimal use of military force on a tit-for-tat basis or act decisively at a time of your own choosing. Goldstone's basic and central thesis is that Israel not only far exceeded the norm of sufficiency, but took warfare to a totally new level of deliberate destruction of civilians and civilian structures. "(T)he reframing of strategic goals has resulted in a qualitative shift from relatively focused operations to massive and deliberate destruction." (para. 1190)

Goldstone does not consider that there may have been an alternate strategy of greatly increasing fire power without engaging in a war against the civilian population, such as a shock and awe strategy pioneered by Rumsfeld for the Americans. Goldstone in the report never even introduces or measures alternative

strategies versus alternative outcomes. Could an alternative strategy adopted by Israel have produced less damage but still deterred Hamas from continuing its rocket attacks at the same time as the ability of Hamas to conduct such attacks was significantly impaired? While normative ethical assessments are relative to alternatives available, Goldstone approaches the evaluation from both a simplistic reductionist approach of two alternatives as well as an absolutist normative standpoint. Certain military actions are totally ruled out.

There is a second problem for those evaluating Goldstone's Report as a precedent for undertaking just war analysis. For most just war theorists brought up in the heritage of Michael Walzer's mode of reasoning, just war theory is not the application of conventional criteria applied mechanically. It is a "discursive practice of systematic public reflection and argument". The ethical norms consist of "a persistently contestable and evolving shared vocabulary of ethical justifications and restraint."²⁵ Goldstone comes from the tradition of rights whereby the principle of rights is the pinnacle of all ethical considerations and just war ethics are subsumable within a human rights doctrine. Absolutes reign and the analysis is replete with this language that is somewhat alien to most just war scholars.

3. Methodological Issues

3.1. Proportionality

The simplification of strategic possibilities and the use of an absolutist monistic normative frameworks is then compounded by a fundamental error in reasoning. The first emerges in the play on the equivocal use of proportionality. The Goldstone Report quotes Israeli Major General Gadi Eisenkot, the Israeli Northern Command chief, from an article that appeared in Israel's internet news agency, *Ynet*²⁶: "We will apply disproportionate force on it (Lebanon) and cause great damage and destruction there." (para. 1191) Eisenkot is clearly referring to the relative amount of fire power Israel intends to employ. He is not referring to the ratio between the force to be employed and the military objective. Rather, he is insisting that disproportion (re magnitude) force must be used to ensure the ratio of means to ends remains proportionate. The Goldstone Report repeatedly uses this most fundamental of errors in assuming a common meaning when equivocal meanings are being employed.

As Aristotle pointed out in both the *Categories* and in the *Nicomachean Ethics*, health can be used to refer to a state – I am healthy – or to that which contributes to health – eating an apple – or to the a symptom of sign of health – I have healthy cheeks. They are three very different but related meanings conveyed by the same term. Similarly, a harm can also be used equivocally. Disproportionate force is a harm. It may, like eating an apple, refer to the amount or quantity of harm to be used to produce a result – an army may use a relative large amount of firepower or disproportionate amounts. Secondly, in employing one strategy rather than another, it may produce disproportionate destruction – analogous, but in an opposite way to the flush in one's cheeks as a sign of the good. Just as healthy apples as a cause of health and large amounts of firepower are causal factors, just as healthy cheeks or disproportionate or very large amounts of destruction are signs of health

or harm respectively, neither of these meanings refer to the core meaning of health in medicine or of disproportion in just war theory. In medicine, health is a state that refers to a relationship and balance among extremes. In just war theory, proportion refers to the relationship of means used to achieve a particular military end. Just war theory is not about the quantity of firepower used or about the quantity of destruction but about the ratio of firepower to the goals of a military action. Was the ratio proportionate? The Goldstone Report commits one of the most basic fallacies in assuming that all uses of disproportion have a univocal meaning. Based on that fallacy and other errors, the Report derives what it believes to have been the Israeli strategy in Gaza.

3.2. Accountability and Slippery Slope Reasoning

There is a connection between the disproportionate application of force and the possibility of a disproportion between the means used and the military goal. So it might mean that Eisenkot meant not only the application of significantly increased force but the use of that significantly increased force to target the entire civilian population. This possible connection has been exploited by the Goldstone Report's characterization of the Israeli Dahiya²⁷ doctrine, or colloquially by its detractors as the "mad dog" thesis, the version that has now even made it into Wikipedia. In both the defender's and the detractor's depictions, the doctrine is about accountability – that those responsible for assaults on Israel should be targeted.²⁸ But does it mean the leaders making decisions should be targeted or does it mean the people, including women and children, who support and even elect those leaders should be held accountable?

The latter interpretation is supported in the Report by other quotes from Major General Eisenkot. Referring to the Dahiya (also spelled Dahiya), Eisenkot said: "these are not civilian villages, they are military bases." Did he mean Dahiya was bombed because the command and control structure of Hizbollah was concentrated there or did he mean any civilian town that supported Hizbollah was, in fact, a military target? In the Israeli/Palestinian cyberwar, the latter view almost monopolizes the internet.²⁹ It is further reinforced by three additional quotes from the same source, one in which Eisenkot declares that this is not just his view but is the official doctrine of how wars will be fought henceforth. "This is not a recommendation. This is a plan. And it has been approved." The authoritative source is the Goldstone Report. So the argument becomes a circular one in which the Goldstone Mission quotes interpretations of reports from news sources that then become gospel because they are in the Report.

The second additional quote taken from Eisenkot refers to the intention of "hitting the national infrastructure of the state," which both sides agree is part of the doctrine. But the third quote is the most telling: "In practical terms, the Palestinians in Gaza are all Khaled Mashaal, the Lebanese are all Nasrallah, and the Iranians are all Ahmadinejad." This is the one that most clearly suggests that the war is to be waged against all the civilians in a hostile territory, reinforced by the statement that there will be "no proportion to the amount of casualties it has endured," though proportion once again referred to a numerical total of relative losses on each side

rather than to a relationship of means used to achieve a pre-established military goal.

I have cited all the quotations in a concentrated way to indicate that the interpretation provided by the Goldstone Report is not just plausible but has considerable evidentiary support and has been widely accepted. I have two concerns. Why did the Goldstone Report, if it was dedicated to impartiality, not present both interpretations and examine the evidence for each? Instead the Report presented one interpretation as a self-evident given as if no alternative interpretation was possible. Second, a full and fair reading of Eisenkot's interview and his other statements suggest that he was advocating the doctrine the NATO allies used against Serbia in the Kosovo War and not the strategy the Serbs used against the Kosovars in that same war. The statement was made in the context of reports of Syria massing troops on Israel's northern border. Further, the most damning sentence— that all Lebanese are Nasrallah and all Gazans are Hamas – is preceded by a sentence that is not quoted. “I do not propose that we adopt the Arab way of thinking [in jumping from Israeli soldiers to all Israeli Jews to all Israelis and then to all Jews], but rather, only the conclusions stemming from a permanent situation whereby states and political groups that claim to be representative shirk their responsibility for those they make pretenses of representing.”

This clearly suggests a policy of not just attacking militants but of holding the civilian leaders accountable through the use of force. It does not suggest holding the civilians responsible for the leaders they have chosen and/or supported. The result will inevitably be far more civilian casualties if you target the civilian leaders and their civilian abodes, but this does not turn the strategic doctrine into a war against the whole civilian population. It does mean infrastructure will be attacked, that soldiers will not simply target militants shooting at them at greater risk to themselves but will hit the enemy while providing maximum protection for its own forces. It will mean fighting a psychological as well as military battle. As Eisenkot put it in that newspaper interview, “I am referring to the situation whereby Arab civilians grumble about being punished because of their leaders, while fearing their leaders more than they fear us. We need to make the fear we sow among them greater.” And it will mean necessarily ignoring public opinion that may be appalled at such an escalation.

Now one might analyze this doctrine and conclude it too contravenes the laws of war. But the interpretation will not equate all villages with villages “turned into Shiite army bases” which is what Eisenkot said. Since my brief is an assessment of the Goldstone Report and not a review of whether Israeli policy in Gaza or NATO policy against Serbia in the Kosovo War or the initial shock and awe strategy of the US against Iraq was acceptable according to the ethics of war, I will not take this issue up here. My major concern is about misinterpretation, caricature and misrepresentation in a document supposedly from an impartial perspective.

The error can be summarized by depicting the slippery slope argument used in the Goldstone Report.

Israelis target militants.

Since Hamas politicians, direct militants, Israelis target the civilian leadership

Thus, far, both interpretations are in agreement. But the Goldstone deduction continues.

Since Hamas members support their leaders, Israelis target all Hamas members. Since Hamas was elected by both members and supporters, Israelis target all supporters.

Since the civilian population elected Hamas,, Israelis target all voters for Hamas.

Since the voters for Hamas constituted the majority (in fact, the largest plurality). then the civilian population of Gaza must be targeted.

Except I could not find any military officer, whatever the blunt and intemperate nature of their statements, to have affirmed any of the latter propositions on any fair reading of their remarks, though I did find two members of the Israeli cabinet for whom the above logic might be considered a reasonably fair interpretation of their comments, but those members were at odds with the majority of the cabinet over the policy in Gaza. My own conclusion is that the Goldstone Report interpretation as well as the bulk of other material is erroneous because the slippery slope argument was largely a projection of the commissioners and not a fair reflection of the views of those they claimed held them.

3.3. Evidential Norms

This brings up the issue of second order norms. In assessing proportionality does one apply the rule of a preponderance of proof that no civilians are present or do we use a balance of probabilities or, finally, do we give the benefit of the doubt to the soldier who must weigh his own protection against the risk to civilians?³⁰ It is very clear that Goldstone opts for one extreme – the preponderance of proof. Goldstone’s basic argument is a *ius ad bellum* one. Israel had a right to target Hamas for shelling Sderot and other southern Israeli towns with rockets, but Israel was not entitled to target any of the civilian objects unless there was clear and evident proof that they were being used for military purposes. In contrast, the American Council on Foreign Relations adopts a balance of probability second order rule: attacks are prohibited if they cause incidental loss of civilian life, injury to civilians, or damage to civilian objects that is *excessive* in relation to the anticipated concrete and direct military advantage of the attack.

Military commanders must consider the results of the attack compared to the advantage anticipated. In *ius ad bellum* considerations, the comparable second order rule must be that the balance of evidence must establish that more good would likely result than the harm produced. The wrong that results and the damage caused must be proportional to the anticipated good expected. The IDF and the Israeli government seem to have adopted a *minimin* rule instructing both strategists and tactical commanders to use restraint while, at the same time, ensuring the desired results. In the battlefield, soldiers must act but rely upon evidence sufficient to make a judgment without undue risk to oneself. Instead of a preponderance of

evidence for protecting civilians or determining proportionality or even a reasonable balance of evidence, the benefit of doubt is given to the strategists and to the tactical commanders and soldiers on the ground. Such a second order rule will inevitably result in greater civilian casualties and fewer military casualties on one's side.

Given such opposite frameworks, interpretations of processes for making judgements and even second order rules of evidence, there was no possibility that the Israeli just war theorists and practitioners would ever or could ever have the same shared vision or analysis as the commissioners. A clash was as inevitable as the one between Israel and Hamas. Hamas could enjoy the spectacle from the sidelines while licking its wounds from the terrible costs of the battle.

The second order norm adopted by the Israelis may possibly be contrary to just war theory. However, it is incumbent of the Commission to clarify and articulate the difference between the Israeli and the Goldstone standard and then demonstrate not only the difference but that the Israeli second order norm is a distortion of just war ethics. The Goldstone Report does not undertake either process.

3.4. Standards for Inclusion of Evidence

The Report is also replete with one standard for a) including evidence and b) interpreting evidence when applied to Israelis versus Hamas. In the case of the latter, the Report does not find evidence that leaves little doubt but only "significant evidence" *suggesting* "that one of the primary purposes of the rocket and mortar attacks is to spread terror amongst the Israeli civilian population." (109) Terror is a product not an intent in the case of Hamas, though even then it is a violation of international law. But Goldstone can never dub Hamas a terrorist organization whereas Israel deliberately terrorizes Palestinians. In the case of the Israelis, the evidence does not suggest but determines and leaves no doubt. Intentions are stated as definitive conclusions in spite of contrary evidence readily available and not considered. So when Goldstone says in his Moyers' interview that "it's a question of looking at the intent," the Commission looked through very different glasses to discern the intent of Israeli leaders versus Hamas leaders.

3.5. Selectivity

According to Goldstone, the Mission chose the 36 cases because "they seemed to be, to represent the most serious, the highest death toll, the highest injury toll. And they appear to represent situations where there was little or no military justification for what happened." The Commission did not choose to investigate in depth 18 executed by Israelis and 18 by Hamas. Almost all incidents involved Israeli action and Palestinian civilians and property. There was little effort made to investigate whether Palestinian civilians were used as shields as part of a pattern, whether they booby-trapped houses or hid military equipment in houses, mosques, schools and hospitals. Most of all, the Commissioners accepted Palestinian testimony without any critical examination of the testimony the witnesses provided as I shall elaborate.

The Commission did find, "indications that Palestinian armed groups launched rockets from urban areas" and that the militants "do not appear to have given Gaza residents sufficient warning of their intention to launch rockets from their

neighbourhoods to allow them to leave and protect themselves against Israeli strikes at the rocket launching sites,” but then goes on to suggest that they had no other choice. “since after the ground invasion, their only choice was to fight in urban areas.” (480) According to that logic, the Hamas fighters could fight the Israelis from urban areas but the Israelis could not respond or, at least respond without far greater risk to their own soldiers and in a way that would certainly have prolonged the war and possibly, in the overall result, produced even a larger number of casualties. But this is guessing. The very least the Commission could have done was consider the implications of the alternatives implied by its logic, which it did not do. In fact, in the Report’s far fewer references to Hamas actions, the depiction is tentative and the Report generally just says that it is “not in a position to make any finding” based “on our investigations”.

5. Conclusion

The Report subsumes the laws of war under a single hierarchy of values with rights at the pinnacle and does not acknowledge that rights and the ethics of war can be at loggerheads. Further, and perhaps most astounding for a supposedly impartial Commission, it did not conceive of itself as a fact-finding mission, with the specific purpose of uncovering and publishing facts, but as a vehicle to give voice to victims. Just as the Commission made the protection of civilians the highest priority when wars are fought, it “gave priority to the participation of victims and people from the affected communities” (22) and “made victims its first priority.” The Commission saw itself as having a publicity role to “draw attention to their (the victims’) plight.” (136). That may or may not be a laudable goal, but it not the job of international independent fact-finding commissions looking into issues of just war norms.

Granted, heads of fact-finding missions usually have a very broad scope for determining in complete independence “the procedures and working methods of the fact-finding mission” as well as the content of report.³¹ But then the head of such a commission is often given full scope to ensure the correct range of requisite members to ensure the right mix of expertise in addition to human rights experts. The Goldstone Commission lacked historians and strategic planning military experts, military and academic experts in just war law, or political scientists with an expertise on the Palestinian-Israeli conflict.

As part of its methodology, the Report spent quite a number of pages accusing Israel of “repressing dissent” while quoting from a pamphlet published in Israel by soldiers that disagreed with Israeli actions in Gaza and offered anonymous testimony while other soldiers came forth and championed the dissenters. In fact, given what is published in Ha’aretz, the Goldstone Report itself can be considered relatively mild. So where is the evidence of repression of dissent and how and why would the Goldstone Commission make such a determination since it did not undertake the requisite fact-finding? Such determinations are more revealing about the mindset of the investigators and their prejudices in spite of their presumptions of their own impartiality than of the limitations on free speech and rights of freedom of association in Israel.

The Goldstone Commission characterizes Hamas in a way that is not in accord with Canadian, American or British let alone Israeli characterizations, yet sees no need for examining its assumptions or how those assumptions affected its own reporting and interpretation let alone inquiring into the “facts” as was its ostensible mission. Is this because Goldstone and his colleagues ignore and misunderstand the historical and geo-political context and the role of Hamas in part as a proxy for Iran and the new anti-Israel axis? Why was Hamas’ charter to eliminate Israel not considered relevant even to discuss let alone mention and affirm or disconfirm? “Israel will exist and will continue to exist until Islam will obliterate it, just as it obliterated others before it.” (The Martyr, Imam Hassan al-Banna, of blessed memory)

For the only real context to which attention is paid is the history of Israel as an occupying power, the broader context “deeply rooted in the many years of Israeli occupation of Palestinian territory”. The right of the Palestinian people to self-determination is discussed eloquently (and I believe justly), but what about the Jewish right to self-determination that Richard Goldstone so adamantly defended in interviews afterwards but left out of the context in the Report? What about the long years of Arab denial of that right and the current Hamas resurrection of that pattern? Or is it simply because of its antithesis to the state’s use of military power but not to presupposed victims resorting to violence as I mentioned above? After all, when one reads the Report one gets the distinct impression that Hamas rockets are only sent as a response to Israeli provocations.

The Commissioners do not even belong to the tit for tat school, seeing both parties equally responsible, They certainly do not belong to the provocation and deterrent school but believe that Israel is primarily responsible for the violence in the region. This suggests that perhaps there is an animus towards the Israeli state and some sympathy for the charges that it is an apartheid state,³² though unwilling to go quite that far when the Report talks about something not at all within its purview. “The Mission is also of the view that the Israeli system presents inherently discriminatory features that have proven to make the pursuit of justice for Palestinian victims very difficult.” What does the report sight as an example of a discriminatory action - “the disparity in treatment of Jewish and Palestinian citizens by the Government of Israel in the installation of early warning systems and provision of public shelters and fortified schools between its Jewish and Palestinian citizens” (110, 1714) in providing shelters for Sderot and not for the Arab towns. However, the targets of the attack were not the Arab towns, and, in any case, they, like Beersheva and Ashkelon, were outside the perimeter of the towns entitled to receive the subsidy.

The repeated differential treatment of evidence on one side versus the other is most stark when the Report quotes from Hamas leader Fathi Hammad. “Although the Mission finds this statement morally repugnant, it does not consider it to constitute evidence that Hamas forced Palestinian civilians to shield military objectives against attack. The Government of Israel has not identified any such cases.” (421) So when Israel makes the accusation, it is dismissed. “The Palestinian people has developed its [methods] of death seeking. For the Palestinian people,

death became an industry, at which women excel and so do all people on this land: the elderly excel, the mujahideen excel and the children excel. Accordingly, [Hamas] created a human shield of women, children, the elderly and the mujahideen, against the Zionist bombing machine.” (476) Totally transparent statements of intent on one side are not viewed as adequate evidence. But colloquial uses of ordinary terms such as ‘disproportion’ in a normal non-legal context are used as definitive evidence of intent by Israelis in a legal context. Hamas talk is just puffery. Israeli talk taken out of context and given a different meaning is a revelation of true intent.

When Richard Goldstone tells Moyers that, “I’ve really seen or read no detailed response in respect of the incidents on which we report.” As I researched my paper and have read many, does it mean Goldstone has not done the research or that he has not read some of the mail addressed to him? When Goldstone says, “I would like to see a response to the substance, particularly the attack on the infrastructure of Gaza, which seems to me to be absolutely unjustifiable.” If it is *absolutely* unjustifiable, then in Karl Popper’s phrase, Goldstone is offering a proposition which cannot be falsified by any evidence or any explanation let alone my own. So no wonder he will not consider any response.

Notes

- 1 **Paper presented on 13 November at the fourth International Conference on Applied Ethics at Hokkaido University, Sapporo, Japan.**
- 2 **As some examples, see: Howard Adelman (1974) “Rational Explanation Reconsidered: Case Studies on the Hempel-Dray Model,”** *History and Theory*, XIII, 3, 208-224; Howard Adelman (1975) “Neutrality and Impartiality in the University,” *Queen’s Quarterly*, Winter; Howard Adelman and Allan Adelman (1977) “Explorations toward a Logic of Empirical Discovery: A Case Study in Clinical Medicine,” in *The Journal of Medicine and Philosophy* 2:1, March, 54-70; Howard Adelman (1991) “Morality and Ethics in Organizational Administration,” *Journal of Business Ethics*, 10: 9, September; Howard Adelman (1991) “The Policy Maker and the Advocate,” *Making Knowledge Count: Advocacy and Social Science*, ed. by Peter Harries-Jones, Montreal: McGill-Queen’s University Press, 54-73; Howard Adelman (2008) “Rehabilitating the United Nations,” Toni Erskine, ed., special issue of the journal *Ethics & International Affairs* on “Responding to Delinquent Institutions: Blame, Punishment and Rehabilitation.
- 3 **These include the United Nations Special Committee on Palestine (UNSCOP) (see Howard Adelman (1992) “Middle East Peace Negotiations: Working Group on Refugees - Working Paper: Themes and Processes,” for the Department of External Affairs and International Trade); FEWER; CEWARN; the UN Secretary-General’s 1995 Commission on Darfur.**
- 4 **Howard Adelman and Astri Suhrke, 1996, *Early Warning and Conflict Management*, Volume 2 of *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience*, Copenhagen: DANIDA; Howard Adelman and Astri Suhrke (1996) “Early Warning and Response: Why the International Community Failed to Prevent the Genocide,” *Disasters: The Journal of Disaster Studies and Management*, 20:4, December, 287-294; Howard Adelman (2008) “Canada’s Balancing Act: Protecting Human Rights and Countering Terrorist Threats”, in Alison Brysk and Gershon Shafir, ed., *National Insecurity***

and Human Rights: Democracies Debate Counterterrorism, Berkeley and Los Angeles: University of California Press;

- 5 **The full title of the report is: “Human Rights in Palestine and Other Occupied Arab Territories: Report of the United Nations Fact Finding Mission on the Gaza Conflict,”** Human Rights Council, 15 September 2009, A/HRC/12/48. Reference to the report will be by paragraph. http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/UNFFMGC_Report.pdf
- 6 **In addition to establishing facts, analyzing those facts to ascertain whether there was criminal responsibility, establishing the objective elements of the crimes and whether done deliberately or recklessly (para. 172),** Richard Goldstone hoped that his report would open the debate within Israel for a change in policy and would have consequences for the protection of innocent civilians in the world..
- 7 **In a paper I delivered (publication pending) entitled “A Comprehensive Theory of Just War Based on a Case Study Analysis of the Norm of Proportionality in the Conduct of War,”** at the International Studies Association, San Francisco, “Bridging Multiple Divides,” March 2008, the detailed analysis of this one case suggested possible grounds for war crimes charges as a result of gross negligence.
- 8 **Howard Adelman, “The Foundation for the Goldstone Inquiry and Report,”** paper presented at the Centre for International Governance Innovation (CIGI) workshop held in Waterloo on 19-20 October 2009 on “Ethical Supports for Strengthening the International Rule of Law. That paper focused on how the ethical behaviour of key players in international commissions can be improved at the international level if the rule of law is to be strengthened rather than undermined. Three follow up papers to this one are relevant, one on a detailed analysis of the cases of discrimination and proportionality in the conduct of the war discussed in the Goldstone Report, another on the political context of just war ethics applied to asymmetrical warfare to be delivered at a conference on military ethics in San Diego in January 2010, and a final one on the implications of the report for both international ethics and international law of the Goldstone Report to be delivered at the International Studies Association being held in New Orleans in February 2010.
- 9 **Though I deal with the repercussions of the Goldstone Report in the final paper of this series,** the results are already in with respect to the peace process, though it will take much longer to assess whether the report has advanced the protection of civilians in war. Ghassan Khatib, former Palestinian Authority Minister of Planning and Labor and the co-editor of the blog, bitterlemons.org, in his piece, “A Palestinian View: The Goldstone report and its ramifications for Palestinian politics,” (posted 13 October 2009) noted accurately the effect on both sides. “The findings and recommendations of the Goldstone report were shocking to Israelis. They were furious,” particularly at the warrant for Ehud Barak’s arrest in London brought about by the families of the many victims of Israel’s Gaza offensive. On the Palestinian side, the initial decision of the Palestinian leadership to agree to a six-month deferral of the vote in the Human Rights Council to support the deferral of a vote on the report in the UN’s Human Rights Council “caused an earthquake in Palestinian politics,” forced President Abbas to reverse himself and damaged his domestic standing, offsetting his hard-won improvements in his status from the Fatah conference, the convening of the PLO’s National Council, improvements to the economy and in the field of law and order achieved by the government. Abbas decided not to stand for the presidency again and, as Khatib concludes, the anti-peace leadership of both Israel and the Hamas-led opposition in Palestine have been strengthened, thereby dooming an already very weakened peace process to failure.
- 10 **It is interesting to not that there is no parallel sentence to be found that Hamas fails to**

- protect its own citizens by refusing to acknowledge the futility of resorting to violent means. Presumed victims can resort to violence but states cannot, at least, Israel cannot, though somehow the Americans and the British can.
- 11 **The Goldstone Report quotes Israeli leaders to support the contention that they intended the response to be disproportionate and that “disproportionate destruction and violence against civilians were part of a deliberate policy”.** But there is a difference to a response being disproportionate in actual delivery of destruction and being legally disproportionate. Israelis referred to the first and not the second meaning. And when Deputy Prime Minister. Eli Yishai, remarked, a remark cited several times in the Report, that warned that, Israel would “destroy 100 homes for every rocket fired” (64; 1201; 1212), the quote is used as evidence to support the contention of the Report that Israel deliberately targeted civilian homes, when, whatever the insensitivity of the statement, it did not refer to houses in general but to the houses of terrorists. (389:1200)
 - 12 *New York Times*, 17 September 2009, A33.
 - 13 **As Mark Rigad noted, in the context of asymmetrical warfare, neither just cause nor proper authority are issues in *jus ad bellum* discussion of ethics.** Israel certainly was a proper authority and the Goldstone Report never disputes Israel’s right to respond to the Hamas rocket attacks from Gaza on Israel. Mark Rigad (2007) “Jus Ad Bellum After 9/11: A State of Art Report,” *The Journal of Political Theory* 3, June, <http://international-political-theory.net/3/rigstad.pdf>. A widely entrenched principle states that warfare is permissible when states are under attack; wars of national-defence are the only wars that may be fought without the explicit authorisation of the United Nations in accordance with Article 51 of the United Nations Charter.
 - 14 Additional Protocol 1 of the Geneva Conventions (1977) Article 35 specifies that “In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited,” and that “It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.” <http://www2.ohchr.org/english/law/protocol1.htm>
 - 15 **See Lionel Beehner’s 2007 Council on Foreign Relations paper, “Does ‘Hot Pursuit’ Allow Turkey to Invade Iraqi Kurdistan,”** 17 October 2007. http://www.huffingtonpost.com/lionel-beehner/does-hot-pursuit-allow-tu_b_68912.html According to Beehner, in the 1907 Hague Conventions. “a state is legally allowed to unilaterally defend itself and right a wrong provided the response is proportional to the injury suffered. The response must also be immediate and necessary, refrain from targeting civilians, and require only enough force to reinstate the status quo ante.” Article 51 actually reads: “Countermeasures must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question.”
 - 16 **The Goldstone Report goes further: “The Israeli armed forces are, in technological terms, among the most advanced in the world.”** (para. 1182) Cf. [http://www.inss.org.il/upload/\(FILE\)1245235226.pdf](http://www.inss.org.il/upload/(FILE)1245235226.pdf)
 - 17 **Michael J. Totten (2009) “Gaza and the Law of Armed Conflict (So Called Proportionality),** *Commentary* 3 January <http://www.freerepublic.com/focus/f-news/2158224/posts>
 - 18 **David Emanuel Rodin (2004) *War and Self-Defense*, Oxford: Oxford University Press.** For a response to Rodin, see Jacob Blair (2008) “Tensions in a Certain Conception of Just War as Law Enforcement,” *Res Publica* 14, 303-311. The Goldstone Report noted that “the fact that they (the al-Qhassam Brigades and other armed groups) continue to launch rockets at populated areas without any definite military targets and are aware of the consequences to civilians indicates an intent to target civilians.” (para. 1721) but in contrast to the definitive

- conclusions the Report deduces about Israel as intending a total war on Hamas civilians – see below – all the Report can conclude is that, “it is *plausible* (my italics) that one of the primary purposes of these continued attacks is to spread terror – prohibited under international humanitarian law – among the civilian population of southern Israel.” (para. 1722)
- 19 **For reflections on just war theory applied to asymmetrical situations, see Jeff McCann and Jean Bethke Elshtain (2004) *Just War Against Terror: The Burden of American Power in a Violent World*, New York: Basic Books; Jeff McCann (2004) “The Ethics of Killing in War,” *Ethics* 114, July, 693-733; Allen Buchanan (2006) “Institutionalizing the Just War,” *Philosophy and Public Affairs* 34:1, 2-38; and Eric Patterson (2005) “Just War in the 21st Century: Reconceptualizing Just War Theory After September 11,” *International Politics* 42.**
 - 20 **Lionel Beehner (2007) “Does ‘Hot Pursuit’ Allow Turkey to Invade Iraqi Kurdistan?” 17 October 2007. http://www.huffingtonpost.com/lionel-beehner/does-hot-pursuit-allow-tu_b_68912.html More significantly, read Lionel Beehner’s 13 July 2006 Report for the Council on Foreign Relations entitled, “Israel and the Doctrine of Proportionality, <http://www.cfr.org/publication/11115/>**
 - 21 **The Goldstone Report noted that, “In a meeting with the Mission on 1 June 2008 (sic! – this is a typo; the year was 2009; the Commission was only created in 2009), the Gaza authorities stated that they had taken the initiative to spare civilian lives when they renounced suicide attacks in April 2006.” (para. 1667) The Report cited as a source *The Guardian* 9 April 2006. Unlike references to Israel where critical questions are raised and then adjudicated about real motives, the Goldstone Report did not question whether the real intentions of Hamas were, as stated, to save Israeli civilians, or whether its motives might have something to do with winning elections or with courting world public opinion or these and other goals that would make Hamas appear more moderate in the traditional Iranian style of *taqiyyah*, a Shiite and Iranian practice of self-defence through dissimulation to court a broader spectrum of support.**
 - 22 **Michael L. Gross (2006) *Bioethics and Armed Conflict: Moral Dilemmas of Medicine and War*. Cambridge, MA: MIT Press, 233.**
 - 23 **Thomas Hurka (2005) “Proportionality in the Morality of War,” *Philosophy and Public Affairs* 33:1.**
 - 24 **National Commission on Terrorist Attacks Upon the United States “Testimony of National Security Advisor, 8 April 2004. <http://www9-11commission.gov/archive/hearing9/9-11Commission.Hearing.2004-04-08>**
 - 25 **Rigad (2007) 2.**
 - 26 **<http://www.ynetnews.com/home/0,7340,L-3083,00.html>**
 - 27 **Dahiya is an area in Beirut in Lebanon that was and remains a Hizbullah stronghold that Israel bombed in the 2006 Lebanese War.**
 - 28 **“Arabs should be accountable for their leaders’ acts” quoted in the Wikipedia article on the Dahiyya doctrine from an interview with Gadi Eisenkot in *Yedioth Ahronoth*, 6 October 2008.**
 - 29 **Cf. www.tadamon.ca/post/dat/2008/10 as an example. It was even picked up in the English print media by Ben White in the stalwart anti-Israel *Guardian* newspaper www.guardian.co.uk. 7 October 2008.**
 - 30 **Igor Primoratz (2005) “Civilian Immunity in War,” *Philosophical Forum* 36:1, Spring, 41-58. *Additional Protocol I of the Geneva Conventions* (1977), Article 48 requires parties to a conflict to “distinguish between the civilian population and combatants and between civilian objects and military objectives and...direct their operations only against military objectives.” Article 51 elaborates the obligations with respect to “Protection of the civilian population.”**
 - 31 **See clause 3, of the European Council (2008/901/CFSP) setting up the independent**

international fact-finding mission on the conflict in Georgia,” 3 December 2008.

- 32 **As evidence for this, the Report cites though it does not endorse the statement of “The Committee on Economic, Social and Cultural Rights”** which “has recognized that Israel’s application of a ‘Jewish nationality’ distinct from Israeli citizenship institutionalizes discrimination that disadvantages all Palestinians.” In any case, what has this to do with just war and the Gaza invasion?

Chapter 3

The Four Cultures: Hybridizing Science and Humanities, East and West

Michel PUECH

The purpose of this paper is to elaborate hypotheses and to indicate research tracks. It leads to a research program and not to final conclusions. It tries to inspire and comfort philosophers who do not feel at ease in a compartmentalized culture.

1. Four Cultures, One Predicament

C.P. Snow's seminal article on the "two cultures" (Snow 1998) is well known in the anglophone world but surprisingly not in other cultural areas, according to my experience and investigations at least. The whole affair started with a famous Cambridge (U.K.) lecture in 1959, pleading against the divorce between *classical literary-artistic culture* (humanities) and *scientific culture* (technoscience). Our culture is split in two parts, lectured Snow, two parts ignoring each other and despising each other. This divorce is not just "another English social peculiarity", he said, but "this is a problem for the entire West" (Snow 1998, 3). In the worldwide discussion that followed the printing of Snow's *Two cultures*, it was made clear that importing Western science, everywhere in the world, meant importing the cultural divorce between science and humanities.

This "tragedy of the two cultures" has been approved as a brilliant analysis, bringing to light a real and deep problem in modern culture. It is read and explained as such in text books and school classes. But fifty years after, the anniversary of the Snow's initial talk invites to ask: What have we done? Why are we still in this cultural tragedy? How could we have an impact on this divide?

Today, we can address the issue of cultural fragmentation and its drawbacks in a new perspective. A globalized communication network and a globalizing way of life blur the boundaries of human activities. This provides reasons to hope in a *global ethics*. Its relationship to applied ethics belongs to the concerns of this paper. My hypothesis is that in the present state of affluence, material and informational, the problems we are facing in applied ethics, philosophy of technology, and sustainability are consequences of our thinking in a determined and closed cultural system.

In our globalized world, there is not just one line of fragmentation and isolation, there are two: *Science/Humanities* and *East/West*. Even in the West, there is now a need for cultural pluralism and a rejection of one-way regimented world-visions. In the East, adopting techno-science should not imply a massive loss of cultural diversity. This double fragmentation, *Science/Humanities* and *East/West* is an impediment for a possible new cultural form. I will call it *wisdom* and construe

it as a resource for applied ethics. It starts with the attempt to take the double divide as a single issue: let us try again to bridge the *Science/Humanities* gap and the *East/West* gap at once.

Wisdom means neither science nor humanities, neither Eastern nor Western, but inhabiting the world with an *ethos* that would be at the same time rational, humanistic, caring, and efficient. To imagine and to implement this *ethos*, thinking “out of the box” is required. The reward of this philosophical risk will be great and I have a feeling that philosophers are the ones to initiate this cultural *salto vitale*.

Our current fragmentation of disciplines, professional skills, cultures, methods, and credibility is no match for the globalization of issues: climate change, world trade, nuclear weapons, development, bioethics, nanotechnologies, etc. Hybridizing cultures, therefore, is not only a politically correct option, a sort of folklore-synthesis sub-discipline. It is the overall and new fundamental need of thought, ‘what deserves to be thought’, as Heidegger would have put it.

It turns out that we do not have two problems, bridging *the Science/Humanities gap* and bridging *the East/West gap*, we have one: hybridizing four cultures. We are responding poorly to the Science/Humanities challenge and poorly again to the East/West challenge because we take them as separate questions. My point is to look for a *global* gap-crossing point of view. It is not a *technical* issue (bridge building, cultural crossroads and information highways), it is a *lifestyle* and *think-style* issue (wisdom). Thus, applied ethics is at a crossroad: academic literature production on one way, risk taking in cultural renewal on the other. Here is one step on this second way.

Approaches like Nakamura’s classic book (Nakamura 1964) or Nisbett’s experimental research (Nisbett 2003) can help and speed up the existing but slow and partial evolution that mixes cultures in our globalized world. Relying on this previous type of research, the grids of the Science/Humanities and East/West cultural differences can be sketched, for the purpose of this exploring paper, as follows:

Science/Humanities divide:

- abstract-model building and controlling material processes / narratives of human experience
- “*erklären*” (explain by analysis and causal mechanisms) / “*verstehen*” (understand), using the concepts of German hermeneutics (Wilhelm Dilthey)

East/West divide:

- controlling by parts (focus on objects or individuals, and on the rules of their behavior) / apprehending the whole and inserting in it somehow
- unidirectional lines, growth / cycles, looping backward and onward in evolutionary circles.

Instead of a combination calculus, I will elaborate on these grids firstly by looking for a set of sources—the genes for the hybrids, which can be called *memes* by the adepts of *memetics*—and secondly by looking for a set of domains—cultural ecosystems where they can live and develop. The upshot is not exactly a *catalogue*

but a *program*.

2. Resources

The American philosophers R.W. Emerson and H.D. Thoreau opened a new world of thought in the XIXth century. Far enough from Europe, and aware of the radical change implied by modernity, they invented a new form of wisdom, an ethics of self-reliance in an authentic bond with nature. They considered the place of man in the modern world, an environment of pervasive technology, where man has an enormous transforming power on matter. They were philosophers of the railroad and the telegraph, as well as of woods and solitude. But they did *not* oppose inner authenticity and worldly engagement in the industrial era. They tried to delineate a “life with principle”, or an “examined life”: inwardly authentic and outwardly open to a civilized form of techno-science. This is a resource for applied ethics, on the Science/Humanities issue.

Both Emerson and Thoreau were strongly influenced by Asian culture (Richardson 1986, Richardson 1995), essentially via German text editions, and the whole romantic rediscovery of the East. Emerson is closer to India’s philosophical and religious culture, Thoreau to Zen Buddhism. Both received inspirations from the Chinese Tao. The link between this innovation on the East/West issue and their breakthrough in the ethics of modernity deserves to be investigated. Emerson and Thoreau’s “come back” in the culture of the electronic era and now in the culture of sustainability hints that embracing the four cultures has something to do with our philosophical needs.

In the background of Emerson and Thoreau’s original “transcendentalism” and in the more or less “new age” forms of spiritual quest, Buddhism and Zen play an important role. Here again, this inspiration has a link with the four cultures issue. Buddhism adapts to modernity and technoscience without face-to-face confrontation, and this is noteworthy because it is not the stance of major Western religions, even today. The favor of Buddhism in contemporary Western societies, in the elite in particular, reveals and expands *the non-religious potentiality of Buddhism*, as a philosophy of life, and a form of wisdom. Stress on the predicament of suffering and on renouncement ethics is an inspiration to Westerners looking for a way out of the obsession of material power and dominance.

Because of its simplification trend, Western appreciations of Buddhism focus on Japanese Zen. Even more, Zen interpretation of Buddhism envisions life and world so differently from techno-science (its facts, evidence-based argumentations, utilitarianism), that it stands for a real alternative to unified techno-scientific rationalization of life and world. Messengers to the West, like Suzuki Daisetsu Teitaro (鈴木 大拙) and Deshimaru Taisen (弟子丸 泰仙) give us the flavor of Zen thought, crossing over language barriers. Robert Pirsig’s *Zen and the Art of Motorcycle Maintenance* epitomizes the new cultural icons of the technological generation. Jiddu Krishnamurti, widely read all over the world, is by his books a covert master for a lot of Westerners.

These readings mean for us at the same time reconciliation with the East (East/

West problem) and a possible distanced view on our techno-scientific mastering of the world (Science/Humanities problem). Academic philosophy seizes but shyly this opportunity, most of the time in a specialized “comparative studies” approach, whereas its influence on major fields in philosophy would be energizing.

Gandhi is the best instance of cultural hybridization as an inspiration and empowerment. In his case, cultural hybridization was involved in a nationalistic endeavor, which tends to confirm that there is not necessarily a menace to cultural diversity: local and particular cultures are not necessarily at risk to be wiped out by cultural hybridization, on the contrary they can take advantage of it. Gandhi is *not* a pure product of India, he is not exactly *only* a native from Gujarat who stood up for his rights under the British rule. He went to London (England) to become a lawyer. He was an Hindu and a vegetarian, but he met in England a self-conscious vegetarian movement and found in it a sort of renewal of his own values, in a typical East-West-East circulation. Finding no job in India, when back home, he went to South Africa, and started his famous non-violent civil rights campaigns there, for the sake of the Indian workers community. The very idea and the method of these campaigns he found in Thoreau, the American philosopher. The inspiration towards a simpler life, and authentic communities, he found in Tolstoy, the Russian writer. The East/West blend is at the same time a modernity/tradition blend, on the Science/Humanities boundary, because Gandhi understood how the media and modern economics (all of them globalized... in the British Empire) were a new frame for the existence of self-reliant communities. The myth of “progress” as westernization-through-submission has been broken by Gandhi’s idea of a different way to evolve self-reliant communities.

Gandhi’s tremendous success, not only with the British, but in Hindu / Muslim conflicts, is a fact. In a time of severe doubts on the efficiency or even the mere possibility of collective action, we have much to learn from his capacity to *apply* values and ethics, in ends as well as means. Westerners like Martin Luther King kept this East-West-East... circulation functioning, but the potential energy of the method is certainly underemployed.

Gandhi’s basic concepts mean to me a potential rebirth of applied ethics in the West. The three more important are so original that the words can remain untranslated, to avoid oversimplification: *satyagraha*, *ahimsa*, *swadeshi*. *Satyagraha* is *self-reliance*, building the self as a person, in terms of responsibility and capabilities. This self-reliance is not a state but an effort, the resolution to strive for authenticity and integrity. Individual ethics following this inspiration concentrates on caring about small things, micro-actions, in the concrete and local sphere of influence of the person. *Ahimsa* is not only non-violence, but *humility of strength*, as opposed to the arrogance of power. Our techno-scientific state of mind is partial not to power but to the arrogance of power. If we blast the hill to have our road running a straight line, it is not because we have the power to, but because we have the arrogance to. Alternative routes would require a different strength, taking into consideration the landscape, the use of energy, the capacity to spend time for travel, and much more. This hill blasting image is an analogy for a lot of issues in applied ethics, especially bioethics and sustainability. *Swadeshi* is self-reliance

in building sustainable communities. “Think global and act local” can be the base line for Gandhian *swadeshi*. It does not mean we must leave our corporations and employments to join ashrams and meditate, it just means we can reconsider, where we are, the sustainability of our occupation in the communities we belong to, from the smallest (home community) to the largest (planet community), and take into account the interactions between these communities. Gandhi’s works are online on the Web and free (www.gandhiserve.org, exemplary cultural e-commons).

Cultural hybridization is not only a concern for scholars and is not only an intellectual matter. In my country, France, we have had a long story with judo and karate-do. Judo is with soccer the most popular sport for young people. Almost everywhere in the country you can find not only judo but aikido, kendo, jujitsu clubs, and more: kung-fu, kenpô, tae-kwon-do, việt võ đạo ... Of course, yoga and taishi are well-known and a lot of people consider these mind-body exercises as a sort of cure for the stress of modern life. This enduring presence of an Eastern way of life in Westerners lifestyles is a sign of the process I am trying to evoke in this paper. For a lot of people in the West, a lifelong immersion in an Asian martial art grows a different self, a hybridized interiority. Fundamental values and lifestyle attitudes are necessarily conveyed by martial arts, in every detail of the ceremonial, in the dojo-spirit, and in each and every technique. “Technique” here does not mean “technology”, but body techniques. In the martial arts, people can have a direct experience of Eastern conceptions and uses of energy, an experience of Eastern ways to achieve efficiency.

Last but not least, in the purest philosophical tradition, Heidegger’s Asian hidden sources is a very classical topic in Heidegger studies, and one of the most fascinating one. Heidegger’s “come back” on environmental issues and in philosophy of technology can be seen as a covert influence of non-Western philosophical metaphysics.

At the beginning of his philosophical career, Heidegger had such a passion for Asian thought that he was collaborating on a translation of Laozi’s Taoist texts (May 1996, 6). His whole life, he met Japanese visitors and talked with them about Buddhism and the Japanese *ethos*. His famous “conversation” with a Japanese philosopher about language is only the visible part of the iceberg.

Heidegger’s fundamental doctrine of Being is in many aspects so close to the Tao or Zen that a direct inspiration is the best explanation. But Heidegger did not want to raise new quarrels, he has had enough because of his nazi political engagement and of his presumptuous manners. Therefore, he has always been reluctant to mention Asian thought, in particular because he was an old style European scholar and he knew there is not much you can say when you do not know the language.

Heidegger’s attempt to overthrow Western metaphysics is an attempt to overthrow the monomaniac techno-scientific worldview of the West. The originality of this endeavor is that it initiates from inside Western metaphysics itself instead of denying it. This explains, according to me, Heidegger’s success in the East and particularly in Japan: he suggests how to inherit Western metaphysics without dogmatically submitting to it. Totally unwillingly, of course, Heidegger dispatched

philosophical tools (“memes”) highly suitable for cultural recombination.

Of course, to go from *knowledge* (cognition in a search for power) to *wisdom*, not only this pure Heideggerian but other ways are being opened (Maxwell 2007, Puech 2008).

3. Domains

In several domains of applied ethics, each of them still in the process of building a paradigm of its own, a significant advantage can be obtained by intertwining the current issues and methods and some of the Science/Humanities and East/West threads of analysis and re-conceptualization.

In medicine and bioethics the state of the art is split in a superposition and coexistence of two traditions: techno-scientific medicine coming from the West and adopted in the East, and traditional medical science coming from the East and adopted in the West (acupuncture, shiatsu...). The coexistence of these two cultures takes a specific form in each country, with different levels of academic acceptance and of popular use. A philosophical analysis of this pluralist culture in medicine is a real challenge. This philosophical challenge can be taken as mainly epistemological and in this sense it will help shape a new image of epistemic pluralism and tolerance. But I think applied ethics is best qualified to address this cultural pluralism. What we learn from different sources in medicine refers to the ethos of self-care. To take care of ourselves (and not of our “body” only) we need more than a techno-scientific biology applied to the human. We need a notion of *care*, as a whole, insisting on lifestyle, preventing dysfunctions. This wisdom of self-care is to be *added* to technological medicine, not to replace it—because once you have the heart attack you could not prevent, you do need some technology to survive and recover.

More widely, Westerners have a lot to learn from *technology and culture* in Japan. A specific cultural alliance and hybridization made the Japanese ‘success’ and still characterizes the Japanese ethos in modernity (Morishima 1982). The most striking and important feature is the capacity of Japanese culture to maintain its distinctive world, while adopting Western ways in so many compartments of social life. Firstly, this capacity demonstrates an *anti-sakoku* theorem (“sakoku”, 鎖国, is the Japanese word for the policy of national isolation in Japan, from mid-XVIIth to mid-XIXth century). Secondly it suggests a possibility of growing cultural pluralism in the world through non-destructive cultural exchange, for which strong existing cultures only seem to be prepared.

Japanese culture obviously has had, since the beginning, a high hybridization potential. Western cultural elements come after the integration of Chinese, Korean and Indian cultural elements. In techno-ethics, in the West, we are too often facing a single choice to accept or reject technology, while the real question is one of *coevolution* with technology. As Heidegger has shown we construe the question of technology as a technical question, because we are *always-already* in the technological mode of thought. To leave this cultural bias, we have to fully accept that the applied ethics of technology is not an engineer issue, not even a “Western” issue. Therefore, it must be globalized not only in its applications, but

first in its inspirations. Arnold Pacey, a British expert and philosophy of intercultural technology concerns, remains an isolated voice (Pacey 1990) but gives exemplary methods for techno-ethics, in his research on “technological practices”.

In business ethics as well as the ethics of economics in general, different voices become more and more audible, because of the debate on sustainability, now at the forefront of the media and the academy. The four cultures predicament is one the major methodological hurdles on the way to thinking a sustainable future. For this reason, many of the references I mention in this paper are creating momentum. A convergence of business ethics and environmental ethics could even be the future of the sustainability debate, to give birth to a global *eco-ethics*, embracing applied ethics in economy and ecology. But this evolution requires a blurring of academic boundaries and cultural divides—which is according to me the core challenge of sustainability in its philosophical construct.

In the “deep” sustainability trend, voluntary simplicity, Gandhi style or otherwise, is considered to be the only way out of the absurd infinite growth we are in. Sustainability, along this line, requires a radical revolution, where hybridized concepts like satiety, frugality, serenity, compassion, looping back one’s cycles, an so on, are necessary. Illich again, E.F. Schumacher (*Small is beautiful*), are among the needed references, reminding us that in the 1970s, a hybrid philosophy of economy was born. The strategic move here is the capacity to address the four dimensions of the *four culture predicament* at the same time, as it was the case with Illich and Schumacher.

4. Concluding Remarks: Applied Ethics, Wisdom Ethics

One of the concern of applied ethics is the “applied” side of ethics. What does it mean and how distinctive is this denomination? If the stress is on “applied”, then the branch stems from *applied philosophy*, whose mission statement is “philosophical study and research that has a direct bearing on areas of practical concern “ according to the British Society for Applied Philosophy (<http://www.appliedphil.org>). If the stress is on “ethics”, then the branch stems from meta-ethics, which seems to be largely the case for the moment in applied ethics. My purpose is to put the stress on *applied* for the following reasons.

In a striking paper on “the sources of hypocrisy” in ethics, N. A. Davis addressed a somewhat taboo flaw in human ethics: “the lack of fit between our everyday moral pronouncements and beliefs (on the one hand) and our practices (on the other)” (Davis 1993, 165). She mentions the fact, from a 1985 poll in the U.S., that 84% of obstetricians were believing that abortion should be legal and widely available, while 28% only were willing to perform abortions themselves. This is not just a reminder of “the gap between word and deed” (Davis 1993, 178), but may induce a motto for applied ethics: *apply* ethics! Whatever cogent and subtle the “supply chain” in academic ethics is, if no “delivery” reaches the final consumer, I am afraid the brand “applied” is abusive.

Therefore, applied ethics should not be conceived, or not only, as the specification of theoretical ethics to multifarious (theoretical) “fields” (medicine,

business, environment, professions...), as it is currently defined (Frey and Wellman (ed.) 2003 for instance). What is at stake is the expected upshot of this philosophical practice: deeds or words? If applied ethics is defined by its objects, by a range of questions and fields, it will be words, knowledge, rules and principles. We need them, but this is ethics-as-usual. Ethics-as-usual is different from meta-ethics, which addresses meta-questions such as the nature and possibility of ethics in its various interpretations (deontological, utilitarian, virtue ethics, and so on). Ethics-as-usual is different too from applied ethics, which addresses *applying ethics* questions. Without these differences applied ethics is at risk to be reduced to “localized” bits and chunks of meta-ethics (in medicine, business, environment...). What we need might not be the meta-ethics of specialized fields. My hypothesis is that the temptation to be a “specialized meta-ethics” comes from choosing the easy way: importing “analytical philosophy” scientism into ethics to restore a rational credibility. I am afraid that this scenario would leave open the gap that applied ethics was supposed to bridge.

If applied ethics endorses the project of being an applied philosophy, the focus is on cases and not on principles. What is required is not a global and top-down conceptual synthesis but working tools, and appropriate field issue analysis. This is the opportunity, I think, to make philosophy a global commons, by a pragmatist turn. To be a clincher in the building of global ethics, applied ethics needs not require an agreement about fundamental values, but have a strong concern for agreement about methods, methodological prejudices, cultural biases.... It should aim at *tools* and not systems, *harmony in action* and not dominant discourse.

For this *wisdom ethics*, the four cultures concern is central. Its program rejects the separation of techno-science and humanities and rejects the separation of Eastern and Western cultures. Its methods borrows working concepts to all these domains.

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Chapter 4

Direct and Indirect Agency: Clarifying and Refining the Doctrine of Double Effect

Makoto SUZUKI

Introduction: The Traditional Doctrine of Double Effect, Its Problem, and Quinn's Proposal

The doctrine of double effect (DDE) is often invoked to explain the intuitive differences of permissibility between harmful actions (or omissions). Bombing aimed at civilians is wrong, but bombing military targets with the foreseeable result of harming civilians might be permissible; deliberate killing is impermissible, but incidentally causing an attacker's death for self- or other-defense might be permissible; even if suicide is impermissible, saving others with the foreseeable result of killing oneself might not be wrong; and so on. The traditional DDE purports to make sense of such differences in intuitive judgments by appealing to the distinction between *intended harm* and *merely foreseen* (or *merely foreseeable*) *harm*.

However, whether the harm itself is intended or merely foreseen is often unclear. To illustrate this problem, consider the following pair of cases:

The Craniotomy Case (CC):

A woman will die unless the head of the fetus she is trying to deliver is crushed. But the fetus may be safely removed if the mother is allowed to die.

The Hysterectomy Case (HC):

A pregnant mother's uterus is cancerous and must be removed if she is to be saved. This will kill the fetus. But if no operation is performed, the mother will eventually die after giving birth to a healthy infant.

According to the traditional discussion of DDE, which assumes that the fetus is as full fledged a person as his or her mother, the operation in CC is impermissible although the operation in HC is permissible. This is because, the defenders of DDE say, the doctor intends the death of a full-fledged person (i.e., the fetus) in CC but not in HC. However, this verdict can be questioned in the following way. The doctor in CC neither intends harm (i.e., death) to the fetus. We would expect the doctor to be glad if, by some miracle, the fetus survived unharmed. It is not death itself, or even the harm itself, that is intended but rather an immediately physical effect on the fetus that will allow its removal. The intentions in CC are therefore no different from those in HC; so if the operation in HC is permissible, the operation in CC is also

permissible.

This line of objections generalizes to the other pairs of cases where DDE has been used to draw the distinction of permissibility. Consider the two other pairs of contrasting cases, which the traditional DDE has been expected to distinguish:

The Terror Bomber (TB):

A pilot deliberately drops bombs over innocent civilians in order to demoralize the enemy.

The Strategic Bomber (SB):

A pilot bombs an enemy factory in order to destroy its productive capacity, foreseeing that he will kill innocent civilians who live nearby.

The Guinea Pig (GP):

There is a shortage of resources for the investigation and proper treatment of a new life-threatening disease. Doctors decide on an experimental program in which they deliberately leave the stubborn cases untreated in order to learn more about the nature of the disease.

The Direction of Resources (DR):

There is a shortage of resources for the investigation and proper treatment of a new life-threatening disease. To save the most people with the limited resources for treatment, doctors treat only those who can be cured most easily, leaving the more stubborn cases untreated.

The defenders of DDE have argued that even if TB and GP are impermissible, SB and DR can be permissible. For they say, though the bomber in TB and the doctors in GP intend harm to the victims, the bomber in SB and the doctors in DR do not intend harm to them; they merely foresee the harm. However, once again, this way of distinguishing the contrasting cases can be questioned. The terror bomber does not need the civilians really to be dead. Because his goal is to demoralize the enemy, he only needs them to *seem* dead until the war ends (Bennett 1981, 110-111). And the doctors in GP do not need the patients really to be harmed by the disease. Because their goal is to learn more about the nature of the disease, they need the disease to continue its course, but if by some miracle the patients remained comfortable and well functioning despite its progress, the doctors would be not frustrated but pleased.

In this way, it is hard to draw the distinction between intended harm and merely foreseen harm uncontroversially. Thus, late Warren Quinn had reinterpreted DDE and argued that DDE does not depend on the distinction between the intended and merely foreseen harm, but rather on the distinction between direct and indirect agency. According to this view, intending someone's *involvement* in something that leads to harm is morally problematic, whether or not the harm itself is intended. Most philosophers writing on DDE have taken this to be a significant move, but they have also criticized Quinn's formulation of DDE.

This paper will clarify and refine Quinn's distinction between direct harmful agency and indirect harmful agency. I will first show that Quinn's formulation, if correctly understood, actually does not suffer the above problem for the traditional DDE and many other alleged problems. In doing so, I will stress the importance of understanding what Quinn means by "deliberately involving a victim in something" as well as the significance of distinguishing different types of moral considerations from the type of considerations that are specifically relevant to DDE, i.e., whether or not an agent is deliberately involving a victim in part of her plan to further her goal. Second, I will argue that we need to acknowledge that the distinctions apply not only to cases where an action actually produces harm but also to cases where there is an attempt to produce harm but that attempt fails. Quinn's formulation is only concerned with the former cases, but it can be naturally extended to the latter's. I will conclude that, despite what critics argue, Quinn's DDE thus adjusted can accommodate our intuitions and avoid many of the alleged problems.¹

1. Quinn's Formulation of DDE

In "Actions, Intentions, and Consequences: the Doctrine of Double Effect," Quinn states DDE as follows:

...it [DDE] distinguishes between agency in which harm comes to some victims, at least in part, from the agent's deliberately involving them in something in order to further his purpose precisely by way of their being so involved (agency in which they figure as *intentional objects*), and harmful agency in which either nothing is in that way intended for the victims or what is so intended does not contribute to their harm. Let us call the first kind of agency in the production of harm *direct* and the second kind *indirect*. According to this version of the doctrine, we need, *ceteris paribus*, a stronger case to justify harmful direct agency than to justify equally harmful indirect agency. (Quinn 1989, 343-344; italics original; the phrase in the bracket added.)

I should point out that this formulation of DDE does not adequately represent the distinction Quinn has in mind in two respects. First, as Fischer, Ravizza, and Copp 2001 points out (193), the formulation does not explicitly restrict its attention to the agency where harm is foreseen (or foreseeable) by the agent. However, traditional DDE focuses only on agency where harm is foreseen (or foreseeable), and Quinn's paper tries to elucidate the distinction it makes; indeed, in all the pairs of the cases where Quinn tries to make the distinction between direct and indirect harmful agency, the agents foresee the harms (Quinn 1989, 336). Therefore, it is natural to interpret that in both cases of direct and indirect harmful agency, the agents foresee (or can foresee) the harms.²

Second, Quinn seems to take his formulation of DDE not to apply to the cases where the subject is willing to serve the end of the agent even if the subject foresees that he may suffer harm as a result.³ This restriction makes room for consented

combative sports and surgery, perhaps self-sacrifice or euthanasia, and so on.⁴

There are three points that need emphasizing in Quinn's formulation. First, it disfavors deliberately involving someone in something that leads to harm, whether or not the harm itself is intended.⁵ Second, Quinn's formulation holds only that *other things being equal*, the cases of direct harmful agency is *harder to justify than* the cases of indirect harmful agency. Quinn specifically points out the various rights of competition, the right to punish, and the distinction between doing and allowing harm, as such potentially intervening factors (Quinn 1989, 344-346). Some cases of direct harmful agency might be permissible, and some cases of indirect harmful agency might be impermissible. Thus formulated, DDE is a *ceteris paribus* principle and not an absolutist principle as is traditionally conceived. Incidentally, note that on Quinn's account, "other things," i.e., other relevant factors, might well include the severity of harm and the number of victims, which the traditional DDE takes into account under the proportionality condition. Third, Quinn's formulation is concerned only with actions in which harm *actually* comes to some victims *through the agent's deliberately involving them*: even if the agent intends to put a subject in some event that leads to harm, it is not direct harmful agency unless the subject is actually involved in that event and harmed as the result.

2. Deliberate Involvement: Counterfactual Test

Now let me clarify the crucial point of Quinn's formulation: what does "the agent's deliberately involving them in something in order to further his purpose" mean? Quinn illuminates this point in dealing with the example of human shields. ("Shield" is the term Robert Nozick (Nozick 1974, 35) introduced, which means an innocent person who unintentionally protects an aggressor.)

(Shield 1)

Another problematic kind of case involves innocent hostages or other persons who physically get in the way of our otherwise legitimate targets or projects. Does our shooting through or running over them involve a direct intention to affect them? I think not. It is to our purpose, in the kind of case I am imagining, that a bullet or car moves through a certain space, but it is not to our purpose that it in fact move through or move over someone occupying that space. The victims in such cases are of no use to us and do not constitute empirical obstacle (since they will not deflect the missile or vehicle in question). If we act despite their presence, we act exactly as we would if they were not there. If, on the other hand, we needed to aim at someone in order to hit a target, that person would clearly figure as an intentional object. (Quinn 1989, 345)

To simplify the explanation, I will suppose that the tank is attacking people ("us"), and the only way to avoid the tank is to stop the tank by shooting through or running over the innocent hostages.

Here, Quinn suggests that a condition of direct harmful agency, i.e., an agent

deliberately involving someone in order to further her end precisely by way of his being so involved, is not satisfied by pointing and shooting the bullet at or running against the tank where the shield, i.e., the victim, is bonded. For *even if the victim were not there, the agent would do the same thing*; the agent is not deliberately involving him in order to further her end exactly by way of his being so involved. The counterfactual states a sufficient condition for an agent *not* to deliberately involve the victim for that: that is, if this counterfactual is true, she is not deliberately involving the victim. The other sufficient condition (for an agent *not* to deliberately involve the victim) is the inadequate completion of the action: that the agent fails to complete her action even to the stage that is foreseen to lead to the harming of the victim. Put differently, she is deliberately involving the potential victim to further her end by way of his being so involved *if and only if she completes her action at least to the state that is foreseen to lead to the harming of the victim (the adequate complete of the action), and the above counterfactual is not true*.⁶

Thus, an agent commits an act of direct harmful agency if and only if the following four conditions obtain: [1. forecast] the agent foresees (roughly) how her action might lead to the harm; [2. deliberate involvement] the action is adequately completed, and it is not true that if the victim were not there, the agent would do the same thing; [3. actualized harm] the forecast is realized (i.e., the action leads to the harming of the victim in the foreseen way); and [4. no valid consent] it is not the case that the victim is still willing to serve the agent's end if the victim foresees that he may suffer harm as a result.

Let me show how good Quinn's counterfactual test is, by applying it to the three pairs of contrasting cases mentioned above. Remember that, *ex hypothesi*, the conditions 1, 3, and 4 obtain in both of the contrasting cases, and the actions are all adequately completed, so the question is the counterfactual part of [2. deliberate involvement] condition. In CC, it is not true that if the victim, i.e., the fetus, were not there, the doctor would do the same thing: the doctor would not have the operation of crashing someone. So CC is the case of direct harmful agency. On the other hand, in HC, the doctor would remove the mother's uterus whether or not the fetus were present. So HC is the case of indirect harmful agency. This is the desired outcome. Now consider TB and SB. In TB, it is not true that if the victim, i.e., the civilians, were not there, the terror bomber would do the same thing: the pilot would not bomb that place, for bombing there would not demoralize the enemy. On the other hand, in SB, even if the civilians were not there, the strategic bomber would bomb the same target, i.e., the enemy factory. Finally, consider GP and DR. In GP, it is not true that if the victim, i.e., the patients who are hard to cure, were not there, the doctors would do the same thing: the doctor could not leave them untreated and observe the progress of the disease. On the other hand, in DR, the doctors would do the same even if the patients who are hard to cure were not present. They would still attend to the other patients. Thus, Quinn's formulation of DDE discriminates the cases that the traditional DDE is supposed to do but fails.⁷

Consider another example. As Shelly Kagan points out, the defender of DDE might well want to specifically condemn the actions in the following kind of shield cases, while permitting the action in (Shield 1), but it is hard to do so. However,

Quinn's formulation of DDE enables them to accomplish this feat.

(Shield 2)

...suppose I have no gun powerful enough to destroy the tank, but by shooting and killing the shield, I can spatter his blood over the tank's window—blinding Schmidt [the driver of the tank], and allowing me to escape. Were it not for the shield conveniently located on the tank, I would be unable to escape. (Kagan 1989, 140; the phrase in the bracket added)

In such a case, it is not the case that the agent would do the same thing if the shield were not there: the agent would not shoot. Thus, the reason why the agent in (Shield 1) does not violate Quinn's formulation of DDE is absent in this case. It seems that the agent in (Shield 2) needs to deliberately involve the shield to further his end precisely by way of their doing so involved. Thus, Quinn's criterion apparently accord with intuition here.⁸

Some of his critics apparently fail to appreciate Quinn's counterfactual test (Kamm 1992, 377-378; Mapel 2001, 263-265 & 267), and contend that DDE, even Quinn's version, fails to explain moral difference between cases. Take Francis Kamm's example (she attributes the point to Kenneth Simmons). Kamm notes that Quinn's distinction between direct and indirect harmful agency depends on whether the agent deliberately involves the victim in his plan. Now, suppose we are waging a war.

...if all we need to do in order to win a war is create a belief in some people that others are involved in our plans, then it may not be necessary to intend actual involvement at all. For example, we may bomb a location because doing so will lead our enemy to believe that people in the location are dead. However, we need not intend but may only foresee that its inhabitants will be involved and will die. Here actual involvement would be only a side effect. (Kamm 1992, 377-378)

Kamm's point is that according to Quinn's formulation of DDE, this case is a case of indirect harmful agency, for we do not plan to kill inhabitants by bombing but only plan to make others believe that we kill them by bombing. However, this case is intuitively as morally objectionable as the original case of terror bomber (TB), which deliberately involves the inhabitants. So Quinn's version of DDE fails to explain moral difference between the cases.

Actually, according to Quinn's criterion, this example is a case of direct harmful agency. The goal of the bomber in Kamm's example is making his "enemy to believe that people in the location are dead." So, presumably, it is not the case that he would do the same, i.e., bombing the location he actually bombs, if the inhabitants were not there. He foresees how this will harm the inhabitants, and they are actually harmed that way.⁹ Of course, the inhabitants are not willing to serve the bomber's end. Thus, it is the case of direct harmful agency. Probably Kamm mistakenly thinks that what the inhabitants are deliberately involved in must be explosion or killing. However,

it does not have to be so; according to the conditions for deliberately involvement (someone in something to further the agent's end) described above, it is enough that (the bomber completes his action, and) the bomber would not bomb the location he actually bombs if the inhabitants were not present.

However, as we will see below, there are more pressing objections to Quinn's view. In the remaining part of this paper, I will discuss how to deal with the problems suggested by these criticisms.

3. Admitting Another Factor: Constraint against Needless Harming

Fischer et al. 2001 claim that the following three cases are intuitively on a par morally, even though only the first case would be classified as direct harmful agency.

(Bomb Remover 1)

There is a bomb on a table in the library. It is in a black box near some extremely valuable books that we do not want to be destroyed. The books are in a vermilion box on the same table. We are standing outside the library talking to Mary. Mary knows nothing about the situation, and she wants to please us. We say to her, "Go on up to the top floor and fetch the black box off the table next to the vermilion box." We foresee an extremely high probability of her death, for the bomb is very sensitive to movement as well as being on a timer. Further, imagine that we know that we could program a robot to do so. Mary goes up there and the bomb goes off, killing her, just as she gets the black box far enough away from the vermilion box. The books are saved. (Fischer et al. 2001, 200)

(Bomb Remover 2)

[The situation is the same as (Bomb Remover 1). However, this time] we give her a steel case that will protect the books and say to her, "Go on up to the top floor and put the vermilion box into this one." We foresee an extremely high probability of her death due to her coming in close proximity to the black box, for the bomb is on a timer and is just about to go off. But since the books will be in a steel case, they will be saved. On the way up to the top floor, Mary forgets what she is supposed to do, and she simply leaves the steel case on the floor. She picks up the black box and carries it away with her. The bomb goes off, killing her, just as she gets the black box far enough away. The books are saved. (Fischer et al. 2001, 200-201; the phrases in the bracket added.)

(Bomb Remover 3)

Mary is in the library working at a table that is far removed from the valuable books. The books are scattered on another table at the other end of the library, and on that table is a black box containing the bomb. The bomb is on a timer and will blow up, we realize, in a matter of minutes. We grab the black box and carry it quickly to Mary's side of the library,

where we gingerly place it on a table at which Mary is working. We run from the scene, leaving Mary to her fate and recognizing that there is an extremely high probability of her death. The books are saved. Mary is killed when the bomb blows up. (Fischer et al. 2001, 201-202)

I will first explain why DDE is compatible with the intuitive judgment that (Bomb Remover 1) and (Bomb Remover 3) are on a par. I will then, in the next section, deal with the parity between (Bomb Remover 1) and (Bomb Remover 2).

My response begins with the observation that in all these three cases, our involvement of Mary is needed neither to achieve our purposes nor to satisfy our interests. In (Bomb Remover 1) and (Bomb Remover 2), we can program a robot to achieve the end, and in (Bomb Remover 3), as Fischer et al. 2001 say (202), we could have told Mary to get out of the library or could have placed the bomb in another place (without hindering our purpose). Therefore, all of these cases are subject to the intuitive constraint against needless harming.¹⁰ This constraint claims, roughly, that it is wrong to take a course of action (or omission) that is foreseen (or is reasonably foreseeable from the standpoint of the agent) to cause harm or the risk of harm to a subject when the agent can easily change the course of action to avoid or to contribute to avoiding that harm without hindering his goal and any nontrivial drawback to his interests. (What he does might not actually succeed in avoiding the harm; the above condition thus hedges by adding the phrase “or to contribute to avoiding.”)

Note also that this constraint is more strongly against potentially harmful actions that do not conduce to the agent’s end or interests than it is against those actions that do conduce. This is a very intuitive kind of constraint. At one point, Fischer et al. themselves say on (Bomb Remover 3), “Indeed, the fact that her death serves no purpose is one reason our treatment of her seems so objectionable in that case.” (2001, 206)

I think that Fischer et al. 2001 are mistaken to think that because Quinn’s formulation of DDE criticizes (Bomb Remover 1) more heavily than it does (Bomb Remover 3), it does not accord with our intuition. Quinn’s formulation of DDE just says that *other things being equal*, it is more difficult to justify direct harmful agency than to justify indirect harmful agency. So it is possible that, all things considered, some cases of indirect harmful agency are as difficult to justify as (or even harder to justify than) some cases of direct harmful agency are, if other morally relevant things are different. In the above cases of (Bomb Remover), there is another morally relevant factor, i.e., the constraint against needless harming. *Because in (Bomb Remover 1) Mary does conduce to our end of saving the books while in (Bomb Remover 3) she does not, the constraint criticizes the latter more than the former.* This is the reason why, intuitively, (Bomb Remover 1) and (Bomb Remover 3) are morally on a par; even though DDE itself makes (Bomb Remover 1) more difficult to justify, the constraint against needless harming makes (Bomb Remover 3) harder to justify, so, all things considered, the two cases become roughly morally on a par.

4. Putting Failed Attempt within the Scope

The remaining problem is the parity between (Bomb Remover 1) and (Bomb Remover 2). Why is (Bomb Remover 1) morally on a par with (Bomb Remover 2) even though (Bomb Remover 1) is a case of direct harmful agency and (Bomb Remover 2) is not? To appreciate this conundrum, let me first explain why (Bomb Remover 2) is not a case of direct harmful agency, and consider why (Bomb Remover 1) and (Bomb Remover 2) appear to be on a par. I will then note that this problem generalizes and will explain how the defenders of DDE should cope with the general issue.

(Bomb Remover 2) is supposed to be one of the “luck out” cases. These are cases where agents have the worst intentions and nevertheless achieve the purposes as a result of bringing about harms of the kind they foresaw and chose as a means to their ends, but *not* as a result of what they deliberately involve anyone in precisely in order to further their purposes (Fisher et al. 2001, 196). Another example of the “luck out” cases is the case of a terror bomber, who specifically intends to hit the school to demoralize the enemy but instead hits a hospital. These cases are considered problematic because in Quinn’s formulation, the actions are classified as indirect harmful agency. Remember, Quinn’s formulation is concerned only with actions in which harm *actually* comes to some victims *through the agent’s deliberately involving them*: even if the agent intends to put a subject in some event that leads to harm, it is not direct harmful agency unless the subject is actually involved in that event and is harmed as a result. In the above two cases, arguably, the agents do not succeed in deliberately involving someone in something. They intend to put Mary (or the people in the school) in a situation where she goes up to the top floor and puts the vermilion box into a steel case (or where they are hit by a bomb). But their actions do not actually get that someone in that situation. On Quinn’s formulation, if the foreseen harm on the victim does not actually come partly from the agent’s deliberate involvement of the victim in something, then his or her action is not a case of direct harmful agency; thus, “luck out” cases are cases of indirect harmful agency.

However, Fischer et al. 2001 claim that these are intuitively the cases that DDE should specifically condemn; further, they claim that these are as objectionable as the cases of direct harmful agency where a comparable harm is involved. That is, (Bomb Remover 2) is as objectionable as (Bomb Remover 1). And I think that the terror bombing only to hit the hospital is as objectionable as the original terror bomber case where he succeeds in hitting the targeted group of civilians, and a comparable number of people are killed or injured.

More generally, Quinn’s formulation has trouble dealing with a case where a potentially harmful conduct that fails to achieve some of what the agent has intended or expected. First, even if the agent actually fails to deliberately involve someone in something by failing to complete the action, it is still objectionable: the agent tries by the conduct to deliberately involve someone in something, which is foreseen to lead to harm. Even if I intend to get my uncle to take a poison in a wine glass in front of him in order to get his fortune by killing him, and I actually attempt it, it

might happen that my uncle pushes down the glass when he stretch his hand to it and fortunately does not drink it. However, since I try that, my conduct is intuitively wrong, and the reason why it is so seems to be identical with part of the reason why the action is wrong when I succeed in involving him in poison drinking and the harm actually comes from the event. Second, even if the action actually deliberately involves someone in something, the action might fail to produce the foreseen harm. In the above example, even if I succeed in getting my uncle to have a poison in the wine glass in front of him, my uncle might safely survive (he might be a man like Le Comte de Monte-Cristo, who has strong immunity to poisons). However, since I try that, my action is intuitively wrong, and the reason why it is so seems to be identical with part of the reason why the action is wrong when the harm actually comes from my uncle's poison drinking. The actual result of harm adds some reason to morally criticizing an action of direct harmful agency, but even if the action failed to produce the foreseen harm, it would still be *ceteris paribus* wrong. Thus, it is still objectionable for the agent just to try to deliberately involve someone in something, even if it ends up failing to involve the victim or to produce the foreseen harm through the involvement.

These problems come from the fact that it is necessary for harmful agency, and *ipso facto* direct harmful agency, that the action is adequately completed and that the action leads to the harming of the victim in the foreseen way. Let us drop these conditions, and revise Quinn's formulation in term of the distinction between direct *dangerous* agency and indirect *dangerous* agency, which is characterized in the following way.¹¹

Direct dangerous agency:

agency in which harm is foreseen (or is foreseeable) by the agent to threaten some subjects, at least in part, from the agent's *attempt* to deliberately involve them in something in order to further his purpose precisely by way of their being so involved, and it is not the case that the victim is willing to serve the agent's end if the victim foresees that he may suffer harm as a result.

Indirect dangerous agency:

agency in which nothing is in that way intended for any subjects, though harm is foreseen (or is foreseeable) by the agent to threaten some subjects, at least in part, from the agent's attempt, and it is not the case that the victim is willing to serve the agent's end if the victim foresees that he may suffer harm as a result.

This is an extension of the original distinction between direct and indirect *harmful* agency. This version is contrived to regard every case of direct *harmful* agency as a case of direct *dangerous* agency but to regard some cases of *indirect harmful* agency as *direct dangerous* agency.¹² The defenders of DDE should now hold that, other things being equal, direct dangerous agency is harder to justify than indirect dangerous agency.

The notion of “attempt to deliberately involve someone in something” needs some explanation. It does not count as a case of attempt just to have an intention. Roughly speaking, an attempt to realize some P, where P is a state of affair under a certain mode of representation, is made when an agent takes some action or omission in the process of executing the intention that P. DDE is not concerned with evaluating mere *intentions*; it is concerned with the moral permissibility of *actions*, not mere pro-attitudes. Some intentions may be culpable in itself, but that is not the proper object of the evaluation by DDE. So, the attempt here must not be a mere intention but an action that is produced in the process of executing the agent’s intention. And for an attempt to be a case of attempt to deliberately involve someone in something, it must be false that if the subject were not there, the agent would do the same. In addition to the fact that the agent makes such an attempt, if harm either is foreseen (or is foreseeable) by the agent to threaten some subjects, at least in part, from that attempt, and the potential victim does not voluntarily and knowingly consent to the execution of the intention, then the attempt is a case of direct dangerous agency.

The above extension of Quinn’s formulation enables us to respond to Fischer et al.’s alleged counterexamples of “luck out” case against Quinn’s formulation. If we use the extended version, (Bomb Remover 2) is a case of direct *dangerous* agency, where we make an attempt, which fails to deliberately involve the victim [Mary] in something, but which still produces the foreseen death of Mary. Our giving a steel case and saying to Mary, “Go on up to the top floor and put the vermilion box into this one,” is an attempt, i.e., the action produced in the process of executing our intention to have her put the vermilion box into a steel box. It is not true that if Mary were not there, we would do the same thing, because we would then send a robot or another person. Mary would not knowingly and voluntarily consent to the execution of our intention; if Mary knew the situation, she would not consent to performing the task we ask. Hence, we attempt to deliberately involve Mary in the situation that she puts the vermilion box into a steel box. In addition, the death of Mary is foreseen by us to threaten Mary from our attempt. Therefore, it is a case of direct *dangerous* agency.

Further, it is natural that we intuitively judge that (Bomb Remover 1) and (Bomb Remover 2) are morally on a par, because both are cases of direct dangerous agency, both cause the same foreseen harm (the death of Mary) and violate the constraint against needless harming: Mary’s death is needless. Thus, even if the original version of Quinn’s formulation of DDE does not explain our intuition about (Bomb Remover 2) and intuitive moral equivalence between action in it and action in (Bomb Remover 1), the extended version does.

In general, the “luck out” cases, such as the above case of a terror bomber who intends to hit the school but instead hits a hospital, are classified as cases of direct dangerous agency¹³. So, when the agency succeeds in producing foreseen harm, it is no wonder that the “luck out” case can be as objectionable as a case of direct *harmful* agency in Quinn’s original formulation, which produces the comparable harm, such as the case of the terror bomber who intends to hit the school and succeeds in doing so. For both are the cases of direct *dangerous* agency and produce

the comparable harms.

5. The Problem of Defining “Attempt”

However, there remains a problem in the above account of dangerous agency. There are actions that are produced *at the early stage* of the process of executing the intention, which satisfy the above conditions of attempt to deliberately involve someone in something, and which are foreseen (or are foreseeable) to lead to harms, but which we do not think that DDE should particularly condemn. For example, suppose that I intend to kill my wealthy uncle to inherit his fortune, and so intend to buy a lighter, to bring a lighter with me to his house at my earliest convenience, and to put fire to his house where he is sleeping, in order to achieve the purpose. I do buy a lighter, but before I find a good opportunity to execute the intention to go to the uncle’s house with the lighter and to put a fire to his house, the uncle all by himself drops by my house where the lighter is placed, finds my lighter, brings it to his house, and uses it in lighting his cigarette. He throws it away without putting the fire out, and this leads to burning the house down; he dies. In this case, it seems that DDE should not particularly condemn my action of buying a lighter. Of course, my character is evil, and my intention is morally wicked, but DDE is concerned not with the goodness or badness of the character or intention, but with the rightness and wrongness of the action. In this example, I have an intention to kill my uncle by fire and an intention that his house where he is sleeping be on fire, and I perform the action of buying a lighter in the process of executing these intentions. It is false that if the subject were not there, I would perform the same action; my uncle would not voluntarily and knowingly consent to the execution of these intentions. I foresee that harm (death) will fall on my uncle, at least in part, from that action of buying a lighter.¹⁴ Then, the attempt is a case of direct dangerous agency, which DDE must condemn. However, this is counter-intuitive.¹⁵

I think the best way to handle this problem is to put another qualification on the notion of attempt to do some P. An action (or an omission) qualifies as an attempt to do some P only if either (1) the agent believes that she has to perform no further positive action in order to achieve P or (2) the agent does not have such a belief, but it is reasonable for her to believe it, given his or her epistemic situation. By “positive action,” I mean action involving some external movement; inaction or omission is not a positive action. One’s epistemic situation is defined by his or her beliefs, perceptions, and cognitive and imaginative capacities. Let me explain what kind of state (1) is, which will also illuminate (2). When one believes that she does not have to take any further positive step than action A in question in order to achieve P, she might still perform an action B because she believes that B makes it certain that P will occur. However, besides such an action, i.e., an action that the agent believes can make it more probable that P happens, the agent will perform no further positive action in order to achieve P until the agent realizes that action A fails to achieve P. On the other hand, if the agent does not believe that she has to perform no further positive action than action A in order to achieve P, she will proceed to perform another action in order to achieve P as long as she maintains the intention that P.

This condition probably *disqualifies* my (merely) buying a lighter as an attempt to kill my uncle or to put fire to his house where he is sleeping. Probably I do not believe that I have to perform no further action in order to achieve my goal, and it is not reasonable to believe it, given my epistemic situation.

However, what if I happen to believe that I do not have to perform any further action in order to put fire to my uncle's house where he is sleeping? Then, on this characterization of attempt, my action of buying a lighter in the process of executing the intention to put fire to my uncle's house where he is sleeping qualifies as an attempt to do so. This will make the action a case of direct dangerous agency, and I think it is an intuitive result. If you are skeptical of this point, try McMahan's similar example.

(Wealthy Uncle 2)

One is desperately casting about for a prudent means of acquiring the fortune that one's wealthy uncle has left to one in his will. Thinking that anything so safe is worth a try, one sends him out to roll up the windows with the intention of exposing him to the one-in-a-million risk of being struck by lightning, hoping that he will indeed be struck. He is then, in fact, struck by lightning and killed. (McMahan 1994, 204)

In this example, the agent seems to believe that she does not have to take any further positive action in order to achieve P; the agent performs no further positive action in order to achieve P. Then, the agent sends the uncle out to roll up the windows in the process of executing the intention that he is exposed to the one-in-a-million risk of being struck by lightning. It turns out that the agent does attempt to get the uncle exposed to the one-in-a-million risk of being struck by lightning. This implication is not strange, and it can have a good moral ramification in this case. It is false that if the uncle were not there, the agent would do the same. Presumably, the uncle does not knowingly and voluntarily consent to going out since he would not agree to do so if he were informed of the relevant information the agent has, especially the agent's reason to send him out. Then, on the above characterization of attempt, the extended version of DDE would specifically condemn this case because the agent attempts to deliberately involve the uncle in the condition that he is exposed to the one-in-a-million risk of being struck by lightning. Further, the agent foresees that the action might lead to his being struck by lightning and death. Thus, it is a case of direct dangerous agency. The characterization of attempt in the text allows the action of sending the uncle out in (Wealthy Uncle 2) to qualify as an attempt to get the uncle exposed to the risk of being struck by lightning, and thus enables us to explain our intuition about the action, that DDE should specifically condemn that action.¹⁶

Conclusion

In this paper, I have tried to clarify and refine Quinn's formulation of DDE so that it will explain our intuitive judgments about several allegedly problematic

cases. In this process, I have tried to do three things. First, I begin by articulating notions involved in Quinn's formulation of DDE, especially the notion of deliberately involving someone in something. This notion of deliberate involvement methodically accounts for our intuitive judgments about which cases are to be specifically condemned by DDE and which are not. This is the feat that the traditional DDE fails to accomplish.

Second, I have tried to explain the significance of distinguishing the consideration of DDE from other morally relevant considerations such as the violation of the constraint against needless harming. By distinguishing them, we can explain why some cases of direct harmful agency are intuitively on a par with some cases of indirect harmful agency with comparable harm, and why lack of respect manifests not only in the cases of direct harmful agency but also in some cases of indirect harmful agency.

Third, I have tried to explain our intuitive judgments about "luck out" cases or, more generally, cases of failed attempts to deliberately involve someone in something that are foreseen (or are foreseeable) to lead to harm. Here, I have explained the need to modify Quinn's formulation of DDE. This revised version does not require an action to be direct dangerous agency that the action succeeds in deliberately involving someone in something that actually leads to an expected harm.

The resultant formulation of DDE is contrived, with similar conceptual apparatuses used in Quinn's original formulation of DDE, to make the same judgments in the cases where the original formulation takes the actions to be direct dangerous agency; therefore, it is in that sense an extended version of Quinn's formulation and Quinian in spirit. Because of these refinements, the resultant version of DDE can account in an organized way for many of our intuitions in relevant cases.

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Notes

- 1 This paper cannot address all the problems alleged by the critics (Kagan 1989; Fitzpatrick 2006; Kamm 2007, Chapter 3; Scanlon 2009). The author is not committed to the view that some version of DDE is defensible in the final analysis.
- 2 I want to make an additional comment on what counts as foreseeing harm. As Fischer et al. 2001 point out, it is too strong to require for the application of DDE that the agents foresee the *precise way* in which the harm will be caused. If it is so required, many cases will not count as the cases where DDE applies though we intuitively think it should apply to them.

For, in general, people foresee roughly how harms might come from their actions, but they do not foresee the exact way that these actions cause the harms (Fischer et al. 2001, 209n17). If an agent foresees (or can foresee) the harm of his or her action in this way, the action can still be counted as (direct or indirect) harmful agency.

- 3 **Quinn says: “The DDE rests on the strong moral presumption that those who can be usefully involved in the promotion of a goal only at the cost of something protected by their independent moral rights (...) ought, prima facie, to serve the goal only voluntarily.”** (Quinn 1989, 349; see also 350) Since the moral presumption is satisfied if the subjects who will suffer harms knowingly and voluntarily consent to serve the goals of agents, the agents’ actions in these cases are not plausibly those DDE takes to be *ceteris paribus* wrong. Fischer et al. 2001 criticize the above passage because they take Quinn here to try to state the rationale of why direct harmful agency is more difficult to justify than indirect harmful agency, and they think that the rationale—“the strong moral presumption”—grounds both direct and indirect harmful agency; whether direct or indirect, *ceteris paribus*, agency may harm someone only if the person consents (Fischer et al. 2001, 205 and 210n31). However, Quinn here does not state the rationale for DDE. Quinn would agree with Fisher et al. that the presumption that one may harm someone only if the individual consents ground both direct and indirect harmful agency. According to Quinn, what makes it harder to justify direct harmful agency than indirect harmful agency is another, although related, point that subjects may be *used* only when they consent (Quinn 1989, Section 4).
- 4 **There are two elements of Quinn’s view, which I ignore in this paper. First, according to Quinn, the application of DDE is subject to “right restriction”:** DDE applies only to the potential violation of a right, which someone has, independently of DDE. The effect of DDE is always strengthening the right of a victim whom an agent deliberately involves in her scheme (Quinn 1989, 346). I do not discuss this right restriction because Jeff McMahan 1994 gives plausible objections against it (see note 16). Second, I put aside Quinn’s distinction between direct *opportunistic* agency and direct *eliminative* agency. According to Quinn, among the cases of direct harmful agency, the cases of direct opportunistic agency, where the agent aims to benefit from the victim’s existence (e.g., TB and GP), are *ceteris paribus* more difficult to justify than the cases of direct eliminative agency, where the victim’s existence is a mere physical obstacle to the agent’s end (e.g., CC) (Quinn 1989, 344 and 350). I ignore this further distinction because it does not affect the following discussion in this paper.
- 5 **Fischer et al. 2001 say that Quinn must interpret the notion of involvement in the way that what the victims are involved in is, and is taken to be by the agent, “to some extent bad for them [the victims]”** (Fischer et al. 2001, 193-194; the phrase in the bracket added). However, there is no textual evidence that supports their interpretation.
- 6 **Quinn does not talk about the counterfactual test any further, but obviously, we need some criterion of the sameness of actions to evaluate this counterfactual.** One problem is that the counterfactual is trivially true in all cases if, in order for two tokens of actions to be classified as the same, one token of action must have all the properties and relations that another token of action has. For, in the possible worlds where the antecedent of the counterfactual (“the victim is not there”) is true, no action has a relation with the particular victim. Therefore, the criterion should not require that, for two tokens of action to be the same, they share the relations with the particular affected individuals.
- 7 **There is one type of potentially problematic cases for Quinn: various cases of self- or other-defense**(Fitzpatrick 2006, 613; McIntyre 2009, Section 3). The above conditional is false in many cases of self- or other-defense. If the attacker or threat were not there, the agent would not do the same thing, i.e., attacking someone. Further, since the aggressor does not

and would not give any consent to the agent's attacking back, there is no consent in the self- or other-defense cases. So, as it stands, Quinn's formulation of DDE specifically condemns attacking back the aggressor. However, intuitively, it is permissible for an agent to intend to attack or incapacitate the aggressor if it is the only way to save herself or some other person from serious harm. And the traditional DDE is often invoked to justify the self- and other-defense. Thus, this is potentially a problem for Quinn. One possible way out is to claim that the aggressors are guilty, and DDE condemns only such an agency as intending harm to the *innocent*, so self- or other-defense against the aggressor is permitted. However, if a guy were abducted and hypnotized by your enemy with no fault of his own, so as to attack you, he were not guilty, so Quinn's DDE has to specifically condemn your attacking back at him, even though many think it is permissible (Kagan, 132-138). Still, Quinn can make two comments here. First, perhaps the majority view is confused, and self- or other-defense against the innocent aggressor is usually unjustifiable (i.e., wrong) even though excusable. Second, Quinn's formulation of DDE is a *ceteris paribus* doctrine, so he can admit that if the innocent aggressor is going to bring about too much harm, it becomes permissible to commit the direct harmful agency, i.e. attacking back the innocent aggressor.

- 8 **Kagan will claim that there remains a problem. He will claim that Quinn's standard condones the agent in another case that intuitively DDE should not, which does not involve the shield.**

(Pushing an innocent bystander over the cliff)

For example, imagine that the only way to avoid the tank racing toward me is to push an innocent bystander over the cliff—enabling me to stand in safety where the bystander is currently standing.... I am no better off for the bystander's presence: were he not there, I could simply move to the safe spot. (Kagan 1989, 143)

(We should suppose that in this example, I actually rush, push the innocent bystander and occupy the place where he or she has been standing.) As Kagan points out, in this example, at least intuitively, DDE should not allow me to push the innocent bystander over the cliff. However, it might be suggested that if the bystander were not there, I would do the same thing, i.e., just dash to occupy the same place, so that as in the case of (Shield 1), this is the case of *indirect* harmful agency according to Quinn's standard. To respond to this objection adequately, the defenders of DDE need to formulate the finer criterion of the sameness of actions, which differentiates the actual behaviour of the agent and her behaviour in case the bystander were absent.

- 9 **One can change Kamm's case so that the bomber would not bomb the city if the inhabitants were not there.** In such a case, the destruction of the city, not the inhabitants, were sufficient to demoralize the leader of the enemy, and the pilot bombs the city regardless of whether the inhabitants are present (Fitzpatrick 2006, 612). Such a case is not the case of direct harmful agency. However, such a case can still be as objectionable as the case of direct harmful agency if the bomber can avoid killing the citizens by, for example, informing them that the bombing is impending. In such circumstances, the pilot's harming the inhabitants is not a necessary concomitant of achieving his goal, so it violates the constraint against needless harming. See the next section.
- 10 **My comment here is probably similar in its spirit to P. A. Woodward's, who says the following about the three Bomb Remover cases:** "The principle that evil is to be avoided whenever possible (part of the proportionality condition employed here—see the quotation from Donagan [1977, 161], above) dictates that these actions not to be performed." (Woodward 2001, 218; the reference in the square bracket added.) However, I do not agree with Woodward on three points. First, I am unsure if this "principle" is part of the proportionality condition of traditional DDE; as I understand, the idea of the proportionality condition is

- that the goodness of the end of the action must be proportionate to, i.e., important enough to justify, the bad consequence of that action (Quinn 1989, 334n3; McIntyre 2009, Section 1). It is unclear if this condition implies the principle Woodward expresses. Second, the principle that evil is to be avoided whenever possible is, depending on what “evil” and “whenever possible” mean, too strong to accord with our intuitions. We might spend money on watching a movie while foreseeing that if we donate that money to UNICEF, which is surely possible, it might well save human lives in the Third World. Spending money on watching a movie rather than donating that money is considered permissible. However, Woodward’s (and hence Donagan’s) formulation of the above principle might prohibit this kind of actions. Third and most importantly, Woodward (2001, 218) and his principle do not explain why (Bomb Remover 1) is as objectionable as (Bomb Remover 3). All three are equally condemned by the principle that evil is to be avoided whenever possible. So, if (Bomb Remover 1) is the case of direct harmful agency while (Bomb Remover 3) is the case of indirect harmful agency, then (Bomb Remover 1) must be more objectionable than (Bomb Remover 3).
- 11 **McMahan proposes another modification with the same purpose, i.e., to allow DDE to specifically condemn those actions that intend to involve someone and are expected to cause harm but fail to do so.** See McMahan 1994, 209-210.
 - 12 **This modification invites a version of the problem of impossible attempt: if one has a false belief, and based on it, she intends to do and actually does something that would be wrong if it were completed, but which is impossible given the real situation, does she do wrong?** For instance, suppose that one believes (or it is believable for her, given her epistemic situation) that a lump under the blanket on the bed is a particular person lying asleep, and suppose also that she intends to kill him by shooting at the shape and actually shoots it, but it turns out that the shape under the sheets is merely a pile of pillows, does she attempt a murder? (An analogous problem in terms of criminality rather than wrongness is famous in philosophy of law; see, for example, Adams 2000, 397.) I think that the intuitive view is that she has still done a wrong thing. We should differentiate the problem of wrongness of action from the problem of her responsibility and deserving punishment. Perhaps she might neither be responsible for anything nor deserve punishment, but her action is still wrong.
 - 13 **as far as the action in the “luck out” cases does constitute an attempt to deliberately involve someone in something.** If even such an attempt is not made, it is not a case of direct dangerous agency. I think this is an intuitive result.
 - 14 **It might be objected that I neither foresee, nor am able to foresee, that buying a lighter might lead to the harming of my uncle.** However, since in buying a lighter I do intend that the lighter will be brought to my uncle’s house and be used to put a fire on it, actually, I either believe or am capable of believing that my buying a lighter might lead to the situation in which my uncle’s house where he is sleeping will be on fire, and he will be dead.
 - 15 **After I wrote this part, I have come to realize that the essentially same problem is discussed in the area of philosophy of law.** The question is how to distinguish between merely preparing to commit a crime and beginning an attempt of crime. How far does the agent have to go in order to make an attempt of crime? (See Adam 2000, 397)
 - 16 **(Wealthy Uncle 2) is used in one of McMahan’s counterarguments against Quinn’s right restriction,** which is explained in note 4: DDE applies only to the potential violation of a right, which someone has, independently of DDE. As McMahan says, sending the uncle out into the storm does not seem to violate the uncle’s right that exists independently of DDE. However, the action in this example is intuitively a case that DDE should specifically condemn.

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Chapter 5

A Normative Account of Risk: The Case of Cognitive Enhancers

Rana AHMAD

Introduction

The familiar concept of risk is in fact more complex than usually assumed. There is a wide array of definitions of the word “risk” that range from the very technical to everyday usage. In the physical sciences, risk is the product of the probability of an event multiplied by some quantitative measure of the event’s consequences; in economics, it is the relative frequency of an undesirable event over time where undesirable events are limited to physical harm to humans or the environment; in psychology, it is a subjective perception of expected utilities and the probability of their occurrence. Some researchers go so far as to claim that there is no correct definition of a risk and that the choice one makes in using a particular definition is in fact “political.”¹

Over the last forty years (since the emergence of formalized risk analysis), one of the most significant distinctions between different kinds of risk has become that between experts and non-experts. Fischhoff and his colleagues explain that expert or objective risk is “the product of scientific research, primarily public health statistics, experimental studies, epidemiological surveys, and probabilistic risk analyses. The latter [subjective risk] refers to non-expert perceptions of that research, embellished by whatever other considerations seize the public mind.”² There is in fact much evidence to suggest that non-experts sometimes have puzzling views about risks.³ For example, Starr first concluded that people will accept risks incurred during voluntary activities (e.g. skiing) that are about one thousand times greater than they will accept when they are involuntarily imposed upon them (e.g. food preservatives).⁴ This conclusion inspired research leading to the classic report *Acceptable Risk* which described how people are more afraid of the harm from something new or unfamiliar but with a low probability of occurring (e.g. nuclear meltdowns) than they are of the harm from something familiar (e.g. driving a car) with a high probability.⁵ The conclusion seems to be that the average person is misinformed about risks and therefore bases decisions on perceptions of both the likelihood and severity of possible harms which are often incorrect. Experts, in contrast, often seem to have a better understanding of ‘real’ risks thanks to the data they have access to and their background knowledge. The problem seems to be that many of these informative studies on people’s perceptions of risk begin with the assumption that a risk is an objective and usually measurable fact about the world. There are many instances, however, when this assumption does not adequately capture what the average person means when they say that something is risky.

There is an ideal case study in the recent issue of cognitive enhancers and their use by various groups. While benefits are possible, there are risks as well to using drugs that have not been tested extensively but there are also risks to both morality (in terms of cheating for instance) as well as to aspirations (such as achieving ones' goals). The normative account of risk can help to explain why people might be interested in such products when physicals are involved. I will describe this in more detail and summarize the results of my own empirical investigation.

1. Normative Risk

There are two main distinctions that can be made which help to clarify a speaker's meaning. First, "risk" is used descriptively to point out that some event or action involves the chance of some unwanted outcome or to indicate the degree or exact probability of the unwanted outcome. Second, "risk" is used to recommend that some kind of action ought to be taken. By providing reasons for action, risk can be a source of normative force as long as one is averse to possible harm. When we say that something is "risky," we mean that there is good reason to think that it involves the chance of some unwanted outcome *and* that some action ought to be taken to avoid it. An account of risk that includes both senses in which it is used therefore cannot rely solely on probabilities or numerical estimates.

In Renn's thorough review of the literature spanning thirty years of risk research from the 1960s up to the turn of this century, he explains that there is no commonly accepted definition of the term "risk" and, like others, notes that the term often refers to the possibility that natural or human events will produce undesirable consequences but that there is ambiguity over what counts as undesirable given that some people actively seek out "good risks" (in extreme sports for instance) and that in economic theory both gains and losses are described by "risk."⁶ He therefore proposes a definition that attempts to encompass these different aspects reflected in the literature:

Risks refer to the possibility that human actions or events lead to consequences that affect aspects of what humans value...Risk is therefore both a descriptive and a normative concept. It includes the analysis of cause-effect relationships, which may be scientific, anecdotal, religious or magic ... but it also carries the implicit message to reduce undesirable effects through appropriate modification of the causes or, through less desirable, mitigations of the consequences.⁷

To make the claim that risk is both a descriptive and a normative concept convincing, further explanation is necessary. What is needed is an account that provides more structure to the idea that a risk can provide reasons for action and that incorporates some of the features of risk that distinguish it from other normative concepts. To call something a risk is to imply that one ought to act in such a way as to avoid possible harm. If a person fails to heed this message, there are consequences for doing so; however, since a risk is uncertain, these consequences are only

possibilities.

Another feature of this view is that risks are about what matters to people since they affect whatever is of value to them. This is an important refinement for the understanding of risk: the narrow, usually technical conception of risk as simply the chance of some objective harm leads to the view that people who choose not to avoid the risk that scientific analysis says they ought to, are making a mistake. The normative account explains that risk provides reason for actions just like “right” and “wrong” do, although these reasons are less compelling and more likely to be outweighed by other considerations. It also helps to explain why people make seemingly irrational decisions when faced with risk. Perhaps they are not in fact miscalculating or misunderstanding the facts of a situation, but are attempting to avoid threats to different values they might hold.

2. The Epistemological Foundation of Risk

There are a number of different conceptions of risk ranging from quantified estimates of probability to social and cultural constructs which naturally give rise to some fundamental philosophical questions. If a claim about riskiness can be analyzed in to a statement of probabilities, is riskiness an ontologically real quality? Does risk really exist? If assessments of riskiness are culturally bounded—in that different cultures would assess the riskiness of the same thing in different ways—does the riskiness of something depend strictly on the epistemological framework from which one assesses it? The answers to such questions might provide some help in understanding risk.

Rescher, for instance, maintains that risk is an ontological category since it has to do with objective outcomes in the real world (the chance of some mishap as the result of an action).⁸ Thompson, however, argues that since the outcome of an event has to be judged before being categorized as a risk, risk seems to be an epistemological category since it has to do with what people think rather than simply real events in the world.⁹ The view that risk is ontological (in Rescher’s view this means that it is therefore an objective fact) is problematic because it assumes that the evaluative aspects of identifying a risk to begin with are free from subjectivity. The normative account attempts to explain risk not in technical terms or from first principles, but rather from the way we commonly use and understand the term in everyday life. More importantly it attempts to explain how risk might be incorporated into the decisions we make about how to act and what might cause us to weigh various considerations against one another. On this view, risk is better understood as being epistemological, or as a matter of what we think rather than a matter of what is.

For Rescher, a risk is an objective matter of fact about the world since the *outcome* of a risky event is whatever actually occurs while the *result* of such an event is the perception that someone might have of that outcome. For example, the *outcome* of an earthquake might be the ground shaking, buildings collapsing and bridges breaking. The *result* of the earthquake is the value of the outcome to an agent such as the loss of one’s home, possessions, way of life, sense of security etc.

Therefore, risks concerns outcomes and that is what people ought to attend to when making decisions. However, if the outcome of an event is value-neutral, then no risk is either taken or being faced. The choice is simply one with an uncertain outcome. What makes an action or decision risky is that it involves some negative, unwanted or disadvantageous *result*. The *outcome* of events in the world may very well be an objective state of affairs, but this has little bearing on whether those events will be understood as risks. The reason they are thought of as risks is due to the values we ascribe to them. The view that risks are ontological or objective matters of fact is unconvincing since what may define a risk is the way we think about, or evaluate the outcomes of events.

Rescher also distinguishes between risks we take and risks we face. Since it is possible to face a risk we did not take, often because we were not aware of the possible harm involved, he argues that this suggests risks are matters of fact about the world. This does not do much to help his argument about the nature of risk, however. There are a few cases to consider. First, a person *takes* a risk when they understand the possible *result* of an action or event. It is obviously not enough to just know or to be aware of the outcome (what actually occurs) since it is often impossible to know such information ahead of time and outcomes are value-neutral. Only when it is understood or known that some kind of negativity or mishap might occur can a person knowingly take a risk. This would suggest that to knowingly take a risk requires some evaluative work by the individual.

Second, a person or group of people who have little control or knowledge may *face* some risks. However, just because we can face risks we have no hand in creating or that we might not even recognize, does not mean such risks are simply matters about how things stand in the world, although it is understandable that they might seem to be this way. Rescher points out that the passengers of the Titanic faced a risk they did not take since hitting an ice-berg is simply a matter of fact, and therefore a value-neutral outcome. Breaking down the event in Rescher's terms, we see that the *outcome* of taking a trip on the titanic was hitting an iceberg, the ship sinking, and people dying. However, when one starts from a sense of what is important, one then has reason to think of death as a "risk." The *result* aspect is that people lose something of value, or suffer something of dis-value and in this case the results were loss of life, trauma, and suffering.

The passengers faced a risk because we think that losing one's life, being traumatized and suffering are all unwanted outcomes and this is because they threaten those things that we value.¹⁰ Boarding a ship to cross the ocean was a risky venture, even when claims about the sea-worthiness of the ship were made. The passengers took a risk because there is a chance that *something* bad might happen on a ship crossing the ocean even though they might not know specifically what might happen. Rescher might be correct to point out that hitting an iceberg is the value-neutral outcome of the voyage but this does not make hitting an iceberg a risk unless it is an unwanted event. We ascribe our values to the *outcome* of the event and then understand the risk these ill-fated passengers faced. But this is not an objective matter of how things stand in the world. It is a matter of how we think about the outcome and how we ascribe values to it. Looking back on the event, it is easy to see

that the passengers faced a grave risk getting on board the ship since so few people survived.

To further clarify, let us say that there are two passengers on a ship going across the Atlantic Ocean. One man, A, is very wealthy and enjoys a lifestyle few will ever experience. The other man, B, is a poor man who struggles to make ends meet. Halfway across the ocean, the ship is hijacked by pirates and taken to a strange, unknown island which functions as a communist utopia. The *outcome* of this event is clear but the *result* is less so. For A, it is easy to see (after events have unfolded) that he faced a risk when he got onboard the ship because he was about to lose the privileged lifestyle he had enjoyed. However, for B, it is not so easy since we can imagine that he might be relieved to find himself with a better standard of living and without the constant stress of meeting his needs to survive. He might also experience the kind of camaraderie and acceptance he lacked when he was a poor man. In this case, we would likely say that A and B did not face the same risk because it is the evaluation of the outcome (Rescher's *result*) that matters in terms of what kind of risk was faced. This illustrates the importance of evaluating outcomes. It is possible then to have one outcome that is a risk for one person but not for another, which suggests that risks are not simply objective matters in the world, but can very much depend on our evaluations.

There is reason to support the view that risk is epistemological since an outcome is sometimes negative through evaluation and not as a matter of fact. Matters of fact are neutral until some assessment occurs which further categorizes them as negative or positive. This is not to say that risks are merely relative, however. In fact, it is understandable that risks seem to be objective matters of how things stand in the world since what constitutes a harm or negativity is often very obvious such as breaking a leg or losing all of one's money. But this would be to mistake the result of an event or action with its outcome.

On the normative view, risk, understood as the chance of some harm, can also be understood as epistemological. Subjective assessments are required to identify what will count as harmful and harm is an ineliminable component of risk. Rescher's ontological categorization seems problematic given the difficulty in describing a risk as an objective fact about the world which does not involve the value-laden procedure of recognizing that fact to be 'negative' or unwanted. The normative account proposes that risks are *both* descriptive matters of fact and prescriptive messages for action. It also suggests that risks are a matter of what people value, and of course there is more than one sort of value that might motivate people to act.

3. Different Types of Risk Values

Risks can further be understood as whatever actions, events or circumstances negatively affect something of value for someone. There are a variety of things that people value, and that motivate them to preserve or to seek out which include, but are not limited to, physical harm or monetary loss; the usual sorts of things that risk refers to. Since risks in the real world often involve the chance of harm to more than one thing of value, it might not always be the case that people are irrational

or risk-seeking when they seem to prefer a risky choice as predicted by traditional measures. Many studies of risk do not take into account the fact that harm can be a matter of such subjective evaluation.

The prescriptive or normative sense of risk suggests that when we say that something is “risky,” we mean that there is good reason to think there is the chance of some unwanted outcome *and* that some action ought to be taken to avoid it. On this account the reasons for action are not simply the avoidance of harm, but more specifically the avoidance of a possible threat to what is of value to a person. Therefore, values can inform what counts as a risk rather than merely influence the evaluation of one risk with another.

People may value many different sorts of things, however, so there is a good chance that a given situation might involve threats to more than one sort of value, which will result in a conflict. Empirical studies in risk perception have found that people often make mistakes in assessing what is more or less risky when compared with their calculated likelihoods.¹¹ However these studies use estimates of harm or death for what counts as a risk. If people are concerned about other types of harm, such as being honest or meeting the goals they set for themselves, their perceptions of risky situations might be more complex than some of these studies assume.

Avoiding a possible threat to something of value will not always require the same sort of action. While a risk may prescribe whatever action allows one to avoid the chance of harm, the type of action in question will vary with the type of value being threatened. This is especially true in cases where a risk involves threats to more than one type of value.

It is possible to place different types of values into three broad categories. These categories are not meant to be definitive, but serve to roughly estimate those values that will require different or potentially conflicting types of actions in a risk situation. First, standard values (under risk) include physical well-being, money, etc. This category refers to the usual types of risk that most of the technical, and some of the empirical, literature assume. Second, aspirational values are those things that we aspire to in life such as our career or personal goals, or our hopes and dreams. Finally, moral values include notions of goodness, justice, honesty, etc.

As part of a larger research project on the ethical issues of cognitive enhancement, I was able to test this hypothesis empirically. The current controversy surrounding the use of cognitive enhancers is an ideal topic since it involves the possibility of harmful physical side-effects, the inability to perform as well as others academically (and thereby failing to achieve certain goals), as well as the chance that their use amounts to cheating. The use of drugs such as Ritalin for improving performance involves risks to one’s health, aspirations and morality making it an ideal case study. I will present some preliminary results which suggest that these three categories might be worth investigating further.

4. The Risks of Cognitive Enhancers

New developments in neuroscience, neurotechnology and related disciplines are allowing for an increased ability to alter cognitive function in a number of ways.

The prospect of enhanced cognitive capacities has led to intense discussions by both scientists and ethicists. There is already a growing body of work addressing the more salient issues of safety and moral acceptability. Unlike the debates about genetic enhancements, which have produced controversies and revealed a general sense of unease on the public's part, the reaction to cognitive enhancing drugs and procedures is still relatively unknown. Obviously, the benefits cognitive enhancements could confer are significant and extremely appealing in societies such as ours where the demand to perform—and to outperform the competition—is all pervasive. What is not yet clear in this broader ethical discussion is the degree to which people will accept the use of such enhancements and how they will understand the risks inherent to such enhancements.

Improvements in memory, concentration, and general mental performance are prized by people whose careers require such attributes, as well as by those who are experiencing declines caused by stress, fatigue, and the normal effects of aging. There are also added pressures, particularly in Western society broadly defined, to outperform one's colleagues, classmates or associates in order to remain competitive or to attain one's aspirations. Competition is a driving force in many situations: modern society values mental capacity and aptitudes, and this makes the ability to gain an edge very alluring. Such widespread interest has led to greater discussion by both scientists and ethicists since the "prospect of neurocognitive enhancement raises many issues about what is safe, fair and otherwise morally acceptable."¹²

While Ritalin and knowledge of its stimulant-like effects are not new, its increased use for non-therapeutic effects is becoming more and more common.¹³ Farah et al suggest that such drugs can also be used to enhance memory, performance, mood, appetite, libido and sleep.¹⁴ The benefits are obvious enough. Typically, the types of risks attributed to drugs or medical interventions are expressed in terms of potential physical harm or side-effects that might occur from their use. What makes cognitive enhancers such an ideal topic for my purposes is that they can threaten more than one value simultaneously. It is possible to use the three categories of risk-values I have described to capture many of the issues and concerns that are raised by such cognitive enhancement.

First, there are the familiar and most obvious risks involving physical harm such as unwanted side effects, including the chance of a premature decline in cognitive function. The usual risks associated with taking any pharmacological treatment are mitigated to some degree by regulatory mechanisms but which, as we know, are not foolproof means to guarantee safety. In fact, the safety of these drugs used for cognitive enhancement is one of the issues of concern often cited in the neuroethics literature.¹⁵

While such risks are among the more obvious ones since we value our health and well being and tend to avoid those situations where our health is compromised, other values are also threatened by the use of cognitive enhancements. It is possible that some harm might result from someone's decision not to use cognitive enhancers. If a person has aspirations to excel in their chosen career, for example, and this requires outstanding cognitive performance, then it can be a risk not to take advantage of whatever means are available to achieve such aspirations. University

students who aspire to achieving high grades, or who are competing for scholarships or placement in professional school, might consider it harmful to miss out on getting an advantage (actual or not). When more people use enhancers to improve their performance, it becomes even more risky to opt out since it might be difficult to remain competitive.

Finally, there are risks which potentially threaten one's moral values. In most professional (and some amateur) sports, steroid use is explicitly banned and anyone caught using them faces some sort of punishment for cheating. To date, there is no such formalized set of rules for the use of drugs or other methods to enhance one's cognitive capacity even though their use is clearly analogous to steroids. Achieving a high mark on a test because one puts hours of study and effort into mastering the material is generally thought to be a much more satisfying and perhaps morally praiseworthy accomplishment than getting the high mark by cheating. If a person values such moral victories, then they are also putting themselves at risk by choosing to use some means of enhancing their memory or concentration in order to perform better. Since it is not clear whether using drugs like Ritalin actually *is* cheating, opting to use them involves the chance of doing something dishonest.

Caffeine, which is a substance widely consumed by a significant portion of the population, has similar, although less potent, stimulant effects on one's performance so it is often used as a comparison to claim that cognitive enhancers are not cheating. However, caffeine is rarely consumed in a high enough concentration to have significant effects, nor is it consumed in secret in order to confer some advantage not obvious to others. Ritalin, on the other hand, is different in terms of its availability, its acceptance and the degree to which it produces beneficial effects. Thus, a person who values 'honest' work in order to achieve their goals and fair competition takes a risk of acting dishonestly if she decides to use cognitive enhancers.

5. Empirical Findings on Normative Risks and Cognitive Enhancers

A Neuroethics survey was recently conducted in which respondents were asked about some of the most prevalent issues to date in the literature (such as the use of enhancers for therapy vs. enhancement, natural vs. unnatural stimulants, identity, and social access). This empirical investigation is based on a novel survey platform developed by a research team at the W. Maurice Young Centre for Applied Ethics at the University of British Columbia.¹⁶ To address some of the concerns surrounding the ethics of new technology and the role of public consultation in some controversial issues such as biotechnology, the NERD (Norms Evolving in Response to Dilemmas) research team used focus groups and surveys to gain a better understanding, not only of public attitudes on defined topics but also of what elements are important in creating effective public consultation tools.

The NERD platform is an online, easily accessible survey that is adapted to accommodate a variety of issues in ethics and applied ethics. It provides the framework into which a researcher can explore any number of empirical questions as well as to address issues of a specific nature and within a particular context as I have used it here.¹⁷ In the Neuroethics survey, respondents were divided up into

four groups, and each one received the same questions, which were framed in four different ways: standard risks to health, benefits, threats to one's sense of morality, and threats to one's aspirations. The preliminary results suggest that people are not discouraged from using cognitive enhancers even when the question is framed exclusively in terms of possible harmful side effects. Although only some of the results were statistically significant, there were some interesting differences suggesting possible avenues for future research.¹⁸

The first two questions asked respondents about the acceptability of taking two different sorts of stimulants to improve alertness and performance: natural (coffee) and unnatural (Ritalin). Not surprisingly, when the possible physical harm was emphasized, people were less likely to find this acceptable whether the stimulant was coffee or Ritalin. Coffee is a daily staple for many, so it was not surprising to see that people were more negative about its acceptability when they were made aware of its harmful physical effects. Most people responded that it was acceptable to take coffee to improve performance when the question focused on aspirational and moral harms, and the same result held true when only benefits were described.

When a less familiar stimulant was substituted for coffee (Ritalin), the differences between responses flattened out across all four frameworks. In general, there were roughly equal numbers of positive and negative responses to the acceptability of Ritalin before an interview or exam regardless of the type of harm or benefit it might involve. The most positive responses, however, were from people who read about possible harm to their aspirations.

This lack of significant difference in the question about cognitive enhancers is telling because the traditional understanding of risk predicts that people would have responded more favourably to the benefits frame and less so when possible physical harm was pointed out. Also, if the subject of the question was unfamiliar, one would have expected the responses to be generally more negative, but this is not what occurred. One possible explanation for the lack of response to the framing for Ritalin is that the change in topic brings out the competing values that people apply to new situations.

There was also an interesting difference in a question concerning the therapeutic use of cognitive enhancers. More people found it acceptable to use these drugs when someone was suffering from an illness or disorder leading to cognitive deficits when the benefits of doing so were described. It was also more acceptable when the chance of not meeting one's aspirations was explained. However, it was less acceptable when the question discussed the possibility that even therapeutic use of these drugs might produce a lack of fairness. This suggests that there could be a difference between acting to avoid an aspirational risk and acting to avoid a moral risk, although further refinement of the question is necessary.

Finally, people were more likely to say that social access to cognitive enhancing drugs should be limited if they were told of the possible physical harm, when compared to the other three frames. There was a significant difference however, when moral harm was emphasized. In this case people were more likely to say that the drugs should be widely available to everyone.

Overall, this survey has suggested that the most similar results are produced

when possible harm to one's aspirations is emphasized and when benefits are emphasized. Responses to questions framed in terms of moral harms were also similar to those framed in term of benefits, except when it came to therapeutic uses of the drug and social access. Further research would be invaluable in getting a better understanding of these differences.

Conclusion

The assumption that people make poor or irrational judgments about risk is challenged by the view that the foundation of risk is epistemological and therefore can be understood as a matter of what people value. When a value is threatened, a person is provided with a (weak) reason to act in whatever way avoids such an outcome. Of course, the reasons will sometimes be more easily overridden by other concerns and at other times, there will be conflicts between competing values. While people might rely on various heuristics in reasoning that can produce bias and overconfidence, it seems that in many cases they are simply being influenced by other concerns and values. Apart from the physical or economic harm, which make a risk unwanted, the threat of betrayal or not meeting one's goals or desires are also undesirable consequences or outcomes. A risk can be prescriptive because it carries the message to reduce undesirable effects. In some cases, however, different sorts of actions can be required to reduce different sorts of harm. To tell someone that taking a drug like Ritalin is a risk might mean that they ought not to take it because it involves physical harm, but it might also mean that they ought to take it if it involves the chance of not meeting a goal.

The neuroethics survey also suggests that we should not assume people are only concerned with physical harm and benefits. Such findings could be of great relevance when policy-makers seek out public opinion concerning new technologies or procedures involving risks. For instance, if a person is asked about the use of Ritalin as a performance enhancer given its physical risks, they might find it acceptable if they are attending less to physical side effects than to achieving their goals through their performance. The result looks like an acceptance of physical risk, but in fact the explanation is that the respondent considers her or his aspirations more important than physical safety. On the view that risks are threats to what is of value and that there a different type of values, it might sometimes be the case that people are taking one risk in order to avoid another. The prescriptive sense of risk can therefore be further enhanced by the recognition that avoiding harm might be the same reason for action, but the action that one ought to take might vary depending on the type of harm at issue.

Studies which show that people sometimes exhibit what is thought to be risk-seeking or potentially irrational behaviour (by choosing a higher chance of physical injury or even death to avoid a minimal chance of betrayal, for instance) suggest that the prescriptive sense of risk is inconsistent and vague. However, this assumes a very narrow understanding of harm and what might count as a risk for a person. If a risk is normative because it recommends whatever action is required to avoid a harm, and the notion of harm is whatever negatively affects what is of value to a

person, then some of this inconsistency can be explained. There is no reason to think that what I need to do in order to avoid the possibility of failing to meet my career aspirations will be the same thing I need to do in order to avoid physical injury. In fact, there will often be more than one risk involved in a decision and the resolution might very well be a matter of determining what matters more, or what has more value to me.

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Notes

- 1 Fischhoff, Watson and Hope, "Defining Risk," 30. By "political," Fischhoff and his colleagues explain that the decision expresses "someone's views regarding the importance of different adverse effects in a particular situation."
- 2 Fischhoff, Watson and Hope, "Defining Risk," 30.
- 3 Slovic, "Perception of Risk," 280.
- 4 Starr, "Social Benefit versus Technological Risk," 1232.
- 5 Fischhoff et al, *Acceptable Risk*.
- 6 Renn, "Three Decades of Risk Research," 51.
- 7 Ibid.
- 8 Rescher, N. "Risk: A Philosophical Introduction to the Theory of Risk Evaluation and Management"
- 9 Thompson, P. "The Philosophical Foundations of Risk."
- 10 In discussing the Titanic as a situation of risks "faced" rather than "taken," Rescher is imagining the situation of the passengers already in transit: that is, they have no further decision to make at this point that would affect whether they are liable to be on a sinking ship. So when they were in the process of deciding to take a trip, icebergs were a risk they could take; after getting on board and sailing, icebergs were simply a risk they faced. However, here I am exploring the idea in different way.
- 11 Lichtenstein et al., "Judged Frequencies of Lethal Events."
- 12 Farah et al., "Neurocognitive Enhancement," 421.
- 13 The reasons for the increase in use of Ritalin and similar drugs for off-label use are numerous, but I will not go into detail regarding the associated literature. For the purposes of this discussion, the important thing is the increased use and acceptance of the drug over the past ten years. See Glannon, "Neuroethics"; Iles and Racine, "Neuroethics—From Neurotechnology to Healthcare"; Racine, Van Der Loos and Iles, "Internet Marketing of Neuroproducts"; Nagel and Neubauer, "A Framework to Systematize Positions in Neuroethics"; Sahakian and Morein-Zamir, "Professor's Little Helper."
- 14 Farah et al., "Neurocognitive Enhancement," 421.
- 15 Chatterjee, "The Promise and Predicament of Cosmetic Neurology." Other issues, such as coercion, distributive justice, personhood and ethical problems are treated separately from safety concerns
- 16 For an explanation of this empirical ethical tool see Ahmad et al. "A Web-based Instrument

to Model Social Norms” and Danielson et al “Deep, Cheap and Improvable: Dynamic Democratic Norms and the Ethics of Biotechnology.”

- 17 The Neuroethics survey can be found at www.yourviews.ubc.ca/neuroethics
- 18 Since the Likert scale was used in the standard multiple choice questions, and the aim was to test for differences from one group to another, the non-parametric Kruskal-Wallis test was used for significance using SPSS (Version 15.0).

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Chapter 6

Different Methodological Approaches to Bioethics

Vasil GLUCHMAN

Introduction

I often have the feeling that, nowadays, ethics is frequently used, or even misused for various goals which may, on the one hand, seem to be an expression of the interest, place and significance of ethics in the life of society, individuals and their professional activities; however, on the other hand, I get the impression that referring to ethics, or using the term *ethics* has, in some way, become really fashionable. Ethics is mentioned and discussed by laymen, priests, journalists, politicians, medical doctors, economists, lawyers, etc. It can, therefore, be claimed that ethics has become an object of general discourse. I can see the danger of this phenomenon in that, due to its identification, or mistaking ethics, with morality in this discourse, ethics is devalued as a theoretical and systematic investigation of morality, as it can give the impression that ethics is something anybody can talk about, since it concerns each of us in some way. As a result, ethics only appears as some kind of moralising on the behaviour of other people, which is then considered correct, incorrect, ethical or unethical. My impression is also based on ethics having become trendy in individual professional areas of man's activities, which, on the one hand, is something one can only be pleased about; on the other hand, though, this joy is spoilt by experience and the fact that the ethical and moral aspects of particular professions, or professional activities of their members, are discussed by lawyers, journalists, judges, medical doctors, economists, people working in advertising, etc., which is where their professional knowledge in their own field is often identified with that of ethics and morality. This then means that lawyers and judges understand ethics as law, journalists as an area of media, doctors as a medical matter, economists as an economic issue, advertising managers as a marketing field, etc.

They even base their viewpoints on the belief that these issues can only be correctly understood and approached by an expert from the professional area in question. That means that, on the one hand, they try to protect and defend the specific character of their professional activities from any external judgments and, paradoxically, on the other hand, they enter an area of cognition where they often lack relevant knowledge of the theoretical aspects, working methods, techniques, practical applications, etc. As a consequence, this can even lead to ridiculous situations when they base their contributions or views of ethical and moral issues on high-school or university text books or various introductions to ethics, and yet, it seems, they consider it a sufficiently relevant resource of knowledge in this area and basis for drawing conclusions about the ethical or non-ethical framework in

their professions. My experience, especially in Slovakia, is that these professions anxiously guard their territory and are not willing to let anybody from the outside in, unless it has been ordered by law, which is true in the case of health ethics committees, for instance.

There are several kinds of bioethics based on the actual understanding of bioethics and the methodological aspects of the approach towards the issues in question. We can at least mention the philosophical-ethical approach towards bioethics, the biological-medical, religious-theological and, possibly, legal approach to bioethics. In the same way, though, we could consider the psychological, sociological, anthropological, economic, etc., approach. In general it can be stated that, at present, bioethics is characteristic for its interdisciplinary character, plurality of methods, which, as a result, often means plurality in understanding the conception of bioethics.

While ethicists and philosophers understand bioethics as an area of ethical and moral problems which concern the issues of life and death in general, biologists and medical doctors often understand it, above all, as a biological and medical issue, which, under certain circumstances, may have an ethical and moral dimension; bioethics can also sometimes be understood as professional medical ethics. Theologians interpret bioethics as a metaphysical-eschatological issue exceeding our life and the earthly world; lawyers mainly see bioethics as an issue of legislative embedding of the issues concerning life and death, since man is the subject of human rights. It seems that it is often very hard to find common intersections and an understanding of the approaches or methods used by the other party, especially when it comes to competences and outcomes arising from diverse methodological bases.

1. Philosophical Methodology in Bioethics

However, a number of authors point out that such an unlimited plurality leads to a decrease in the level of bioethics and, as a result, to devaluation of the domain as such. That is why some passionate arguments occur on which disciplines are entitled to be called bioethics and who actually is a bioethicist. It is mostly bioethicists with a philosophical education that raise objections stating that anything written on medicine, medical research, biotechnologies, etc., where an ethical and moral dimension is mentioned in some way, is, at present, considered bioethics.

David Benatar and Udo Schüklenk point out that a broad understanding of bioethics prevails, and, as a consequence, it is also fields like medicine, medical anthropology, medical sociology, medical law, theology, philosophy, etc., which are then considered part of bioethics. Each of these disciplines has its own methods; however, this does not mean that, based on this, they can be considered a part of bioethics (Benatar 2006, 17; Schüklenk 2006, iii). Benatar formulates two main objections against the possibility of accepting bioethics in such broad terms. According to him, the reasons for a narrower definition of bioethics are as follows: anthropology, sociology, law, etc., are not branches of ethics, and, thus, it would be hard to presume that medical anthropology, medical sociology or medical law could be a part of bioethics. Furthermore, a broad understanding of bioethics

brings a number of problems, such as confusion between law and ethics, terms that are neither synonyms nor do they coexist. The difference also lies in the way of reasoning and using arguments, which is what ethics does when deciding on what is correct or incorrect, and what should be done, etc. In his opinion, the claim that bioethics should be defined in narrower terms, does not mean denying the significance of these sciences to bioethics, as, without sufficient information, it is impossible to draw correct conclusions or evaluations. However, on the other hand, it is necessary to realise that scientists, social scientists or lawyers express their opinions on issues of philosophy of morality, which, in most cases, they have not prepared for. The situation is similar when philosophers discuss issues of science, social science or law, although Benatar is of the opinion that, in some cases, their analytical way of thinking can help in finding evidence. An intersection of medical doctors and scientists with the area of philosophy or ethics is, however, more common than vice versa (Benatar 2006, 17).

Benatar also points out that the belief that discussing philosophy does not require any special preparation is widely spread but incorrect. It would suggest that philosophical and moral issues can be discussed without a complex cognition of a problem. He does not claim that philosophers can make moral judgements, but he is of the opinion that philosophers' expert skills are often undervalued. Another reason for medical doctors and scientists interfering in bioethics is, as Benatar claims, the fact that bioethics intervenes in medicine to a higher extent than medicine in academic philosophy. Therefore, articles on bioethics are often published in medical magazines and such "bioethicists" give lectures on bioethics to medical doctors regardless of the quality of such bioethics and philosophy. The problem lies in the fact that bioethics is understood in a broad sense and, as a result, it is entered into by people from science, medicine, law, etc., without any philosophical preparation, or with insufficient bioethical education (Benatar 2006, 18). Schüklenk calls it "unethical bioethics" (Schüklenk 2006, iii).

Supporters of a broader understanding of bioethics can, according to Benatar, use the argument that bioethics incorporates philosophical as well as non-philosophical issues. The problem, however, arises in the doubt as to whether there are any questions within bioethics which cannot be answered by applied or practical ethics. If there were such questions within bioethics which could only be answered by scientists, social scientists or lawyers, then these are not, in his opinion, ethical issues, but those of science, social science or law and are not a subject matter of bioethics (Benatar 2006, 18).

Benatar raises some serious objections especially against the identifying of bioethics with the issue of human rights. According to him, morality is a complex matter and cannot be managed by the notion of rights, or even the concept of human rights alone. He agrees that rights are a part of ethics; however, ethics cannot be reduced to rights alone. He states that the fact that instead of difficult and serious work contemplating and deciding on what is correct and what is not, what is good and what is bad within the notion of ethics and morality, the legal approach tends to simply claim something is correct in contradiction to different kinds of activities, which is a fundamental objection against identifying bioethics with law. What

occurs is subordination of philosophical examination to the predetermined agenda. Benatar points out that he has nothing against medical doctors, scientists or lawyers. What he has in mind is that it should be morality philosophers, and not everybody else, who deal with ethics in bioethics. This, in his opinion, does not eliminate the possibility of scientists, medical doctors and lawyers to join philosophers in solving practical ethical issues or searching for answers which are essential to ethical decision-making. He does not reject any possibility of cooperation. The point is that one group should learn from the other especially in the field of their cognition. We should strive to do our best in what we can in order to do the best for others (Benatar 2006, 19-20). According to Schüklenk, it does not concern determination of the territory, but the purport of the discipline as such (Schüklenk 2006, iii). Harald Schmidt points out that, in bioethics, philosophers do not find it unusual any more to talk about scientific facts and medical doctors or scientists about notions of philosophy. He, however, emphasises that, just like in all interdisciplinary fields, a mixture of disciplines makes us realise our own restrictions in relation to the interconnected disciplines (Schmidt 2007, 583).

Eric Racine presents a slightly more accommodating form of the relationship between philosophical bioethics towards empirical sciences by the claim that anti-naturalism of philosophical ethics meant a dead end within bioethics. According to him, it is then true that medicine saved ethics, which, for many decades, was mainly a theoretical discipline. On the other hand, the refusal of anti-naturalism and the acceptance of naturalism lead to a reduction of the normative dimension of bioethics with regard to biological imperatives. The author aligns himself with moderate pragmatic naturalism. Bioethics is neither separated from empiric cognition nor is it subordinate to it (Racine 2008, 93). In the case of moderate pragmatic naturalism, ethical norms are neither derived from reason nor from biological facts and experience, but they are an outcome of interaction between ethical contemplation and the context. Thus, ethical norms are not biological laws but rules formed on the basis of human social activities. In pluralist society, bioethics is, then, neither an autonomous nor heteronomous discipline. Fundamentally, bioethics is of interdisciplinary character, and stands for practical and theoretical efforts open to various discourses and perspectives. Various approaches contribute to an enrichment of the achieved goals. Moderate naturalism recognises empirical cognition as useful in solving meta-ethical issues. Epistemological engagement of moderate naturalism is the best expression of what bioethics has become in order to answer the challenges presented by scientific progress and new situations in health care. In his opinion, the traditional philosophical anti-naturalistic approach does not correspond to the practice of bioethics. The best position is, as he claims, moderate pragmatic naturalism (Racine 2008, 100).

2. Law and Bioethics

There are a considerable number of examples of real existing tendencies to reduce bioethics to law. Alexander Morgan Capron, applying a metaphor, wrote on the relationship between law and bioethics that development in biology and medicine

stimulated the origination of bioethics, but philosophy fell off the rails; thus, law became the engine-driver controlling the locomotive, laws and the decisions of courts became point-switches leading the train on the railway (Capron 2005, 1369). He supports the opinion that it is American law, and not philosophy or medicine, which is primarily responsible for the agenda, development and the present state of American bioethics. He, furthermore, states that law has significantly influenced methodology, the major focus and values of bioethics (Capron 2005, 1371). Robert Baker, similarly, claims that the brightest hope for international bioethics lies in a settling of rules based on a cosmopolitan conception of human rights. According to him, the notion of human rights contained in the Proposal for the UNESCO Universal Declaration on Bioethics and Human Rights supports this opinion (Baker 2005, 188). Baker refutes the possibility for international bioethics to be based on a common theory of morality. In his opinion, it is a less suitable basis than the agreed rules based on a cosmopolitan conception of human rights (Baker 2005, 195).

T. A. Faunce is also of the opinion that the significance of the issue of international human rights for bioethics is increasing due to a need for transparency, quality and safety in the relationship between the medical doctor and the patient. On the other hand, it is also given by a general increase in the acceptance of international human rights in these areas. As he claims, in professional regulation, it is law rather than medical ethics that is more commonly used for an increase in effectiveness of the implemented rules. Evidence can be found in an exponential increase in health legislation, which regulates the relationship between the doctor and the patient. He, however, also realises the disadvantages of subordination of medical ethics to law, as protection of patients can, in this way, become an object of manipulation by the state (Faunce 2005, 176). He has come to the conclusion that the UNESCO Universal Declaration on Bioethics could be a pilot project in a process where moral, political and international legal aspects of human rights would subsume medical ethics. In this way, norms belonging to the categories of medical ethics and international law relating to human rights could originate. There are a great number of problems within human and non-human bioethics which could be included in this. In his opinion, medical ethics searching for a global accordance with the language and norms of international human rights is a possible alternative. Medical boards, clinical and ethical research committees could, according to him, start to publish their interpretations and, in this way, start to form a “common law of medical ethics“. As an example of a positive approach towards the implementation of the subject matter of human rights into bioethics and medical ethics he mentions the case of the Australian National University Medical School, where students had started to be taught that, during their career, international human rights will probably become more important than medical ethics (Faunce 2005, 177).

3. Biology, Medicine, Medical Practice and Bioethics

In biology and science, one can often come across omitting ethics and philosophy within bioethics. In contemplations or specifications of the term “bioethics” it is often stated that it concerns moral issues of biology, medicine, health care,

biomedical research or biotechnologies; however, that is usually all there is to it. According to Richard Sherlock, bioethics is primarily embedded in technological advancements and, especially, in relationship to medical ethics. He presents four main areas of problems within bioethics: a tension between the needs and interests of individuals and society; our relationships towards the future in the context of possible change in the human biological essence due to cloning, embryonic research, genetic screening, selection and therapy; the third area refers to such pandemics as AIDS; and the last area concerns the widening of the gap between the rich and the poor in making use of sophisticated technologies, which could lead to the rich exploiting the poor (Sherlock 2005, 194). It is typical for his approach that by issues and problems of bioethics he does not understand ethical and moral problems which are connected to it, but, most of all, problems concerning technological possibilities and their utilisation in the future. Similarly, Adrienne Asch and David Wasserman, classify issues of health and sickness, life and death, autonomy, dignity, personality and humanity, the relationship between medicine and nature, and the relationship of health towards the welfare of man as the main areas with which bioethics is concerned (Asch-Wasserman 2006, 165). There is, however, no mention that these are primarily philosophical-ethical or morality issues.

This relationship towards bioethics can, to some extent, also be found in medicine and medical practice. Barry DeCoster states that philosophers typically focus on creating arguments, re-evaluating conclusions and clarifying thoughts. This has been the case for many decades and centuries, it is, however, in complete opposition to the hectic life of hospitals. Bioethicists with a philosophical education are, therefore, sometimes considered outsiders or strangers within hospitals. The discussion of bioethicists is often reduced to their knowledge or the question whether bioethicists are experts on morality. According to him, voicing objections and worries with regard to the relationship towards possible techniques within bioethics or clinical ethics is a part of the process of establishing bioethicists with a philosophical education in hospitals and in medical practice in general. What is interesting regarding philosophical bioethics is the long history of philosophy, where past experience in such areas as ethics of sexuality, sexual identity, sexual health, in the context of sex, race or social class, as well as experience of past perception of death. When it comes to medicine, bioethics has the space to emphasise the patients' identity, which, within medicine, is often marginalised. Philosophy and bioethics should, according to DeCoster, be a challenge to medicine, so as to make it change its perception of the patient as disabled (DeCoster 2008, 9-10). This resembles Rorty's opinion referring to giving reasons for the usefulness of philosophers. According to him, it is especially in hospitals, where there is the space to convince the public of us deserving our money.

In medicine and the medical area, the opposite tendency often prevails, which can, for instance, also be seen in the opinion of the Czech author Marta Munzarová, who defends medical ethics from, as she states, the negative influences of bioethics and bioethicists. For one thing, she points out the systemically incorrect identification of bioethics with medical ethics, as bioethics is a broader notion than medical ethics; her more serious objection, however, lies in bioethics lacking a clear

normative domain (Munzarová 2005, 16-17). Another of her objections is based on the fact that, at present, bioethics has an interdisciplinary character, embracing anything, to such an extent which, in the end, results in the loss of its identity.

Munzarová, in opposition to Benatar and Schüklenk, does not, however, mean the extent of those disciplines which assume the right of the status of bioethics but rather the extent and especially variety, and often even contradiction, within the opinions of philosophical bioethicists with regard to the areas falling within bioethics. She promotes the realisation that “[...] some opinions of professors of bio-“ethics” step on the dignity of a sick person by not acknowledging their status as a person. If someone is not a person, then their fate is utterly in our hands and we may even kill them – it only depends on our decision” (Munzarová 2005, 66). She quotes such bioethicists as Peter Singer, John Harris and Helga Kuhse to give evidence of the perversion and amorality of their thinking. I have to point out, though, that these quotes are, to a considerable extent, out of context and the author does not deal with the whole argumentation of the above authors. She, then, draws a conclusion, according to which “it is extremely important that medical doctors and all health care professionals know about these opinions and the controversies of the present bioethical arena and that they do not get allured to a similar way of thinking by the illusion of modernity. If they want to protect the sick, then they have to realise that, thanks to their professional experience and knowledge and by supporting respect for the totality of man and true humanity, they can significantly contribute to the discussion. After all, it is the philosophers’ phantasmagorical ideas that bind them in their own manacles, without them even realising” (Munzarová 2005, 70).

4. Sociological Approach to Biology

An attempt by sociology and sociologists to enter bioethics can also be proven by such claims as the one by Paul Root Wolp, who states that bioethics, at present, is not as coherent as it used to be at those times when philosophy, and possibly theology, dominated. According to him, perception of social, cultural, legal, historical, economical, psychological and geopolitical problems has become a part of bioethics in the same way as has ethical thinking of philosophy and theology. In the same way as the sphere of objects within bioethics has broadened, the matrix of its disciplines expanded, too. What is important is the way we study something, not what the object of our study is. Bioethics, in his opinion, is an area of investigation, not a discipline. It specifies a set of problems, not a set of approaches to them. This does not mean that bioethics has not developed its own discourse, history and approaches towards these issues. Bioethics deals with anything, not just areas set in advance, since the technological development is dynamic, and, therefore, an interdisciplinary character is necessary. Therefore, he is of the opinion that sociology, just like other disciplines, has the right to be considered a part of bioethics (Wolp 2008, 1-2). Raymond de Vries, Leigh Turner, Kristina Orfali and Charles Bosk have all formulated this opinion in a much more radical way when they stated that bioethics has a pluralist character and plurality is of a multiple character. They refuse monopoly of philosophy, or ethics, over bioethics; according to them, bioethics is a

set of socially visible activities which we call bioethics. This set is unusually varied, starting from national committees, through the provision of recommendations for the pharmaceutical industry, to discussions in professional magazines. In their opinion, the right to the name “bioethics” is equally pluralist. It includes medical doctors, nurses, lawyers, social workers, psychologists, theologians, historians, economists, anthropologists and sociologists. There is actually no way of preventing anybody calling him/her a bioethicist, or of questioning their right to do so. Social scientists dealing with bioethics can, thus, also be considered bioethicists. Bioethics is a dynamic, transforming and versatile discipline or area. It has, therefore, entered the public arena and bioethicists alone have to decide who is a true bioethicist and who is not. Since there is such a thing as sociology of bioethics, then it is also sociologists who can consider themselves bioethicists (Vries et al. 2006, 667-668). In my opinion, a major objection arises against such a way of viewing bioethics and bioethicists. There are also medical sociologists and does it mean then that those sociologists dealing with medicine are medical doctors, or, when it comes to sport sociology, are they sportsmen, or are they writers if they deal with sociology of literature? I am of the opinion that it is a serious misunderstanding. If someone deals with politics, does it necessarily make him a politician? The crux of the matter is when any nurse or medical doctor, or an advocate who pleads a patient’s case, is ‘made’ a bioethicist.

5. Theological (Christian) Methodology in Bioethics

Bioethics as a whole has an interdisciplinary character; it has a variety of forms and levels. This is also fully valid for theological bioethics, or Christian bioethics. A religious-theological approach to the area of bioethics can be presented by means of confessional differences as well as through conservative, fundamentalist positions and even liberal opinions presented by individual theologians or bioethicists. It is typical for Christian bioethics to search for groundwork of contemplations on bioethical issues and problems in Christian ontology (Erickson), Christian anthropology (Cozby), or The Holy Scripture (Verhey).

An extremely conservative, fundamentalist line can be presented by means of H. Tristram Engelhardt, Jr., who stated that morality and bioethics outside Christianity are one-sided, incomplete and, possibly, even misleading. As he claims, the reason for this lies in the fact that God is radically transcendent and radically personal, and that a created being cannot be comprehended outside of an uncreated being. He claims that a secular philosophical approach to morality and bioethics fundamentally misinterprets the focus and content of correct actions. It does not understand that human behaviour must be guided by the requirements aimed at God. In his opinion, secular morality and bioethics reflect on the correctness, goodness and virtue outside the final purport of human life and the cosmos. All contemplation within morality and bioethics on essential circumstances of human life, such as sexuality, reproduction, child birth, suffering, dying and death, when isolated from a moral and metaphysical view of Christianity, surely comes from nowhere and leads nowhere. He states that such morality and bioethics are lost in a pointless cosmos (Engelhardt

2005, 241-242).

Principles of secular morality and bioethics, such as autonomy, helpfulness, causing no harm, and justice are, according to him, generally misleading, for their moral content is inadequate, if not even inappropriate, as it may lead to an abortion or an assisted murder. Moreover, for the same reason, it leads to desecration of life from the viewpoint of eternity and immanence. Traditional authentic Christian morality and bioethics offers the correct focus on the Father through Jesus Christ. Therefore, its requirements come into conflict with secular morality and bioethics in such issues as homosexuality, abortion, and research on human embryonic cells, human cloning, assisted murder or euthanasia (Engelhardt 2005, 243-244).

According to him, traditional Christianity in opposition to secular bioethics at present is sexist, as it gives opinions on sexual essentialism, where men own authority in the Church as well as in the family, with possible implications for medical decisions made by husbands and fathers in families. Furthermore, traditional Christianity is also fundamentally against the sexual norms of the present world, in refusing all sexual activities and reproduction outside the marriage of a man and a woman, with an impact on incorrectness of assisted reproduction in such a case when the gametes come from outside the marriage of a man and a woman. According to Engelhardt, traditional Christianity is also against any massive medical intervention starting with premature births, via research on human embryonic cells, to assisted murder and euthanasia. He claims that Christians consider these activities as incompatible with the sacredness of life and as breaking the Agreement given by God (Engelhardt 2005, 250).

Although not as radical as Engelhardt, Stephen A. Erickson similarly claims that Christian bioethics must interpret and relate all bioethical concepts within the notion of a Christian understanding of a person and his/her understanding of the relationship to God. According to him, the idea of life, seemingly neutral, must inevitably be interpreted as sacred and given by God (Erickson 2005, 274-275). All bases and interpretations of Christian bioethics must defend Christian interpretations and Christian conceptions. If it is not the case, bioethics simply is not Christian. A Christian bioethicist, as a Christian, should contextualise all relevant normative notions in a holistic way with a metaphysical relationship towards Christian salvation. He claims that the Christian dimension of Christian bioethics relates only secondarily to the content. It primarily and inevitably concerns a personal relationship. There is no normative neutrality or a sterile approach to ontological basis of human existence. Christian bioethical opinions do not originate from nothing. Since Christian bioethics is Christian, bioethicists must engage themselves in practical activities, which might not be easy (Erickson 2005, 275-276). Christian bioethics cannot be restricted to purely analysing, arguing, clarifying or discussing; it must dictate (Erickson 2005, 277-278).

A more moderate approach towards Christian bioethics and the relationship between theology and bioethics is presented by such Orthodox authors as Hierotheos, the Greek Orthodox metropolitan, who stated that the Orthodox Church appreciates the outcomes of biotechnology and biomedicine when they help to improve human biological life; therefore, they also welcome bioethics; however,

they put greater emphasis and priority on bio-theology. People are not happy with false solutions, with biological life and its prolongation. They also want to find answers to existential questions. Society at present is secularised to a significant extent; therefore, in his opinion, the voice of Christian, including Orthodox, bioethics sounds strange. It is, however, important, since it gives purpose to human life, it answers the deepest thoughts postulated by human beings and satisfies their existential uncertainty (Hierotheos 2008, 40). Opinions of some other Orthodox authors, such as Makarios Griniezakis and Nathanael Symeonides sound similar. They claim that theology is present in practical medicine and medicine is present in practical theology. It is positive when theological bioethics also references philosophy and, in this way, theological and philosophical bioethics cooperate. The presence of theology in bioethical discussions helps the credibility of contemporary biomedical inventions and gives the green light to its participation in the development of life which, however, does not question its human nature. Theology must develop challenges for solutions of a theological, not religious, nature. In this way, theology will play a crucial role in the cooperation of bioethics and other theoretical sciences. Theology could act as joining material between these sciences. Theology could also use its rich history in order to, in the best and most beneficial way; contribute to the resolution of bioethical dilemmas. Theology and bioethics could, then, help to guarantee the future of mankind (Griniezakis – Symeonides 2005, 10-11).

Conclusion

Where shall one look for answers to various definitions of bioethics, the diverse perception of its content, manifold methodologies and the outcomes which result from them? Daniel Callahan, one of the most significant representatives of bioethics and long-standing Head of the Hasting Center in the USA, starts his contemplation on bioethics by the claim, alongside the Biblical Solomon, that it is “nothing new under the sun”, and he remarks that issues of life and death, pain and suffering, law and the power to control one’s own life including the responsibilities towards oneself and others with regard to health and welfare, are among the oldest that humankind has imposed on itself. In his opinion, bioethics is a radical transformation of an older area, i.e. medical ethics. He suggests that bioethics is not only an intersection of ethics and sciences dealing with life, but also an academic discipline, as well as a political decision-making vehicle in medicine, biology and environmental studies, and it also provides a cultural perspective with certain consequences. In a narrower sense, bioethics is a new discipline which originated as a search for answers to new scientific and technological challenges. In a broader sense, it can, in his opinion, be stated that it is an area which penetrates into law and public politics, literary, cultural and historical studies, as well as popular media, branches of philosophy, religion and literature, and also to scientific spheres of medicine, biology and ecology, demography and social sciences (Callahan 2005, 278-279).

Callahan realises that arguments occur with respect to which theory of ethics should be used as the basis for bioethics. According to him, the question is what

authority such arguments can have. Are we supposed to take them seriously at all? Both groups, scientists and humanists, argue for their own grounding and standpoints. He, however, finds it much more important that, in all areas, accordance can be found in practical issues, even without a theoretical consensus. Moral decisions need to be made regardless of their theoretical foundations. According to Callahan, the authority of bioethics lies in a clear definition of the problem and the convincing argumentation of those who reflect a moral problem. The primary task of bioethics is to clearly formulate a problem which requires a solution, regardless of the level of the solution, be it in clinical practice or at the political or legal level, etc. What will follow is searching and giving reasons for theories and principles. It is, however, necessary to state that there are hardly any situations where a problem, which cannot be solved with regard to a disagreement between theory and principles, is also reflected in practice. It is also confirmed by the development of bioethics in recent decades. He points out that a good individual decision includes three conditions: self-cognition, knowledge of moral theories and traditions, and cultural perception (Callahan 2005, 284-285). Originally, bioethics was primarily understood as a matter of sciences dealing with life with reference to issues of morality and values. This opinion has, however, gradually changed; sciences focusing on life are still understood as its core, but it is rather scientific than moral. Ethics plays the key role, as facts and values cannot be separated. Issues of moral value and the purpose of sciences studying life can no longer be separated from the issues of moral value and purpose of society and culture (Callahan 2005, 286).

From our viewpoint, the following proposition of his is really important: even though bioethics is of multidisciplinary character, it still answers three fundamental questions: what kind of person to be in order to live a moral life and to make the right ethical decisions, what one's obligations and engagements are towards other people whose lives may be influenced by my actions, and how to contribute, as a member of society, to the common welfare or public interest (Callahan 2005, 282). I think we can agree that all three of the above questions are primarily philosophical-ethical, and that they find their specific manifestation in searching for answers to new challenges of medicine and biology. All disciplines which deal with issues of bioethics, whether perceived in a narrower or broader sense, can contribute to their being answered. In any case, ethics, regardless of the particular ethical theory it relates to, should be the core, where all this reasoning should start, should it concern a solution to real and not imaginary forms of ethical and moral problems related to the development of biology and medicine, biomedical research and biotechnology.

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Chapter 7

Non-utilitarian Consequentialism and Professional Ethics of Teacher

Marta GLUCHMANOVA

Introduction

This paper is focused on the professional ethics of teacher which was very important in the education in the past as well as at present. The author deals with the ethical and moral aspects of the teacher's profession in past and also reflect the relationships between teacher and students, colleagues, parents and the others at present.

In professional ethics of teacher, consequentialist ethical theories, as potential tools or bases for dealing with moral problems of the teaching profession, are often underrated, while deontological ethics is unilaterally preferred. Critics usually reduce consequentialism to utilitarianism, which holds that right action is only the action that brings the best consequences. They overlook the existence of non-utilitarian consequentialism that critically reinterprets utilitarian principles and values, holds that right action is the action that brings predominance of positive consequences over negative, its value structure is plural, and that rejects maximization and the principle of impartiality.

The ethics of social consequences (a form of non-utilitarian consequentialism) as a theoretical basis for the examination of professional ethics of teacher and a tool for dealing with practical moral problems of the teaching profession is stressed. This innovative conception provides a guideline for a moral agent's thinking, decision-making, behaviour and actions in relation to concrete situations of everyday life. The values of humanity, human dignity and moral rights of humans can be considered to belong among the fundamental moral values in the ethics of social consequences.

I emphasize that the ethics of social consequences can help moral agents (teachers) to deal with many everyday moral problems. Then the teachers can be sure that by acting in everyday life situations in accordance with humanity, human dignity and moral rights, they contribute to the realization of positive social consequences in their profession.

1. The Ethical Theories

I primarily referring to the philosophical and ethical basis in reasoning about professional ethics of teacher. I suppose there is a need to intend about the ethical theories which could serve as a methodological basis in developing professional ethics of teacher and to solve the ethical and moral problems of teacher's profession. At present there does not exist one single ethical theory that would provide exhaustive solutions to all moral problems. Each of the existing ethical theories

comprises certain truth-value, but none of them is complete. Every situation and action can be judged according to various ethical theories.

Nowadays the ethical theories can be divided into two basic groups: consequentialist and non-consequentialist ones. Within consequentialist theories we can recognize utilitarianism and consequentialism, eventually utilitarian and non-utilitarian consequentialism, which have common starting point that is consequences as the criteria of evaluation. Utilitarian ethics nature comprises consequentialist, eudemonistic as well as hedonistic aspects, and maximizing is typical for them. The significant is the principle of impartiality. The action of moral agent is primarily evaluated on the basis of consequences which result from his/her acting (motives and intentions of acting moral agent can play the certain role in evaluation). Therefore, the moral agent has to seek to achieve the action which would bring the best possible consequences.

In non-utilitarian consequentialism the consequences are understood widely and they are not reduced only to the consequences of action. The consequences of motive and intention are more considered. In utilitarian consequentialism the best action is that one which brings the best possible consequences. On the contrary, in non-utilitarian consequentialism the best action is that one which brings dominance of positive social consequences over the negative ones and refuses maximizing as well as the principle of impartiality.

In concretization of non-consequentialist ethical theories, I reflect on Kant's ethics including his Categorical Imperative, which can be included in the most significant deontological ethical theories. Deontological ethics nature consists in emphasis on the acting of moral duty regardless of circumstances including the consequences resulting from our acting.

In the framework of the ethics of teaching, consequentialist ethical theories,¹ as potential tools or bases for dealing with moral problems of the teaching profession, are often underrated, while deontological ethics is unilaterally preferred. One of the reasons for this situation is that critics usually reduce consequentialism to utilitarianism, which holds that right action is only the action that brings the best possible consequences, and which unilaterally prefers such values as enjoyment, pleasure, utility, and overrides neutrality in judgement of the interests of various involved agents. Critics overlook the existence of non-utilitarian consequentialism that critically reinterprets utilitarian principles and values, holds that right action is the action that brings predominance of positive consequences over negative, its value structure is plural, and that rejects maximization and the principle of impartiality. Within utilitarianism the principle of impartiality means that moral agent has to assign the same value with the same consequences to the interest of all moral agents in decision making process (Gluchman 2000).

These characteristics are also fully applicable to the ethics of social consequences. It draws on the ethical conceptions of non-utilitarian consequentialism, such as, for example, Pettit's virtual consequentialism, (which solves one of the most fundamental issues of consequentialist ethics that is the issue of values as well as understanding of moral agent position in the ethical theory. He emphasizes equality of all moral values.), Slote's satisficing

consequentialism (Michael Slote's satisficing consequentialism is the view that moral agents are not required to maximize the good, but merely to produce an enough of good. It is argued that satisficing consequentialism is not an acceptable alternative to maximizing consequentialism. In particular, it is argued that satisficing consequentialism cannot be less demanding in practice than maximizing consequentialism without also endorsing a wide range of clearly unacceptable actions), next Jackson's probabilistic consequentialism (according to him consequentialists can also allow the special perspective of a friend or spouse to be reflected in agent-relative value assessments or probability assessments) or Sen's evaluator relative theory. Amartya Kumar Sen in his evaluator relative theory claims that the core of his value framework is freedom and justice (laws).

The ethics of social consequences prefers plurality of values, proving that consequentialist principles can be used in a wider framework than the one sanctioned by utilitarianism. The ethics of social consequences is based on the principle of consequences resulting from decisions and actions or opinions and attitudes of moral agent (Gluchman 1997). The values of humanity, human dignity and moral rights of humans can be considered to belong among the fundamental moral values in the ethics of social consequences. Other moral values in the ethics of social consequences are, for example, justice, moral responsibility, tolerance or duty. According to the ethics of social consequences, just action respects and confirms the fundamental moral values valid in human society. The basic condition for justice is that it must not negate any of the fundamental moral values, i.e. it must not be in conflict with any of the fundamental moral values. The action that is not just can be considered right if it brings predominance of positive consequences over negative. In such a case one does not need to speak of unjust action, as it is more suitable to use the term not-just action that better corresponds with the context and spirit of the criterion of moral judgments in the ethics of social consequences, i.e. the criterion of consequences. In the case of unjust and especially immoral action, one of course has to use the term unjust action, the main reason being that, regardless of motivation, the action brings predominance of negative consequences. Also in such a case we must know how to distinguish whether the unjust action was intentional or non-intentional (Gluchman 2003).

Moral responsibility in the ethics of social consequences is expressed through the principle of responsibility. In the ethics of social consequences framework we relate moral responsibility especially to the recognition and realization of human rights and the dignity of humans, i.e. to the principle of humanity that determines the basic dimension of the principle of responsibility in this ethical conception. Social institutions do not completely reduce the individuals' duty to bear some share of common responsibility of humankind. The extent to which individuals share the common responsibility differs, being determined by the individuals' social and political status, their possibilities and abilities which are also influenced, among other things, by their education, upbringing and their overall psychological and physiological qualities.

The ethics of social consequences provides a guideline for a moral agent's thinking, decision-making, behaviour and actions in relation to concrete situations

of everyday life, individual exercising of the given principles in such situations. In the ethics of social consequences context the principle of tolerance is limited by the principle of justice in action and judgement. On this basis we can state: “Action is right only when its positive consequences prevail over negative and the action is in accordance with the principle of humanity”. Similarly: “Action is moral only when it brings almost exclusively positive consequences, negative consequences are minimal and the action is in accordance with the principle of humanity and justice” (Gluchman 2003, 16).

To consider human life moral, we do not have to act with constant awareness that our action should reach maximalist aims. For most people, unattainable moral ideal cannot, in a long-term horizon, function as the motivating force for their actions. Rather the contrary, it can often demotivate or demobilize their efforts at moral perfection. Indeed, life tension and frustration, stress, or many other negative things are not the moral aim of human life.

The ethics of social consequences then can be considered a theoretical model reflecting a certain perception of the world of morality. This conception can help moral agents to deal with many everyday moral problems. Then the moral agents can be sure that by acting in everyday life situations in accordance with humanity, human dignity and moral rights, they contribute to the realization of positive social consequences. So the ethics of social consequences can be a productive basis for including with concrete moral problems of present times in the framework of applied ethics, which also includes the ethics of teaching.

2. The Ethics of Social Consequences as a Theoretical Basis for the Ethics of Teaching

I will try to present a theoretical reflection on the values or principles of the ethics of social consequences in relation to the ethics of teaching. From my personal teaching experience I know that dealing with everyday complex situations in school and also out-of-school environment is very demanding for teachers. Especially, when moral agents try to consider and use ethical and moral aspects of their profession in the best possible way. In the ethics of social consequences context moral agent is defined as a mentally healthy adult individual who fulfils the required criterion, i.e. she/ he can distinguish and understand the existing moral status of society and is capable of conscious and voluntary activity for which she/ he can bear moral responsibility (Gluchman 2003). Teachers and other pedagogical employees are then moral agents. In the context of our reflections on the ethics of teaching moral agents are predominantly the teachers. Pupils and students, depending on the degree of their mental and intellectual development, are only potential moral agents, eventually they are partly bearers of moral responsibility, respect, etc. (Gluchman 2008).

Just as there is no ideal teacher who would personify all the positive qualities that the authors of various pedagogical publications accentuate as important for the teaching profession (the teacher can only more or less approximate the ideal), so the action of moral agents (in our case teachers) cannot be ideal. One can only more or less approximate it in the process of thinking, decision-making and acting. To what

extent the behaviour and action are right depends on the moral agent, environment, other involved agents and, to a not insignificant extent, also on the seriousness or complexity of the situations that we experience. In any case we should bear in mind the well being of pupils or students in our charge, which we can attain by our action, but we should also not overlook the well being of the acting moral agent (in this case the teacher), which has recently been often forgotten.

With regard to the variety of theories mentioned in the previous parts, one can state that these theories suggest various solutions to situations and actions of moral agents (teachers). If the moral agents only aim at positive consequences of their action and behaviour, they try to act in a maximalist way and they can forget about, for example, the principle of humanity, human dignity and moral rights (as it happens in the case of utilitarian ethics.) In the effort to be as just as possible, to fulfil their duties in the best possible way, they disregard tolerance and forget responsibility that they have not only to the pupils or students, to themselves but also to the whole class or school, other teachers, parents and also the whole society (as in the case of deontological ethics). For this reason I believe that in the framework of the ethics of teaching in various situations, it is not possible to act in the way that pursues only the maximalization of utility or positive consequences but on the other hand, it is also not possible to act only on the basis of strictly applied rules.

On the basis of my long-term experience and practice in the teaching profession, I think that non-utilitarian consequentialism in the teaching profession is more applicable especially because it does not reduce values to happiness only or the pleasure and to the satisfaction of desires and interests of individuals. Maximization cannot be attained in action and behaviour of moral agents in the teaching profession (one can only approximate it) as I have already emphasized. I consider as right such an action that brings predominance of positive consequences over negative. In my opinion, in any school environment it would be difficult also to apply the utilitarianism of the rule, which according to right action is the only action that follows a certain chosen rule, which is valid in society and in certain social groups (however, a rule that brings the best possible consequences). Variety and heterogeneity of situations and human individuals many times prevent moral agents from using the mentioned rule in certain circumstances. Non-utilitarian consequentialism and the ethics of social consequences as a form of non-utilitarian consequentialism create at least as good theoretical basis for teacher ethics as the bases formed by some other theories. For this reason, I do not completely agree with the authors Soltis and Strike, who claim “consequentialism is not usable in the framework of the ethics of teaching” (Strike-Soltis 2004, 11-14).

In the teaching profession we often experience various situations. In the ethics of social consequences we emphasize especially the position of moral agents in such social contexts in which the moral agents exercise influence these contexts and also therefore have moral responsibility for the social context and the atmosphere which have arisen. I refer mainly to the social and moral relations, on the level of working teams and other formal social groups, including also school groups of pupils, students, colleagues and other pedagogical employees. Since the ethics of social consequences refuses the maximising as the main criterion for

the rightness of acting, it must also accept negative consequences (while positive consequences should prevail over negative ones). For this reason I think that just the ethics of social consequences (as a form of non-utilitarian consequentialism) is an ethical theory equally suitable for application in the teaching profession as other ethical theories. In various situations in the context of school environment or the teaching profession actions of moral agents usually bring both positive and negative consequences, but important is that these actions should bring predominance of positive consequences over negative. What I have in mind, are the consequences that arise in relationship to individuals and the environment where they live, work and influence of their actions. Since the actions of moral agents (in this case teachers) are aimed at protecting and supporting of children and young people (i.e. at the development of human life), one could state that the moral agents act humanly. We understand humanity as a moral quality, or a value that plays a significant role in the ethics of social consequences. The core of the ethics of social consequences is created by the values of human dignity, humanity and moral rights which interact with the values of positive social consequences. If the ethics of teaching is primarily concerned with the protection of pupils and students from certain negative influences from other students, teachers, parents and the surrounding environment, that influences them such or any significant extent, then behaviours and actions based on this ethics are undoubtedly the forms of behaviours and actions that bring positive social consequences.

It might be good expected that moral agents have moral responsibility for their behaviours and actions, and on the practical level of the profession teaching, this means that teachers should act according to the principle of responsibility. Moral agents relate their moral responsibility especially to the recognition and realization of human rights and the dignity of all other human beings that are affected by their behaviours and actions (including pupils and students); that is they relate their moral responsibility to the principle of humanity. Presently a huge effort is made to respect the rights of children and adolescents, especially in school environment that often becomes a situation for many conflicts.²

Conclusion

Therefore the ethics of social consequences through its principles and values has the potential to contribute to the development of theoretical research of teacher's ethics problems as well as to the searching of moral problems solution connecting with the teacher's profession. In conclusion I can state that the ethics of social consequences is applicable to the issue of the professional ethics of teacher because, on the one hand, it concerns actions aiming at the attainment of positive social consequences while respecting the values of humanity, human dignity and moral rights as well as justice, moral responsibility, tolerance and duty. On the other hand, the actions that respect such values bring positive social consequences that form the core of this ethical conception. In the ethics of social consequences as well as in the professional ethics of teacher is concerned with the positive social consequences which are consistent with their principles and values. It means that the teacher (as

well as the other pedagogical staff, including directors, etc.) should act with the sense to respect the mentioned values and principles and to produce positive social consequences, or at least to minimize the negative ones, if they cannot to avoid them. Another argument supporting the ethics of social consequences is the fact that according to this conception every moral agent, when dealing with moral questions, should consider the rightful needs and interests of other people, i.e. pupils, students, colleagues, parents, but at the same time the moral agents expect that other people will equally consider their rightful needs and interests. In this way we will avoid one-sided overrating of the well-being of pupils (which often happens in the case of certain approaches), because the teaching profession is not only the one sided preference of teachers' duties and pupils'/students' rights, but the complementarity of rights and duties (including moral duties) of all involved parts.

Notes

- 1 **Consequentialist ethical theories consider the consequences as the main criteria of evaluation.**
- 2 **Rights and duties of students are included in every school rule book, but we often witness that mainly students' rights are put at the centre of attention and their duties are somehow disregarded.**

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Chapter 8

Medical Refugees in Japan: From Overseas Transplants to Organ Self-Sufficiency for Japanese Recipients

Keiko YASUOKA

Introduction

Sapporo has a special place in Japanese organ transplantation history, because the first heart transplant surgery was performed there by Dr. Wada in 1968. This was the starting point of the Japanese organ transplant nightmare and the unique history which has led to the present situation of organ transplantation issues in Japan. Although the history of Japanese organ transplants is dramatic, sensational and scandalous, it isn't well known either in foreign countries or even by the Japanese people themselves. It was Dr. Wada's first organ transplantation which became "The Wada Case" and he was transformed from a surgical hero to someone accused of murder. However, the case details are very unclear because of a lack of evidence and the charges were eventually dropped. Dr. Wada harvested a heart from a living young man who had become brain-dead after a drowning accident (donor) and transplanted his heart into a young male patient (recipient) whose condition did not necessarily require heart transplantation. Medical anthropologist Dr. Lock pointed out that the Japanese are very infrequent organ donors as a result of "The Wada Case", and I think that her comment is very relevant (Lock 2001).

Also the title of this paper - "Medical Refugees in Japan" - may seem puzzling, and readers, even Japanese ones, may wonder "why refugees in Japan?" Japan is one of the most advanced countries in terms of medical technology and we are proud of being a country 100% covered by health insurance, with the exception of organ transplantation. In fact, Japan accepts foreign patients from developing countries and gives them medical care, again excepting organ transplantation. Some other first-world countries refer to Japan as an organ transplant developing country, or an undeveloped country with regard to organ transplantation. I would like to outline the situation surrounding Japanese organ transplantation medical care; the most serious problems for Japanese patients; why "The Wada Case" still has such strong after-effects; and how to bring about the "organ self-sufficiency" required by The Istanbul Declaration (TTS & ISN 2008).

1. Background

There is a severe organ shortage all over the world and every country has been struggling with various ways to increase the number of organ donations. Organ shortage is an international problem because the number of patients globally needing

a transplant is far higher than the number of donors. However, I think that the Japanese organ shortage is much more severe than that of any other country. There are many reasons why the number of Japanese donations is so low: in our survey some transplant surgeons pointed out that Japanese traditional culture does not allow a dead body to be cut open, some recipients blamed problems within the Japanese medical system for organ transplantation, and some donor families claimed that the Japanese don't care about others. A mixture of these opinions and similar views seem to be prevalent among Japanese people (Yasuoka 2002).

In addition, while Japanese organ donations have been decreasing year by year, the number of patients on waiting lists has been increasing day by day. This imbalance between the number of organ donations and the number of patients requiring transplant makes the potential recipients' situation worse and worse. Each year many patients who have spent years on the waiting list for organ donations pass away before organ transplantation surgery.

At present in Japan, most organ recipients have to depend on living donors inside their family circle or overseas transplants from developed and developing countries. According to current Japanese organ transplantation law, recipients can be given organs (mostly kidneys) by donors outside their family circle such as friends or unknown living donors. However some patients in need of organ transplant go on an "Organ Tour" to developing countries such as China or other South Asian countries, as a result of which, the Japanese recipients harm the human right of donors in developing countries by buying organs, often illegally. In addition, most Japanese heart recipients depend on foreign brain-dead donors in the USA or European countries because of a shortage of brain-dead donors in Japan. But even the USA has a scarcity of organs for other countries' patients due to the current worldwide organ shortage.

2. Refugees?

The obvious question is why Japanese patients can't receive organs in Japan where there are transplant surgeons, transplant medical techniques and an organ transplantation law. Unfortunately there are too few organs to save the majority of patients now in Japan. Specialists highlight various reasons that Japanese organ donation is so infrequent, most of which are correct, but we can't seem to establish one over-riding reason easily because the issues are so complicated in Japanese society.

So I raised a research question: "How do concerned parties explain the infrequency of organ donation in Japan?" I tried to listen to the stories of concerned parties directly to learn about organ donation, organ replacement and organ reception for Japanese donors, surgeons and recipients. Although I expected to learn from their narratives the reason for the paucity of organ donations in Japan, I learned that the motivation for organ donation was various, complex and changeable day by day (Yasuoka 2004).

I interviewed and recorded seven transplant surgeons whose specialities were heart, liver and kidney transplants, two recipient coordinators and one donor

coordinator, and seven recipients of organs from brain-dead or heart-dead donors in the USA, Australia and Japan, as well as six donor families who received organs from their children (five sons and a daughter) or a spouse (husband) in Australia and Japan following heart-death or brain-death. The data were analyzed using both qualitative research methods and the coding method from the grounded theory approach. In addition, the informal narrative data from one inventor of artificial hearts (Wearable Heart), a Japanese paediatrician who works in the USA, and a transplant surgeon who works in Germany were used. Follow-up research has been continuing via email, postal mail and telephone. In addition, I have visited some events run by concerned parties as a participant observer to discover and add more new data.

3. Organ Donation 2007

We face severe organ shortages all over the world; no country has enough organ donations to meet demand. However, according to 2007 data, the Japanese organ donation rate is extremely low compared with other countries. Even the USA, which was once called “Transplant Heaven”, has a problem with organ shortages now, although the US donation numbers are the largest in the world. As a result, many American recipients remain on the waiting list for donated organs for years. In the EU and the UK, organ donation numbers are less than half those of the USA, but even so, they are still much higher than those of Japan.

There have been only 86 organ donations from brain-dead donors since 1997 when the new organ transplantation law was established in Japan (Japan Organ Transplant Network 01/23/2010). On average, there are only 6 or 7 organ donations annually from brain-dead donors in Japan: this number cannot in any way meet patient demand, and the situation is especially hopeless for heart transplant candidates. In addition, Japanese organ donation numbers have been decreasing, in spite of the increasing number of transplant candidates in Japan. Why are organ donations so infrequent in Japan? Many concerned parties and specialists have been seeking the reason for the pitifully low organ donation figure in Japan but it is elusive.

In fact, although we are facing an organ shortage, the kinds of organs and the numbers of organs required are different. Because kidneys and livers can be harvested not only from brain-dead donors but also from living donors and heart-dead donors, more are available. But hearts can only be harvested from brain-dead donors, so heart donations are much less frequent than those of other organs such as kidneys and livers. Surprisingly, Japanese donation numbers for each organ are almost identical: in other words, all kinds of organ donation are rare in Japan.

4. Transplant Surgeons’ Narratives

Firstly, I would like to introduce the narratives of some Japanese transplant surgeons as data here. One transplant surgeon who works in the USA said:

“Americans donate to Japanese patients even though they don’t have enough organs for themselves. Of course they are not entirely happy with the situation, but they treat us Japanese the same as they do any American recipients! But saving one Japanese baby means that one American baby may die. We have to recognise this and think about it seriously. If there is only one donated heart, and one Japanese patient whose condition is really serious goes to the top of the waiting list and gets that heart as a priority, it could mean that the next American heart transplant candidate on the list will pass away before the next donated organ arrives at the hospital. If Americans stop accepting overseas transplant patients due to the organ shortage, American hospitals can save more American patients. We cannot afford to rely so greatly on American donations; it is a great shame that Japanese people don’t donate organs for the Japanese.”

Another transplant surgeon who has worked in Japan for many years, with extensive experience of kidney transplant operations from living donors, told me:

“The role of a transplant surgeon is not only to perform surgery. We have to investigate new donors, especially neglected potential donors! We are wasting many potential donors currently because of medical system problems, legal problems, calls for correct information for adults, and education for children - school education is especially important - and of course, we have to do campaigns for organ donations with recipients. And actually, we waste not only the organs themselves but also many donation wills. More Japanese people have donor cards than we imagine, especially the younger generation, who often carry donor cards but their family members, fathers and mothers don’t know that they hold one. Only occasionally do family members find donor cards or donation wills and act on them.”

5. Recipients’ Narratives

Secondly, I would like to present the narratives of some Japanese organ recipients as data below. One recipient who received a kidney from brain-dead donor in the USA told me:

“My health condition was so bad because dialysis was not suitable for my body. So I was getting sicker day by day. I thought that I would die on this bed in an American hospital! So I tried to think about just getting a new organ. I was...I wanted to live! That’s all. I couldn’t think about the donor; I had no room to think about the donor, but I was waiting for a donor’s death which would give me a kidney. Now I’ve been trying to work out what I should do for the donor family. I tried to write a thank-you letter but a coordinator told me that if I wrote one, the donor family mustn’t suspect that I am Japanese, so all I can do is pray for them every night!”

Another recipient, who was given a kidney from a brain-dead donor in the USA, was introduced by the previous narrator (a recipient) to the same transplant surgeon at the same hospital in the USA. He calls the former recipient “my saviour”, and research has found that the ties among recipients are very strong.

“My friends passed away one after another. I thought that the next patient to die would be me! There was no way to save my life at that time. I had no room to think about the donor. Now, I do care about writing a thank-you letter. I haven’t written one yet. I wonder if the donor family knows that I’m not an American. I suspect that the American donor family would feel sad or possibly have complex feelings if they knew! Family organ transplants are possible, from a spouse as well as from blood relatives, and I expect that new treatments will be invented, but we must remember that organ transplantation is only a temporary treatment.”

6. Donor Families’ Narratives

Thirdly, I would like to add a couple of narratives from Japanese donor families as data. One donor family who donated their son’s organs overseas told me:

“We donated my son’s organs in Australia even though, of course, we were grieving because he died in a foreign country. But in our case, unfortunately, because we were facing the sadness of losing our son in a car accident, we could understand more than other parents the devastation of losing a child in his youth. So I can feel proud of saving someone else’s child in this world. They can be spared the same sadness that we had. But although Japan is a developed country, its organ transplant system depends on overseas donors. I have met many Japanese patients who want to get organs in Australia. My son had a donation will and we Japanese have received many organs from Australia, so we donated our son’s organs to Australia. We have the medical technology in Japan but not the organ donations. It’s shameful to beg others for organs with big money...”

Another donor family donated their son’s organs after he became brain-dead following a car accident. They criticized both “overseas transplants” and “infrequent organ donations in Japan”. They mentioned their family’s unease about the current organ donation problem in Japan:

“We were sad about my son’s sudden death in a car accident, but we are proud that my son saved someone. We can feel that my son is helping someone even though he is dead, and it helps to heal our loss so much. Our friends also said to us “Organ donation? That’s what he would have wanted!” We wonder why Japanese donations are still so infrequent, because we all have to die some day, and after death, we could help someone. We can receive someone’s organs if we suffer organ failure, so

we should donate our organs when we die and save someone; why not help each other?"

7. Two Regulations

I have outlined the current Japanese organ transplantation situation and narratives from three kinds of concerned party and noted that the lack of organ donations and the resulting organ shortage in Japan have led to the problems of overseas transplantation (depending on foreign brain-dead donors) and organ tourism (depending on foreign living donors). These serious problems in Japan have continued for the past twelve years without solution. However, two regulations introduced since May 2008 have been changing Japanese organ transplant issues with remarkable speed. The first was the Istanbul Declaration on Organ Trafficking and Transplant Tourism of May 2008 (TTS & ISN), which stimulated Japan to action, and the second is a new law which was passed by the Japanese Diet on July 13, 2009, and which will be implemented on July 13, 2010. In fact, a part of the new law has already begun to take effect from January 17, 2010 (Japan Organ Transplant Network 2010).

In 2008, the Istanbul Declaration (TTS & ISN) focused attention on three main points. The first was a recognition by the World Health Organization and similar bodies of problems such as “organ trafficking” and “transplant commercialism” as ethical issues, strongly connected to organ transplant issues throughout the world. The second was a call for “organ self-sufficiency”; a big issue in Japan because Japanese transplant patients currently depend on overseas donations. The Istanbul Declaration recommended the prohibition of overseas transplant donations in the near future, and advised countries to work towards the solution of organ self-sufficiency as soon as possible. The third was a requirement to minimize the burden on living donors, which is also a serious problem in Japan since most Japanese organ recipients depend on living donors.

July 13, 2009 was an important day for the Japanese organ transplant world, as a new organ transplantation law was approved by the Japanese Diet. The law will be implemented on July 13, 2010 so this is a time of significant change in the Japanese organ transplantation world. The new law brings about three main changes: (1) Brain death becomes the criterion for human death in Japan, (2) Children under 15 years old can donate their organs, (3) Family consent (presumed consent) is allowable unless living prohibits organ donation.

8. Self- Sufficiency of Organs

The Istanbul Declaration called for “organ self-sufficiency” due to a severe organ shortage globally (Noel & Martin 2009). Japan is the country with the most severe shortage of organs for transplant, so the Japanese face a difficult task in responding to this requirement. However, the number of Japanese recipient candidates has been increasing, and we can’t any longer depend on overseas transplants. So we need to plan immediately what to do after the prohibition of overseas transplants in Japan.

Because of the severity of Japan's organ shortage, meeting the self-sufficiency requirements will be an enormous challenge. Japan has relied on living donors within the family circle and overseas transplants from developing countries such as China and South Asian countries since 1997, and many subsequent problems have also developed during these thirteen years. Dependence on living donors has been harming not only the health but also the later life of those donors. In addition, many recipients relying on overseas organs from both developed and developing countries have also been harming those donors' human rights.

The new law will take effect from 2010, and the Japanese will be able to donate and receive organs from brain-dead donors legally. Japan also needs to seek other solutions that will lead to organ self-sufficiency. There are five methods to increase donation numbers:

- (1) Expanded criteria organs - ECD (Expanded Criteria Donor) kidney transplants and NHBD (Non Heart Beating Donor) heart transplants have already taken place, but there is some concern as to their safety.
- (2) Artificial organs are a realistic solution but artificial organ development is still at an experimental stage.
- (3) Xenotransplantation is also a possible solution, but patients can receive animal organs and experience an emotional rejection.
- (4) Autotransplantation is another possible solution but ES, iPS, or hfPS cell research may come up against human cloning issues.
- (5) Designer babies are not a fantasy any more, but many ethical problems surround them.

9. Human Resources

When we think about how to solve the problem of organ self-sufficiency it is possible to categorize three kinds of medical resources (Fox and Swazey 1992). The first is human resources, the second is material resources and the third is hybrid resources. Human resources are essentially human organs; in other words, kinds of donors. There are four categories of donor: brain-dead donors, heart-dead donors, living donors and patient donors.

- (1) Brain-dead donors: there have only been 86 cases of organ transplantation from brain-dead donors since 1997 in Japan (as of 01/23/2010). Brain-death is the ideal state for all kinds of organ harvesting to save recipients, but with Japan's severe organ shortage, there will still not be enough donors to combat the current waiting list for transplantations. However, the new organ transplantation law will recognize brain death as human death.
- (2) Heart-dead donors: after heart death many organs can be viable for donation, but for some organs, especially the heart, liver and lungs, heart death can make them unsuitable for transplant. But NHBD heart transplantation has been performed in the USA successfully, so it is possible that this may become more and more common in the future.
- (3) Living donors: most Japanese kidney recipients depend on living donors but only those inside the family circle, and Japanese law currently prohibits

organ donation from living donors to patients who are not family members. The Istanbul Declaration also draws attention to the human rights of living donors all over the world, and aims to reduce the number of living donors.

- (4) Patient donors: this refers to ECD kidney transplants. In Japan this option gained notoriety with the “Manami Case”, and the Japanese Organ Transplantation Committee does not currently allow diseased organ transplantation. But in the future, it is possible that organs taken from a “diseased” donor may be viable for transplantation, as with NHBD heart transplant. But the idea of patient donors evokes a fundamental question: can patient donors help recipients (patients) by organ donation?

10. Expanding Criteria

I would like to focus on the fourth category of donor - patient donors - because such organ transplantation has been carried out: so-called “Gift of Life” donations based on human altruism (Murray 1987, Starzl 1992). In fact, the category of patient donors includes both living and dead donors, but I wonder whether living patients can really help other patients. In other words, should patients donate diseased organs? Are they truly safe for the recipients?

In 2006, ECD kidney transplantation became a scandal throughout Japan as a result of the “Manami Case”. ECD brought about an expansion of the criteria for donors, which therefore increased the number of kidney donations. Dr. Manami had been removing diseased kidneys from his patients without their permission, and transplanting these into his kidney failure patients without informing them about the health status of their donors. Dr. Manami insisted that these procedures were “for the benefit of patients”, but again we have to question what can truly be considered “for the benefit of patients”, not just from the clinician’s point of view but also taking into account the point of view and quality of life issues of the patient. However, ECD kidney transplants have become more popular in the USA, and as a result of the development of medical technology, they are now the standard treatment.

“NHBD Heart Transplant” also refers to an expanded criterion for donors, but again it is not popular in Japan yet. NHBD heart transplantation occurs when the donor’s heart has just stopped beating, and there is a strict time limitation on the transplantation of such organs. This procedure is still at the experimental stage and some surgeons are concerned that a heart whose function has stopped once may offer a lower quality of organ, and therefore pose a greater risk to the recipient.

Both ECD kidney transplant and NHBD heart transplant are medical resources using “diseased organs”, but is the use of diseased organs really good for patients? Diseased-organ transplantation has produced the new category of donor patients; even diseased organs must be medical human resources, but I wonder whether they will prove to be a beneficial resource for the recipient patients.

11. Material Resources

The second category of medical resources is material ones such as artificial organs

and non-human organs (Ott, Serlin & Mihm 2002). Artificial organs include artificial hearts and pace makers, artificial kidneys (dialysis); artificial arms and legs and artificial teeth are already very popular. Non-human organs refers to animal organs for xenotransplantation, such as those of dogs, monkeys, baboons and pigs – the closest to human organs both in function and size.

Artificial organs are very unpopular in Japan compared with organ transplantation from human donors, although elsewhere artificial organ replacements and human organ transplants are used as complementary procedures. Japanese transplant surgeons have an aversion to artificial organs, and say that it will be another 20 years before they will be in daily use. However, we use many artificial organs already, including artificial eyes, teeth, ears, hair, blood vessels and pace makers (which are partly organs). Interestingly, the histories of human organ transplantation and artificial organ replacement are closely intertwined, and both started in the 1960s. There are currently two kinds of artificial organs: whole artificial organs such as an implanted heart and partly-artificial organs such as dialysis.

Non-human organs means refers to “xenotransplantation” in which animal organs are transplanted into human bodies. The barrier to xenotransplantation is the potential for infection for the human recipients; animals may have dangerous bacteria or viruses which will be transplanted into the human body together with the organ. Recently, genetically engineered pigs’ organs have been transplanted into human bodies because of a similarity in both size and function, but many recipients experience a psychological or emotional rejection. It seems that the Japanese perception of pigs as dirty or ugly animals affects their ability to accept their organs, despite the fact that pork products form part of the standard Japanese diet.

I firmly believe that since we currently have a severe worldwide organ shortage, we cannot depend on an unlimited supply of human organs. So we must consider artificial organ replacement and xenotransplantation as future possibilities to overcome the global human organ shortage.

12. A Japanese Artificial Organ Inventor in the USA

I will focus on artificial organs here because the use of artificial organs offers a realistic opportunity to overcome organ shortage and support organ self-sufficiency. In Japan especially, artificial hearts are necessary because there is an almost total reliance on overseas heart donations for transplantation. Artificial hearts include both whole artificial hearts and partly-artificial hearts such as pacemakers.

I would like to introduce an artificial heart inventor’s narrative. A Japanese national, he flew to the USA in the 1950s, and has been pursuing his research in Texas for about 60 years.

“I believe that the only way to solve this problem is by the means of myocardial repair for the end-stage heart failure patients. At this time I have confidence in the combination therapy for VADs implantation of six weeks and blood purification. I believe we should be able to provide such

myocardial recovery for all end-stage cardiomyopathic patients...” (Dr. Nose, Director, Center for Artificial Organ Development, Houston, Texas, USA)

Dr. Nose is a very famous artificial heart inventor in the USA, but he is unknown in Japan (although he is from Hokkaido University). I learnt from him that he is confident that artificial organs should save patients now and in the future (Nose 1969). But even in the USA artificial organs are not in regular use, except for pace-makers and dialysis, because they are still in the experimental stages and are currently very expensive. I don't know why Japanese transplant surgeons are opposed to artificial organs; they seem the most realistic and beautiful solution to help countries to gain organ self-sufficiency and to overcome the organ shortage in the future. However, it would be difficult to overcome the severe worldwide organ shortage with only artificial organs. When we consider the combination of various medical treatments and technology, I hope that it will be possible to supply alternative healthy conditions for patients.

13. Wearable Organs

Dr. Nose mentioned the “Wearable Artificial Heart” and the rapid development of emerging biomedical technologies is amazing. However, the artificial heart is still only a dream for human beings and most people recognize that it would be impossible for us to use them instead of our own human heart organ. The human organ itself is wonderful because with just a straight replacement from donor to recipient, the human heart starts working by itself. However, artificial hearts never work automatically; they need a battery, which is necessary to keep them working forever. In fact, the perfect artificial heart has not yet been invented, but that possibility lies in the future, which could solve many ethical problems.

The histories of human heart transplantation and artificial heart replacement are intertwined (Project Bionics 01/30/2010).

1967: first heart transplant performed by Dr. C. Bernard in South Africa.

1968: first heart transplant performed by Dr. Wada in Japan.

1969: first artificial heart replacement performed by Dr. Cooley in the USA

During these three years, the first heart transplant in the world, the first Japanese heart transplant and first artificial organ replacement were competing. However, after the 1970s, each progressed in a different direction and there was no further chance to collaborate or compete. Human heart transplant is the most popular option in the USA now and Japanese recipients rushed to the USA to receive organs before the 2008 Istanbul Declaration. Japanese heart transplant history was interrupted after the first operation because Dr. Wada was accused of murder, and Japanese organ transplantations did not take place again for 31 years (1968-1999). 64 hours after the first artificial organ replacement was performed the patient passed away. The artificial heart could not replace the human organ directly, but a new

use for artificial hearts was produced: patients who are waiting for human heart donations can use an artificial heart as a bridge.

14. Hybrid Resources

The third category of medical resource includes hybrid resources such as autotransplantation and “designer babies” (Caplan and Coelho 1999). Autotransplantation involves the creation of organs using recipients’ ES cells, iPS cells, or hfPS cells. The operated organs are transplanted back into the recipients’ bodies so there is no risk of rejection. Designer babies are babies whose genetic make-up has been artificially selected by genetic engineering so that they can help family members as donors once they are born.

Autotransplantation needs no donors and causes no rejection, so this is the ideal solution not only to lead to organ self-sufficiency but also to combat the severe worldwide organ shortage. It just needs ES cells, iPS cells, or hfPS cells, but it is not yet in regular clinical use, and each of these alternatives brings some further issues - ES cells need human eggs, iPS cells just need a piece of human skin, but cancer is a known side effect of this procedure, and although hfPS cells haven’t shown the cancer side effect, nobody yet knows what future side effects may present. What is worse, stem cell research could offer scientists a potential opportunity to abuse the procedures and work on human cloning.

Designer babies are babies whose genetic make-up has been artificially selected by genetic engineering, or “made-to-order”. This seems like scientific fiction, but it is no longer a fantasy; it is a realistic problem in daily life. In theory, we can buy human seeds and eggs from on-line drug stores and create designer babies as medical tools. Parents whose child needs organ transplantation can create a baby with the same DNA as its sibling. I wonder whether these younger siblings are considered to be brothers or sisters by the patient and parents? Or whether they are merely medical material? And for the designer baby itself, who is he, she or it? Designer babies are not natural human resources because they need a high level of medical technological input, but of course they are not purely material resources either, hence they fall into the category of hybrid resources.

With the ongoing developments in medical technology, I sometimes wonder whether humans have ever been so close to being “material”, or indeed whether material has been so close to being human?

15. Designer Babies

As I mentioned, designer babies are not a fantasy any more, and we have to consider deeply the issues arising. In a designer baby case in the USA in 1991, the oldest daughter suffered from leukaemia and the father, mother and younger son’s types of bone marrow didn’t match. So the couple created a designer baby and the third child (a girl) was born and donated her bone marrow to her older sister. Both the sisters are still alive today. The recipient sister went on to become a transplant coordinator in the USA for bone marrow transplant patients.

Last fall, a movie was released entitled “My Sister’s Keeper”, based on a book which was itself based on a true story (Picoult 2004). However, this movie changed the story and added a kind of happy ending not contained in the book (or the real story). The real story is much more tragic, and it acts as a more problematic record of a designer baby and the ethical issues which need to be discussed. I think that movies or mass media can hide the truth, and although it is tough, we have to face the tragic difficult issues directly.

The story of “My Sister’s Keeper” is that the first child (a daughter) suffered from leukaemia and the only way for her to survive was through a bone marrow transplant. Unfortunately, her younger brother’s (the second child) type didn’t match, so their parents created a third child (a girl), as a designer baby. She was born to become a donor to her sister and she donated her bone marrow and tissue. Later she was due to donate a kidney to her sister, but she hired an attorney to take her parents to court to prevent this. Clearly very young designer babies can’t refuse organ donation, as their parents make decisions on their behalf, so their right of self-determination is being infringed. When designer babies grow up and express their own honest feelings, their parents will have either to ignore the designer baby’s opinion or lose their first child to their disease. We have to question what “family” is in these circumstances.

16. Anxious Conclusion

In July of this year (2010), a new organ transplantation law will take effect in Japan, and in fact has been partly implemented since January 17. A family which contains a recipient candidate can donate and give priority to the family member over other patients on the transplant list. “Family” includes parents, children and spouses, but some specialists have criticized this new law because it goes against spirit of “Gift of Life” giving, or true altruism.

The aim of the new organ transplantation law is to respond to the Istanbul Declaration, leading to organ self-sufficiency and overcoming the organ shortage (Delmonico 2009). Japan has a hard challenge ahead to surmount its twin problems of dependence on living donors and overseas transplants, which have led to the country facing the severest organ shortage in the world.

My conclusion is a very pessimistic and anxious one:

Living donors: currently the Japanese are reliant on living donors inside the family circle, but this will just shift to a reliance on ECD kidney transplants or NHBD heart transplants under the new law. It means that the burden will move from living donors to patient donors, but this is not a fundamental solution at all.

Overseas donors: most Japanese heart recipients currently have to depend on overseas transplants. But once recipients have to stop depending on overseas donors, they will move from overseas transplantation to autotransplantation. This means that Japanese recipients will shift from overseas organ donations to in-vitro fertilization, that is, designer babies.

The last few years have seen a time of change for Japan and the Japanese within organ transplantation issues. These changing times may bring about a better

future, but there is also a risk that the situation will worsen. Especially during the next couple of years, I plan to watch these issues carefully, and I strongly hope that we will take the opportunity to build a better situation, when I hope to report on it again.

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Chapter 9

Privacy and Identity in Intercultural Information Ethics

Elin PALM

Introduction

Privacy, agency and ownership are key issues thoroughly investigated within Information Ethics (IE) dealing with ethical implications of Information and Communication Technologies (ICT). Information Ethics however, is a research field developed in the Western world. Recently concerns have been raised that the problems and solutions identified within IE may have little bearing outside this sphere (Ess, 2005). Are the ICT-related ethical issues discussed in the West the same, similar or completely different in other cultures? And can solutions to such issues be reached that are relevant within the Eastern- as well as Western philosophical tradition?

A broadening of the scope of Information Ethics and a global dialogue has been warranted in order to better respect different cultural identities and to avoid “imperialistic homogenization” (Ess, 2005). In result of more or less concerted initiatives to explore ICT from a cross-cultural perspective, *Intercultural Information Ethics (IIE)* has developed into a research field of its own within which ICT-related moral issues and the use of information are “reflected on in a comparative manner on the basis of different cultural traditions” (Capurro, 2005). Opinions of what the aim of IIE should be differ however. While some scholars welcome research on the impact of ICT on customs, languages and social stability (cf. Capurro, 2005) others hold that IIE should primarily “interpret, compare and critically evaluate moral systems in different cultures regarding their moral attitudes towards and behavior towards information and information technology” (Brey, 2007).

A significant number of cross-cultural research projects investigate potential commensurability between Western normative concepts and Eastern counterparts. This article addresses a tendency within IIE to use overly simplistic constructs of key issues like identity and privacy as a basis for such comparisons. Another problem is a tendency to mix moral and legal practice with ethical theory in the conceptual comparisons. And, the Western philosophical tradition contrasted with an Eastern *ditto* is often treated as far more homogenous than what it actually is. In order to provide a better starting point for cross-cultural conceptual comparisons, in this article, it is suggested that such comparisons should (1) have a clear focus on the ethical theoretical level, leaving aside legal and behavioural aspects and (2) be open for conceptual dis/similarities within and between cultures. Arguably, it is important to recognize the multitude of conceptions within the Western philosophical tradition. Otherwise, shared features and interests may be obscured.

Section 2) describes the development of intercultural studies, using Japan as an example. Section 3) analyzes how the Western notions of identity and privacy have been framed in comparisons with Japanese counterparts. Section 4) concludes.

1. Intercultural Information Ethics

In this section a background of the development of Intercultural Information Ethics (IIE) is given together with an outline of the ethical theoretical approach of this article.

Being a key-concern within Information Ethics, the notion of privacy has been subjected to cross-cultural analysis by several scholars. Attempts have been made to explore possible counterparts in Japanese (Capurro, 2008), Chinese (Lü, 2005), Thai (Kitiyadisai, 2005) and within a Buddhist framework (Hongladoran, 2008). In particular, Japan, with a highly developed telecommunications infrastructure, an extensive broadband network and high Internet usage rates (Cullen, 2007) has attracted a lot of scholarly attention. Possible counter parts and matches to the Western notion of privacy have been sought in the Japanese language (cf. Capurro, 2005, Cullen, 2007, McRobb et al. 2007, Mizutani, Dorsey and Moor, 2004, Nakada and Tamura, 2005, Adams et al. 2009). “It is sometimes suggested that there is no conception for privacy in Japan or that, if there is, it is completely different from Western conceptions of privacy” (Mizutani, Dorsey and Moor, 2004). Some scholars claim that the Japanese society has imported only some aspects of the Western notion of privacy and particularly not the ‘individualistic’ perspective that ascribes privacy to the dignity of the person (Nakada and Tamura, 2005). Others state that Japanese people have imported the notion of privacy but that they use it “without clearly understanding its meaning” (Orito and Murata, 2007). The paronym of the English notion of privacy is *puraihashii*. But even if the word exists in the Japanese vocabulary, its meaning is said to be poorly understood. Surveys indicate that privacy seals intended to secure on-line shoppers’ privacy are grossly misunderstood by those the seals are intended to protect (Orito, 2008). Despite a lack of conceptual correspondence however, it has been argued, there may be shared *needs* and *expressions* of privacy and the Western idea of privacy may have some bearing in non-Western countries (Collste, 2008).

Why then are the differences of ethical importance? In the globalized ICT-community e-service users must often accept an online privacy policy in order to access the service. In that sense, on-line privacy seals are necessary to use vital e-services. Such seals may be inefficient due to “cultural bias” drawing on certain linguistic and cultural commonalities (McRobb et al., 2007). If e-service users accept privacy terms without fully understanding their meaning, this is at least a problem for the quality of their consent. The confusion regarding the meaning of privacy, central for the usage of e-services, speaks to a need for a ‘globally applicable ICT-vocabulary’. Efforts to reach mutually shared values or acceptable ways of framing privacy could aid such problems.

Western philosophers have been concerned with ethical implications of ICT since the 1960s (cf. Moor, 1985, Bynum, 2008). Primarily, the discussion has taken

place in the West and focused on Western conditions. From the mid-90s, equity- and fairness of the global ICT-development have been discussed in terms of a Digital divide (cf. Moss, 2002) or a split between information rich and poor (cf. van den Hoven, 1995, Britz, 2006). It is first during the past decade however, that the ethical implications of ICT on non-Western cultures have gained *substantial* recognition. Scholars within the well-established field of Information Ethics (IE) have argued that ICT originally developed in the Western World, now exported and used worldwide “embed and foster specific Western values and communications preferences” (Ess, 2002). Furthermore, the case has been made that since IE is a Western construct, the ethical problems and solutions identified in the West may bear little or no relevance in other parts of the world (Ess, 2005).

In order to identify whether conflicting views are incommensurable or in some ways compatible and if different cultures require their own IE, it has been suggested that attention should be paid to differences on a (1) conceptual (2) institutional and (3) behavioural level (Brey, 2007) and that in intercultural comparisons, scholars ought to distinguish between these types of differences.

- (1) *Conceptual*: the extent to which there are moral concepts across cultures with similar meanings,
- (2) *Institutional*: the extent to which there is a similarity between codified rules expressing moral principles and codified statements expressing moral judgments about types of situations,
- (3) *Behavioural*: similarities between morally guided behavior, e.g. blaming and praising or certain behaviour (Brey in: Ess, 2007).

Differences between cultures are likely to be found on each of these levels. The way in which privacy expectations are expressed in behaviour and attitudes should not be mixed with the meaning and value of privacy and the reasons why privacy should be protected (Hiruta, 2006). Following Brey, intercultural analyses can be both descriptive and normative. A descriptive analysis could contain interpretations of attitudes towards ICT-usage and implications within and between moral systems of different cultures. Normative analyses should critically discuss standards and practices in different cultures, including the own culture. It should also investigate what compromises cultures should make and provide moral principles that can govern the interaction between cultures (Brey in Ess, 2007).

This paper aims at analyzing two key concepts within the IIE-discourse – identity and privacy – focusing on conceptual similarities and differences on the ethical theoretical level.

2. A Critical Analysis of Assumptions and Conceptual Constructs within IIE

In this section, some of the claims and assumptions central to intercultural comparative studies on privacy are critically discussed. The discussion is structured around two dichotomies often referred to as fundamental differences between Western and Eastern philosophy:

- 1) identity and difference

2) individual and collective

Rather than questioning the existence of significant differences between West and East, the case will be made that these discrepancies (as well as internal such) deserve a more careful discussion.

2.1. Identity and Difference

In below, focus will be on a tendency among IIE-scholars to describe the ‘self’ within the Western philosophical tradition as individuated and coherent (cf. Capurro, 2005, Mizutani, Dorsey and Moor, 2004). Western philosophers are said to presuppose an atomistic, autonomous and coherent self and the identity concept is traced to philosophers like Plato, Descartes and Kant. The reason why privacy has been deemed worthy of protection is that it aims at securing “a fundament of Western civilization, namely the conception of a stable, free and autonomous subjectivity” (Capurro, 2005). Certainly, Capurro notes a dualism in the writings of Kant but states that this aspect never got foothold in the Western tradition. So understood, the Western identity concept has been contrasted with a Japanese perception of the self, or rather with the absence of self within the framework of normative Buddhism. In that the Eastern philosophical tradition drawing on Buddhism denies a permanent self, embracing an idea of a *discontinuous* identity (Kimura in Capurro, 2005:37, Mizutani, Dorsey and Moor, 2004), it constitutes an antithetical position to that of Western philosophy. The discontinuous identity is supposedly based on the principle of *Anattavada* in Theravada Buddhism and has been translated as “the doctrine of not-self”. Briefly put, Theravada considers *anatta/anatman* to mean that the idea of an individual self, an ego or personality is a delusion and human beings should strive to detach themselves from their desires and to realize the illusion of the permanent self. By doing so they may transgress what is subject to *samsara* – the endless cycle of birth and death. Once freed of delusions, the individual may enjoy the complete peace of Nirvana. Mahayana Buddhism, on the other hand, considers all physical forms to be void of intrinsic self and the ideal is to enable all beings to be enlightened together - following this thread of thought, we are not separate, autonomous beings.

The Buddhist not-self or non-self (*anatta* or *anatman*) is taken to mean that there is no permanent, unchanging entity in anything animate or inanimate (see Bhikku, 1996). It has been defined as context dependent and constantly changing (cf. Nishigaki, 2006, Mizutani, Dorsey and Moor, 2004, Nakada and Tamura, 2005). And, it has been noted that this view of the self and rights centered on the individual is at odds with the Western notion of privacy which is said to presuppose a situation-independent, autonomous self pursuing its own interests and to enjoy inalienable personal rights (Mizutani, Dorsey and Moor, 2004). Rights becoming the individual rather than the collective are said to come in conflict with most non-Western cultures (Brey, 2005:6).

Importantly though, the model of a static Western self should be contrasted, not only with the dynamic Buddhist self but with alternative perspectives from within the Western paradigm. First, it is important to remember that the discussion on personal identity and persistence is vast, containing several types of problems

and perspectives and more or less static views on identity. Even if a common feature in Western philosophy, the fixed self is not the only or in all respects dominating perspective. D. W. Murray holds forth David Hume and his “bundle theory of the self” as a counter-example and reminds us that Immanuel Kant framed his theory much in opposition to Hume (Murray, 1993). In his *Treatise of Human Nature*, Hume notes that one’s mental state is no more than a bundle of different perceptions that are always changing. In consequence, a person at point X is neither exactly the same nor completely different from what the person was at point Y, regardless of whether X and Y are both in the same life or each in different lives. Hume’s theory contradicts the idea of a stable, isolated self that gives itself its own laws.

Another Western philosopher whose take on identity is much different from the “Western model” described above is Derek Parfit (Parfit, 1984). Parfit explores what it is to be a person, whether, and if so how, we continue to be the same persons throughout our lives. Briefly put, he reduces identity to the existence of chains of psychological connectedness and continuity. Out of convenience, we may continue to talk about “persons” but the notion of a person is not necessary in order to give a complete account of reality. Furthermore, Parfit advocates a rejection of the Self Interest Theory and a relativization of personal identity. Consequently, in moral reasoning we should focus less on the person, the subject of experiences and instead more on experiences *per se*. Just as we are right to ignore whether people come from the same or different nations, we may legitimately ignore whether experiences come from the same or different lives (Parfit, 1984:341). In some aspects this reductionist account resembles Buddhist ideas. When inquiring what persons are and how they continue to exist, the fundamental question is a choice between two views. “On one view, we are separately existing entities, distinct from our brain and bodies and our experiences, and entities whose existence must be all-or- nothing. The other view is the reductionist view. And, Parfit claims, of these, the second view is true.... *Buddha would have agreed*. (Parfit, 1984:273).

Interestingly, the absence of unity has also been noted in the Buddhist tradition of thought. Arguments are made that there is no unity of the meaning of *Anattavada*, in the normative teachings of Buddhism (cf. Collins, 1982, Bhikkhu, 1999). Allegedly, the meaning of Buddha’s teachings on *Anatta* are far from clear and interpretations differ largely on this particular topic. Broadly speaking, the principle of *Anatta* amounts to a denial of a permanent self. This point may be given several interpretations however. It may for instance mean that the individual, in various ways, should free herself from the physical body, to control sense-organs or focus on obtaining certain mental states. And even if Buddhism rejects the notion of a permanent self, it does not reject the notion of an empirical self (composed of constantly changing physical and mental phenomena) that can be conveniently referred to with words such as “I”, “you”, “being”, “individual” etc. (Walpola, 1962).

Summing up this section, subjectivity as a stable, autonomous identity, has been identified as a basic assumption underlying e.g. the Western notion of privacy (Capurro, 2005). However, the description of the Western self as an atomistic, autonomous and coherent self is not fully adequate. Counter to the tendency within

IIE to treat the stable self as if it had unchallenged dominance in the West, there are important philosophical work that opposes this view. Although the Western legal system may have contributed to foster a general idea of individual selves and responsibility, the conception of the self is a manifold, complex and contested tradition of thought, that of Hume being one example (Murray, 1993), Parfit's discussion on identity being another. Importantly, there are philosophers within the analytical philosophical tradition who offer perspectives on identity that are closer to the Eastern thinking than what the intercultural studies referred to admits of.

2.2. Individualism vs Collectivism: The Case of Privacy

The second dichotomy; individualism – collectivism, is relevant for the extent to which moral agents are granted individual rights and plays a central role in cross-cultural comparative studies. Following Hofstede's classification scheme for assessments of cultures (Hofstede, 1980), members of the Western culture are likely to exhibit individualistic- rather than collectivistic tendencies as in Eastern cultures. Individuals are expected to emphasize their personal interests over those of the "group" and to claim individual rights and liberties. More to the point, those raised in individualistic cultures are much more likely to see themselves as being stable, in terms of attitudes, rights, and personality. In the West, individuals are less likely to adjust to their environment than members of Eastern communities (Triandis and Suh, 2002). Although subject to criticism (cf. McSweeney, 2002, Fang, 2003) these rough characteristics are often assumed. Within IIE, arguments are often made to the effect that in Japan, interests and rights of the collective have priority over those of the individual as opposed to the Western emphasis on individual rights and liberties (Moor et al, 2004).

Japan is typically framed as a collective oriented culture, lacking an idea of selfhood supposedly crucial for individualistic rights like privacy. The validity of this description has been questioned however (Adams et al., 2009). Although a collective-oriented society, Japan is said to differ from other such societies like China and India. The case is made that the Japanese have developed a significant sense of selfhood, "albeit tempered by awareness of the position of that self within a group dynamic" - and more so than in individualist-oriented societies. Moreover it is said that privacy is typically taken to rely on a clearly defined self. "Although the exact boundaries of what information may be passed to whom and under which circumstances differ from other cultures, the Japanese are not uniquely possessed of a lack of a sense of information privacy. This sense depends, as it does in other cultures, on the conception of the self and one's place in society" (Adams et al., 2009).

Then, it is once again important to consider the differences *within* the Western philosophical tradition. The extent to which moral agents are granted individual rights vary between e.g. communitarians and liberals and the weight ascribed to interests of individuals and collectives respectively differs substantially between these philosophical traditions. Communitarians typically employ a thicker view of the moral agent than liberals do, shaped by bonds and ties to family and (in particular the local) community. Within the liberal tradition, the moral agent is

typically more independent and detached from such bonds and ties. Based on the thick view of the moral agent, communitarians tend to ascribe the collective good (i.e. communal values and interests) priority over those of individual interests. Differences in attitudes to the balancing of security and privacy illustrate this. While security-protection often carry negative implications for privacy, communitarian philosopher Amitai Etzioni argues that individual-centered rights like privacy should not be allowed to trump collective values like security. Individuals should subordinate their personal interests in privacy to communal interests in societal security (Etzioni, 1999). In contrast, liberal philosophers tend to give more weight to the allegedly individual interest privacy, and hence, strike a different balance between security and privacy.

Having discussed different conceptions of identity and the extent to which moral agents are granted interests like privacy, we will now move on to discuss how the meaning and value of the Western concept of privacy has been portrayed within IIE. Privacy is an example of a value that is typically understood as centered on the individual and hence, conflicting with most non-Western cultures. More to the point, privacy is said to be an intrinsic value in the West but not in the East (Nakada and Tamura, 2005, Capurro, 2005). The case has been made that privacy is valuable and that it should be protected for reasons of autonomy and an inviolable human dignity (Capurro, 2005). This view will be contrasted with other perspectives within the Western philosophical tradition in order to broaden our idea of why privacy is meaningful and why it should be protected.

Although the way in which Capurro describes the value of privacy is fairly commonplace, it is important to recognize that there is a broad range of meanings and conceptualizations of privacy in the West (cf. Schoeman, 1984). “At present, ..., there is an unresolved debate amongst moral philosophers about the best way to understand the content and justification of privacy rights” (Lever, 2005). Still, trends and currents can be extracted. A rather influential idea is that privacy is a context dependent value in the sense that what is perceived of as privacy sensitive changes over time, with cultures (Moore, 2003, Kukathas, 2008) and between individuals (Nissenbaum, 2004). This idea can be illustrated by examples of differences in privacy perceptions from cross-cultural studies. While privacy sensitive in the West, nudity is not considered sensitive in Japan. Information about impaired vision however tend to be perceived as neutral in the West but privacy sensitive in Japan (Adams et al. 2009). More to the point, personal information that an individual views as neutral in one setting may be perceived as sensitive if transferred to another context. Even if an individual has stated this information in an informed manner e.g. when utilizing e-services, she may not approve of transfer of this data or the combined effects of such data in compilation. The context in which information is stated and the capacities in which the individuals sending and receiving the information are acting are crucial for privacy (Nissenbaum, 2004).

Although what is considered privacy sensitive differs, the reasons why it matters may be similar. Aspects frequently described as potentially privacy sensitive can be sorted as follows: (1) local privacy, (2) decisional privacy and (3) informational privacy. More precisely, privacy is the spatial and intellectual sphere

that enables individuals to decide over matters that concern them, to control who has access over information about themselves (both direct sensory access and stored data) and to establish and develop different types of relations. Against this *triptyche*, privacy intrusions can be defined as unwarranted intrusion in to: the private realm, personal decisions and personal data respectively (Rössler, 2005:44).

In order to explicate why privacy should be protected, efforts are often made to reduce the meaning of privacy to one fundamental value like intimacy (Gerstein, 1978, Inness, 1992, Cohen, 2002), dignity (Bloustein, 1964, Levin, 2005) or personal autonomy (Rössler, 2005, Scanlon, 1998). Even if privacy expectations may be explained by individuals need for protection of acts and relations motivated by intimacy in many cases, this is not an exhaustive explanation. A person may wish to keep her political views to herself - an interest that typically is viewed as a matter of privacy - but it does not have much to do with intimacy. Then, dignity seems to concern how individuals behave and respond to certain circumstances. An employee may adjust to excessive surveillance or other forms of exploitation with dignity i.e. in a certain manner. Whereas an employee can maintain her dignity during continuous aggressive surveillance, her autonomy would be seriously impaired. Turning to the third alternative, most certainly privacy is important for personal autonomy. However, this value is important primarily on an individual level while privacy may be valuable to a collective as well. It seems difficult to pinpoint *one* value that convincingly explicates the importance of privacy in all situations. A more plausible understanding is that privacy is significant for a multitude of reasons (cf. Lever, 2005, Benhabib, 1996). Annabelle Lever frames privacy as a bundle of rights including at least solitude, intimacy and confidentiality and argues that those are interests both of individuals and of the collective (Lever, 2005).

As mentioned above, communitarians tend to view privacy as an interest centred on the individual and to ascribe this value lower priority than a collective interest like social security. However, privacy must not necessarily be framed as a pure individualistic interest. There are good reasons for viewing privacy as a communal value as well. Even if privacy is valuable for the reason that it secures and enhances e.g. personal autonomy, this does not exclude the possibility that privacy is also a social good. Privacy rights can serve to promote political participation and to test the efficiency of political rights and equality (Lever, 2005). People have a shared interest in privacy and in a right to privacy. And, privacy is socially valuable because it supports and is supported by a democratic political system (Regan, 1995). Certainly, the Western and the Eastern world differ in their emphasis on individual and collective interests respectively. Generally speaking, Asian as well as African countries value collective interests higher than individual ditto. Framed as a mere individual interest privacy is not likely to be accommodated in such countries. However, neither is the Western philosophical tradition unanimous in framing privacy as an individual interest nor in ascribing it intrinsic value.

Conclusion

The global ICT-use and globalization of data transfer motivates investigations

of whether and why concepts like ownership, agency and privacy central within Western Information Ethics (IE) matter in non-Western cultures. The emerging research field Intercultural Information Ethics (IIE) and the efforts to reveal values embedded in and exported across the globe by ICT and to identify shared interests and conceptual commensurability are worthy of praise. As pointed out by IIE-scholars, this field of study is only in its cradle and a lot of work remains to be done (cf. Capurro, 2005:37). Although critical of some aspects of the cross-cultural studies conducted, this article does not seek to diminish the value of these contributions. Rather, an attempt is made to strengthen such studies by addressing common pitfalls and difficulties and an unfortunate tendency to simplify the issues to be compared and exaggerate unity within the philosophical traditions at hand. Certainly, in his conclusions, IIE-scholar Rafael Capurro briefly mentions that we have partly contradictory traditions and stories within Europe (Capurro, 2006:46). In this article, contradictions have been highlighted rather than downplayed. This has been done by studying two dichotomies, “identity - difference” and “individualism - collectivism”, commonly used to differentiate between the Eastern and Western philosophical tradition and more or less explicit in intercultural studies.

Starting with the identity/difference divide, it was concluded that, while IIE-scholars have framed the Western concept of personal identity as rather static, referring to one identity from birth to death, there are significant differences within the Western philosophical tradition. The idea that the subject is a fixed entity over time is at least disputed by some philosophers. When analyzing the second divide; individual/collective, it came clear that individualistic and collectivistic cultures are rather rough constructs that should be treated with caution. Even if individual rights are more prevalent in Western- than Asian- and African cultures, there are significant differences within the Western philosophical tradition. Communitarians ascribe individual rights and interest less weight than liberals. The assumed differences were further highlighted by a closer look at the meaning and value of privacy typically viewed as an individualistic interest with little bearing in non-Western cultures. However, it was shown that privacy is a multifaceted concept subject to many different interpretations within the Western privacy discourse. It seems to be important for a multitude of reasons and instead of framing privacy as a mere individual interest, there are reasons to consider it a collective interest as well. And, better than describing privacy as a static concept, is to view this value as contextually dependent, changing between and within cultures, over time and among individuals. These aspects that increase the chances of a shared understanding have typically been overlooked in comparative studies within IIE. Yet, it seems more reasonable to aim for acceptability regarding normative concepts central to ICT than for full conceptual commensurability.

Unfortunately, the conceptual constructs used within IIE are often too simplistic, leaving aside significant external and internal differences. Arguably, the different – and at times conflicting - conceptions and constructs within the Western philosophical tradition should inform cross-cultural research. Although simplifications may be necessary at times, a reduction of conflicts and diverging perspectives and economic presentations of concepts to be compared are likely to

obscure similarities and convergence. That said, it is hoped that the diversity within the Western philosophical tradition will be better recognized in future studies.

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Chapter 10

The Pending Global Water Crisis: Why Ethicists Are Needed

Rana AHMAD and Michael LANTHIER

Introduction

The United Nations, the World Health Organization and the World Water Council (UN 2002, WHO 2003, World Water Council 2006), among others, claim that water must be declared a human right. This move is the result of the increasingly limited supply of fresh water, a growing global population, the continued degradation of the environment and the high cost of technological remedies.¹ The effort to ensure equal access to safe, clean water through the recognition and enforcement of human rights is laudable and meant to provide basic necessities to all people without prejudice of any kind. However, we have faced problems with other natural resources which have not resulted in the same type of response by the international community. This indicates that water shortages and inaccessibility is a greater and more pressing issue than many of the other environmental concerns we have had to deal with in the past.

One of the differences is that the effort to make water an explicit human right has evolved in response to the growth of private water companies and the larger role they have started to play in providing access to those who need it. Other difference include the universal necessity of water for survival and meeting basic needs as well as the lack of viable alternatives when water runs out or access is impossible. The present day concerns have arisen gradually over time as a result of technological advancements, as well as demographic and economic changes. Historically, water was considered a resource available to all and so societies arose where it was available and were limited where it was not. In general, where it was possible, people developed ingenious ways of providing water to themselves or depended on their governments to provide this service. It is only very recently that this mindset has begun to shift, particularly where water is becoming more scarce or too expensive for impoverished governments. The increased activity of private water companies who see these difficulties as business opportunities, and their subsequent failures, have motivated the argument for making water a human right.

In some ways the emphasis on a rights-based approach has overshadowed some of the ethical issues that require substantive analysis. We argue that while the right to water is one means of addressing this complex issue, it ought not to be the only focus of debate. There are a number of facets to what some suggest is a pending global water crisis that are not adequately addressed by rights. To this end, there is much need for ethicists to take up the topic of water as separate from, although part of, environmental, business and science and technology ethics.

1. Historical Background

Water has always been necessary for the very survival of human societies in the obvious sense that people must have daily access to potable drinking water in order to survive. Furthermore, since it has been known for millenia that the productivity of soil can be greatly increased by the addition of water, human societies have tended to engage in more or less extensive irrigation since the time of the ancient Sumerians (Radkau 2008, 87). The appearance of cities and civilization in Mesopotamia and other parts of the world five to six thousand years ago was only possible because of the increased food production that resulted from irrigation (Penna 2010, 116). It is no coincidence that many cities of the ancient world were located close to rivers, which were then diverted into canals for various uses including drinking water, sanitation, transportation and irrigation. A dependable supply of water was necessary to allow the survival of these early urban agglomerations: droughts or changes in the flow of a river could and did spell disaster (Penna 2010, 124-125).

The Mayan civilization of the Yucatan peninsula, which reached its apogee during the eighth century CE, shows the importance of water in the rise and fall of civilizations. The Mayans' city-states were often built too high above the water tables for wells or sinkholes to reach them. City rulers overcame this difficulty by excavating and then plastering huge depressions in order to create reservoirs that could support large populations with water collected from rainfall (the reservoirs at Tikal could allow 10,000 people to survive for eighteen months). This water was also used for irrigation, as ingenious systems of gravity canals released the necessary water into fields that were often several kilometers away. The collapse of this Mayan civilization, which lasted throughout the ninth century CE, was partially the result of climate change and droughts which devastated certain locales: the ultimate unreliability of the Mayans' water makes clear the link between water and civilization (Diamond 2005, 157-177).

Another ingenious example of how a population managed its supplies for the good of the many occurs in the mountainous areas of Iran, where local inhabitants perfected a method of using snowmelt to bring water to the parched people and land hundreds of kilometers away. The *qanat* system originated three thousand years ago, and used gravity in a fashion reminiscent of the Mayan aqueducts. The system was well suited to its environment since it could carry water for great distance with little pollution or loss through evaporation. *Qanat* technology spread to many other parts of the world thanks in part to the expansion of Islam (the technology seems to have made its way to North and Central America via Spain). This system is even being touted as an alternative to modern hydraulic projects that often do more harm than good to the environment: the *qanat* is a very "green" technology that only taps groundwater as fast as it is replenished (Balali 2009).

The basic relationship between humans and water did not change significantly until the advent of industrialization in Europe and North America. By the end of the nineteenth century, the tremendous demographic, economic and social changes that western Europe had gone through made water more necessary than ever before.

Growing cities led to public health crises as outbreaks of tuberculosis, typhoid and cholera threatened the prosperity of the new urban agglomerations. Clean water was now needed in abundance to quench thirst and clean the cities, but industrial and human pollution made this extremely challenging: many of the rivers and streams of Europe had become contaminated with human waste, dyes, pulp, sawdust and animal carcasses (Penna, 180-182). The solution to this dilemma was the use of new groundwater resources that were newly accessible thanks to deep-drilling techniques used to benefit the society as a whole and to keep it going. This method would later spread from the industrialized West to the rest of the world, and has ironically become responsible for some of the serious global water shortages of today (Radkau 2008, 242-243, 248).

In Europe and North America, these modern municipal European waterworks were usually publically owned and operated: modern water provision has not seemed until recently to require the privatization or commodification of water. Even if private initiatives had initially been important in countries like Great Britain, by the beginning of the twentieth century, most such waterworks had been taken over by local governments. Some countries continued to experiment with private ownership at the turn of the century, but the case of Finland seems representative of how poorly this worked out in practice (Juuti, Katko and Hutka 2006). France was a partial exception to this trend: in that country, municipal water services existed side-by-side with private companies however this was an unusual situation and the companies were primarily locally owned and operated. Two of these companies, the Lyonnaise des Eaux and Generale des Eaux are today known as Suez and Veolia Environment, and are now the biggest players in what has become over the last two decades the global water industry (Dufeuilley 2005)

The twentieth century witnessed an even more profound change in the human usage of water. Demand for water increased almost tenfold as the nineteenth-century European experience was repeated around the world as cities became larger and more numerous (McNeill 2001, 121). Partly as a result of the need to slake this great global thirst, the twentieth century was also the era of grandiose hydrological projects intended to harness a natural resource that could provide sustenance, irrigation and power. Two of the greatest fears of all people in all eras have been drought and flood, with both leading to suffering and death. Suddenly, new technology offered protection against both threats: massive water projects on all five continents altered the course of rivers, brought water to deserts and created new inland oceans in order to ensure the happiness, prosperity and safety of all. However, this technology has turned out to be less of a boon than its proponents once hoped.

Although humans have been using underwater reservoirs for millennia, the *qanat* and similar systems were generally limited in scope. But new technology led some entrepreneurs to see deserts as potentially fertile farmland and new aquifers were tapped to turn this vision into reality. In spite of droughts, water-mining helped turned once-barren plains into cornucopias of wheat, cotton and corn. But some of these aquifers are now almost completely exhausted, and agricultural production will have to be scaled back dramatically (McNeill 2001, 151-154).

Like aquifers, dams were first built several millennia ago, but the technology

of the Industrial Revolution has led to the construction of gargantuan structures throughout the world during the twentieth century. These serve legitimate, useful purposes (flood control, the provision of potable water, irrigation, electricity generation), but such projects also usually lead to unforeseen problems. The Aswan High Dam, for example, changed Egyptian agriculture forever, allowing two or three crops to be grown per year. Rice, maize and cotton yields all increased dramatically, floods became a thing of the past, and the dam's turbines produced a third of Egypt's electricity. But the damming of the Nile also had unanticipated effects: silt from Ethiopia no longer made its way to Egyptian farmlands, forcing local farmers to rely heavily on chemical fertilizers. Salination was and is also a significant problem, while the creation of an artificial reservoir at Lake Nasser also increased evaporation, which is actually decreasing the amount of water available to Egypt (McNeill 2001, 157, 170-173).

2. The State of Water Today

Dams and other hydraulic technology that have become available over the past two centuries have helped people acquire the water they need, but are now also partly responsible for a very real water shortage and a host of problems associated with it. Even though over 70% of the Earth's surface is covered by water, in reality, 97% of it is salt water and while the remaining reserves of clean, potable water have been adequate for millennia, they are now becoming insufficient (McNeill 2001, ch. 5). Worsening pollution, climate change, a rapidly growing population and ever-greater consumption mean that the world's fresh water supply is shrinking in both absolute and relative terms (UNESCO 2009, 29, 31, 39). This fresh water shortage is painfully obvious even in many parts of the industrialized world, where Australia has been dealing with long-term rural droughts and the south-western United States is running dry (Barlow 2008, 4). Maude Barlow reports that less and less water is fit for human consumption: in China, 80% of major rivers are too polluted to support aquatic life, and 75% of India's lakes and rivers are officially considered too polluted to be used as a source of drinking water. The situation is not quite so disastrous in Europe and North America, but even in those fortunate corners of the world the health of rivers and lakes is poor and getting steadily worse (Barlow 6-8). The mining of finite groundwater reservoirs and the construction of massive dams in order to irrigate water-intensive crops, along with deforestation, urbanization and the melting of glaciers is disrupting the natural hydrological cycle and decreasing the amount of fresh water on our planet (Barlow 2008, 11, 15, 18, 21; McNeill 2001, 147-148).

It should therefore come as no real surprise that over one billion people around the world do not currently have access to clean water and resort to collecting water from ditches, drains and streams that are often contaminated: this leads to illness, disability and death (Watkins 2006, 33, 35). When water *is* available for the world's poor, it also tends to be extremely expensive. The United Nations report that some of the poorest people in the world are forced to pay the highest prices for water: for example, slum-dwellers in Jakarta, Lima and Manila pay five to ten times more for

water than the better-off people in the same cities(Watkins 2006, 51-52)

The problems of high water costs and scarcity have been exacerbated by the recent trend of privatization in the water industry. Only twenty years ago, private water providers were a global rarity, and most people throughout the world depended on municipal water services for potable water. The situation today is very different, with privatization having gained ground at a very rapid pace: as of 2008, over 11% of the world's population (742 million people) depended on large water companies for their water (Barlow 2008, 62). These numbers are set to increase, perhaps dramatically, during the coming years (*Pinsent Masons Water Yearbook 2008-2009*, 22.)

The global privatization of water, although increasingly prevalent, has often been met with fierce resistance. The best-known such confrontation took place in Cochabamba, Bolivia at the turn of this century. The local municipal water supply company, which could not fully meet the needs of locals due to limited resources, was privatized and taken over by the USA's Bechtel at the behest of the World Bank late in 1999. Things went from bad to worse as water bills skyrocketed (sometimes tripling in price), leaving the vast majority of the region's impoverished citizens unable to afford water. The people of Cochabamba mobilized, formed a citizen's alliance and shut the city down for four days. Millions of people throughout Bolivia went on a general strike in support of Cochabamba's residents, and protestors issued the Cochabamba Declaration calling for the protection of water as a universal human right. The Bolivian government had been caught unaware by this widespread manifestation, but eventually reacted by declaring martial law in April 2000; violence ensued as police arrested activists and killed demonstrators. Surprised by these developments, and no doubt leery of the fallout and bad publicity, Bechtel pulled out of Bolivia and the government revoked its water privatization legislation (Shiva 2002, 102-103; Public Citizen 2003, 5).

3. Water as a Right

Shortly after this and other similar events, the WHO released a document outlining both the motivation for, and the description of, the human right to water, citing a number of reasons why we ought to think of water as a right along the lines of equality, food or shelter. The WHO believed it was necessary to "supplement" the United Nation's Universal Declaration of Human Rights with an explicit right to water for two primary reasons.

First, the WHO was apparently hoping that this right would address the water shortage that exists in several parts of the world: "Access to a regular supply of safe water is a basic human right, as is access to unadulterated food. But as with other human rights, too many people miss out (WHO 2003, 7)." It is assumed that by making water a right its provision and management will be taken more seriously and that there will be a much stronger motivation to act where problems exist.

Second, the WHO wanted to make water something that citizens—all citizens—are entitled too. Such entitlements are clearly meant to be normative and perhaps even enforceable, unlike generalized claims to those things required for sustaining

life, no matter how evident or obvious they might be. This rights-based approach is thought to be an effective way of both informing and empowering people in respect to their legal rights. Informed and empowered people are not merely “passive recipients of aid,” but play a central and pivotal role in the development of resources and the means to acquire those things to which they have a legal entitlement. In more explicit terms:

A rights-based approach integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development...The principles include equality and equity, accountability, empowerment and participation (WHO 2003, 10).

Since human rights are fundamentally characterized by the relationship between the individual and the state, a rights-based approach is considered one of the more effective ways to allow governments to fulfil their duties to their citizens. What this entails is a responsibility and obligation for the State to meet the criteria for the right to water. In this case, the set of criteria that must be met includes sufficient, safe, acceptable, physically accessible and affordable water (WHO 2003, 7). An informed and empowered people can both actively pursue their rights, while at the same time holding the State accountable when they are failed by it. More importantly, this is an attempt to guarantee that every person, every member of our global community, has access to water in order to survive.

4. Beyond Rights: Other Ethical Challenges

While such a goal is laudable and commonsensical, the full debate is somewhat hobbled by an over-emphasis on this one issue rather than a broader analysis of the many ethical issues involved. The ratification of the right to water (when and if it occurs) does not solve the problem of inadequate access to water, nor does it contribute the substance ethical debate that has yet to take place. This is not meant to be an argument against the efforts to make water a human right, particularly given the relative lack of critical discourse by scholars, politicians and the general public in the West over the issue of water. However, it is necessary to keep in mind that the issues involved are not *only* about human rights.

It is our contention that the rights-based approach to water is problematic *if* it limits the discussion to one particular aspect when there are in fact a number of issues that applied ethicists have much to contribute to. Since one of the aims of applied ethics is to clarify and analyze the issues of a given problem or those of a profession so that common morality can be applied, the pending global water crisis could benefit from such clarification and analysis.

Furthermore, the present emphasis on making water a human right is perhaps not as immediately necessary as it seems to be. The rights to both life and to an adequate standard of living can be seen to entail the protection and provision of water. Some might also object that these rights have historically been ineffective in ensuring access to safe water and that there is little reason to think that anything

will change with the recognition of yet another right. Water is not just something we should want to protect but something that *has* to be protected because of its instrumental role in our very existence. If the rights we have already to food and to life are insufficient to ensure access to water (which is necessary to meet the other rights), then it is difficult to see that this strategy does anything practically toward solving the problem even though it might make it a much more visible issue. We cannot feasibly or rationally opt out of access to clean water, at least not for long, nor can the state coherently meet its obligations to citizens it already has without water. The problem is a complex one and therefore requires a broader debate to address the range of potential concerns.

First, we must consider the issue of privatization. Never in history has water been a commodity in the same way as food or other goods, whether manufactured or grown. This is largely because water is readily available, and is still taken for granted by those who are not already facing some of the more serious problems evident in other areas of the world. Water, unlike any other resource, literally falls from the sky and can be captured by various means to sustain us. Where no source of ground or earth-based water is available, people might still survive and thrive as the ancient Mayans did because of the frequency of rainfall. It is difficult to stake a claim for something that, unlike swaths of land, groves of trees or caches of bushes, falls from the clouds. This has also contributed to the historical *lack of ownership* of fresh water. There are of course some exceptions such as riparian rights which provides the owners of land the right to use the water that runs under, through or across it, usually with the limitation that they do not interfere with its natural course or pollute the water for users downstream. But even with riparian rights, no one is said to own the water (Getlzer 2004).

This creates some very challenging problems when it comes to deciding what ownership and privatization of water resources will mean for governments, corporations, the general public and even philosophers. Who ought to own something that everyone depends on simply to exist? Can we expect corporations to reasonably balance their aim of making a profit with the requirement to be socially responsible when, in this case, social responsibility might well evolve into a very expensive endeavour as resources are depleted and the need for water increases? In his critique of Milton Friedman's famous paper arguing that a corporation's social responsibility is met by making a profit, Mulligan suggests, "depending on the nature of a resource and the degree of its scarcity, the political leadership in any system, ...is liable to assert its right to determine the allocation of that resource" (Mulligan 1986, 268). However, it is not clear whether the government, having once been in control of a natural resource like water and then turned it over to a private corporation, could feasibly take it back unless the situation was dire. As Mulligan asks, "Who doubts that it is appropriate for our political institutions, rather than market mechanisms, to ensure the equitable availability of breathable air and drinkable water or to allocate food and fuel in times of war and critical shortages (Ibid)?" Those like Mulligan who argue that social responsibility is possible for corporations assume that air and water will not be left to market mechanisms have been relatively silent as corporations increase their presence around the world in

becoming purveyors of water.

It is also important to note that the WHO and UN documents outlining the right to water do not expressly prohibit privatization or management, and in fact seems to tacitly accept that it is necessary in some cases. The argument here is that the distribution, sanitation and management of water is so expensive that the governments of some poorer countries cannot provide it: it therefore makes sense for private companies to step in. However, the issue is still a contentious one since it is not entirely coherent to expect corporations to fulfil the obligations of the state. The point here is that the right to water will not necessarily help us deal with some of the more worrying developments of the last decade, nor will it address the fears that people have expressed (often justly so) over private control of this resource. Clearly, more debate is required concerning how to justify, limit or promote privatization depending on which arguments we find most convincing.

A second issue revolving around water that ethicists need to consider is that of distributive justice. The basic problem here is that water is a finite resource that is not evenly distributed around the world and has deepened the division between the haves and have-nots. However, at the same time, water scarcity is a global issue that will eventually have an impact on all members of society. Furthermore, those countries with the resources necessary to develop new technological solutions are not the ones who are presently experiencing significant shortages of water. Therefore, wealthier countries need to decide how much of their science and technology research ought to be aimed at solving a problem that is potentially devastating, but not yet on their radar. Additionally, how do we distribute the advancements that might alleviate the problem when those who need it most will likely not be able to afford them? This is particularly problematic as technological solutions such as desalination plants tend to be expensive and when they are not, there is the further issue of patents, ownership and reasonable compensation.

A third aspect that ethicists need to concern themselves with in regard to water accessibility is the environment. Some of the worries over ownership and private control of natural resources are similar to those raised by environmental ethicists, and there are also concerns about how major water projects affect other organisms. For instance, Paul Taylor famously argues that all living beings are of equal inherent value (Taylor 1981). If we, as moral agents, must respect all forms of life, then there must be some justification required when the actions taken to provide water to humans somehow threatens other animals or organisms. It is difficult to see how the human right to water could override the concerns some say we ought to have for other forms of life. Furthermore, extensive tampering with nature to secure fresh water supplies for a given society may serve to reinforce the human-centered approach to nature. The concern here is that this mindset will erode the interest people have in preserving, maintaining and respecting nature in general and could lead to further degradation of the environment. Such an outcome is untenable given our dependence on the environment as a whole for our existence and the health of the planet. Securing water resources at the expense of nature will ultimately prove to be a short-term solution to one problem and the beginning of a much bigger long-term problem (such as in the case of the Aswan Dam). Yet there is a very real and

pressing need to provide water to people who are suffering and many would argue that this ought take precedence over concern for the environment and nature.

Additionally, a water shortage will be a global problem affecting everyone just as pollution, climate change, habitat destruction and the greenhouse effect are. It is unlikely that the problems being experienced in some parts of the world at present will remain limited to these particular areas. While water-rich countries are so far immune to the effects of a lack of water, questions about obligation to the water-poor countries remain largely unconsidered. Immigration policies, distribution efforts and research and development funds will likely be put under great pressure or need to be changed as more and more countries experience water shortages and difficulties. If water is a human right, is it acceptable for the world's water-rich nations to deny the water-poor access when the resource becomes more and more concentrated in the hands of fewer and fewer countries? It seems that more discussion is needed about the impact that a right to a natural resource will have in the future.

Finally, there are still fundamental issues of right and wrong to be sorted out. For instance, what kind of argument can be made in support of denying water to those who are in need today in order to ensure a plentiful supply to future generations who do not yet exist? Those living in water-rich countries, even those who do not, also need to re-evaluate non-essential uses of water such for cultural, religious or social practices. There is also a need to consider the degree to which it is tolerable or justifiable for citizens of wealthy nations to create a demand for bottled water through tourism in poor water-starved nations that is simply unaffordable for many of the locals. This is a matter of what is morally acceptable rather than what is a right.

The argument that water ought to be considered separate from other kinds of rights under which it seems likely to be subsumed is a good one. Water is unlike other goods that we buy and trade on the market since it is, for the most part, neither created nor manufactured. At the same time, it is also unlike food, shelter and medical care since there is no long-term or viable substitute for it. For these reasons, it make sense to consider the problems we face with a looming shortage of water as separate and distinct from these other issues while also broadening the scope of topics that ethics, in particular applied ethics, contributes to.

Conclusion

In today's world, water is both privately and publicly owned and controlled depending on where you live, and who you are. It is difficult for those living in wealthy countries who can easily turn their taps on at minimal costs or can afford the price of bottled water to fully understand the issue. However, the issue is in fact multi-faceted and complex. It involves human rights to the extent that we want to ensure accessibility to everyone, yet there are many other issues to consider. Justice and fairness, both on a societal and individual level, present us with significant challenges, particularly once accessibility to water is a right. Also, what are the obligations of those who live in the countries with plentiful supplies to their neighbours who might have squandered their own resources, or who allowed some

to squander a public resource and now face a crises? This is a matter of particular concern since denying people water is not like denying them other kinds of goods for which there are alternatives. It is much harder to justify since the need for water, when unavailable, is immediate and the effects severe.

Water access involves issues of business ethics and the obligations of those who wish to conduct business while dealing with a good that is so necessary for survival and yet subject to the laws of demand and scarcity. It could be argued that it is unwise to leave this problem in the hands of businesses that, even if they are abiding by their own professional codes of conduct, are unlikely to produce equitable distributions of water to those who need it. At the same time, codifying the right to water, which as we have suggested is subsumed under other human rights, has yet not been successful in correcting, resolving or reducing the problem in general. Perhaps this is where the debate needs to be opened up and subjected to further scrutiny. What is needed is consideration and substantive analysis of the many issues that the potential water crisis involves. Water accessibility is therefore best understood as an ethical issue, which deserves serious involvement on the part of applied ethicists in particular.

Notes

- 1 For instance, movements like The Blue Planet Project (www.blueplanetproject.net), One Drop Foundation (www.onedrop.org) and Food and Water Watch (foodandwaterwatch.org) are among many of the organization that support and contribute to the awareness of the need for the right to water.

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Chapter 11

Environmental Issues in the *Dhammapada*

Raghunath GHOSH

Introduction

The present paper deals with the problems of environmental pollutions and allied issues, which have drawn people's attention around the world. When I personally think of its disastrous consequences, I think the human beings are responsible for this. Can the laws and rules make a man moral? Until and unless an individual being becomes aware of the problem, it cannot be removed. Personally I believe that it human excessive greed which makes bound to destroy the environment. If we really love this healthy environment, we must resist our temptation of having more and more in our life. This theory has been propagated in the Buddhist literature in general and the *Dhammapada* in particular. For this reason it is now-a-days essential to think over what the text says and advise others to follow the path as prescribed in the *Dhammapada* to reduce our thirst for consumable objects.

1. Buddha's Diagnosis for Human Dissatisfaction leading Environmental Pollution

The Sanskrit rendering of the term 'peace' is *santi*, which is derived from the root *sam* meaning 'restraining of the sense-organ'. In Buddhism and Hindu tradition the root of the absence of peace is 'thirst' (*'tanhā'*) or cravings for getting more and more consumable objects. The thirst is an unending phenomenon. The more we get, the more we urge for it. In order to get rid of such thirst we have to search for self-satisfaction, which ultimately leads to the world of peace affecting environment also.

Buddhism in general prescribes the way of compassion. The Buddha is an embodiment of compassion and hence he is regarded as the compassionate protector of all beings. As such thirst has been taken as the root cause of all 'worldly diseases' (*'bhava-roga'*), the path as shown by Buddha is to be resorted to and hence he is called 'a physician of all worldly diseases' (*'bhava-roga-vaidya'*). To him the individuals following his path should practice loving kindness, which implies not to harm the life of all beings. It is advised always to protect mankind as well as animals and vegetations. It is his wisdom through which he can see all human beings in the universe as equal in nature. The well-being of human being and animal is inter-related and mutual.

2. The *Dhammapada* and its Observations about the Diagnosed Cause of Pollution

To ignore such instructions is to invite our environmental crisis. In the modern time we find that human beings have misused their power and destroyed the animals, forests and mountains resulting in environmental crisis. The greedy minds of mankind are responsible for such changes and destructions of the ecological balance.

The external environment is seriously polluted because of the pollution of the internal environment i.e. mental environment. The excessive greed is one of the reasons for the internal pollution. This disease may be eradicated if an individual finds some satisfaction and contentment through the Buddha's teaching. That the external pollution is related to our internal one is evidenced in the *Dhammapada*. It is said that just as the maker of an arrow makes the end of it straight, so an individual should simplify his mind, which is wavering, fickle, uncontrolled and unprotected.¹

The contentment in the context of Buddhism does not mean the eradication of all desires but to live in harmony with all beings and nature. It is said in the *Dhammapada* that a pure and developed mind alone can understand others mind (Panditavagga of *Dhammapada*, verse no.3). It is further emphasized that when the world is burning (*prajjalite*) there is no opportunity for adopting laughter (*hāso*) and joy (*ānanda*). In the like manner, if our mind is covered with darkness, would we not seek for light? (Jaravagga of *Dhammapada*, verse no.1). Those who believe in the teaching of Buddha will control their desire and live in harmony with nature keeping the environment in healthy condition. It is rightly mentioned in the *Dhammapada* that one who *sees* only will control his desire and live in harmony with nature keeping the environment in healthy condition. The *Dhammapada* also endorses that one who sees only the apparent beauty, who is not self-restraint in enjoying consumable things, who is lazy and weak is always attacked by one's enemies just like a weak tree. On the other hand, an individual refraining from seeing apparent beauty becomes self-controlled and respectful and hence he is not overpowered by the enemies just like a firm and stony mountain.²

To get an ecological balance we should develop an ecological sensibility and actualize that sensibility in practice. So in Buddhism the phenomenon of inter-relatedness is deeply felt and hence a comprehensive developmental path is sought. In the *Dhammapada* it is stated that the house-holders may belong to different professions like students, lecturers, labourers, executives etc, but they should not preclude themselves from following the path of truth, purity, lustlessness, angerlessness etc and should practise the virtues like love, compassion, affection etc. If these virtues are practised in a balanced way, less confrontation and conflict (as evidenced in the Buddha-vagga of the text) would follow. On proper analysis it is found that tensions and conflicts arise out of desire, cravings and attachment. We can shed desire, cravings and attachment if we understand the true nature of things and life. The control of body may be achieved by controlling the senses of sight, touch, smell etc and organs like hand and feet. For regulation of mind right thought

and observance of ethical code of conduct is necessary. The *Dhammapada* gives us an insight into the mysteries and true nature of cravings and desire (Bala-vagga, verse no. 3 and Maggavagga, verse no. 16). It is clearly prescribed in the same text that he who seeks refuge in the Buddha, the *Dhamma* and the *Sangha*, he who sees with right knowledge the Four Noble Truths, sorrow, the causes of sorrow, the transcending the sorrow and the Eight-fold path can get rid of sorrow. (Buddha-vagga, verse nos. 12-14). In this connection it may be recalled Shantideva's statement that if someone is reluctant to remove sufferings of others, it would like refusing to use one's hand to remove the thorn of one's foot, because the pain of the foot is not the pain of the hand.³

3. Treatment-Measures to Stop Pollution: Mental and Environmental

Though the Buddhism talks about the protection of the environment, it gives emphasis on the three-fold training of human mind and seven factors of the enlightenment, which are the basis ethical sensibility to the environment. The *Mahaparinnibbanasutta* of the *Dighanikaya* points out three-fold course of training like cultivation of 'ethical conduct' ('*sila*') 'meditation' ('*samādhi*') and 'wisdom' ('*paññā*'). These three are inter-connected in the sense that the first is left behind when the second is undertaken. Without the development of these it is possible for one to lead happy and peaceful life. 'Wisdom' ('*prajñā*') goes beyond knowledge attained through reading books or hearing the tales. The 'practice of morality' ('*sila*') and 'mental development' ('*samādhi*') develops a penetrative insight and realization into the nature of everything in its proper perspective. When the realization (wisdom) appears, the trained mind becomes an unshakable dynamic force that can handle any human problem without anxiety and thereby can remove the worldly problems. When the ethical conduct is firmly established, the meditation becomes effective. Through the effect of meditation the transformative power of wisdom becomes possible.⁴

The above mentioned three-fold practice has a tremendous influence on the Buddha's doctrine of seven factors of enlightenment viz., 'mindfulness' ('*sati*'), discrimination of principles ('*dhamma-vicaya*'), 'energy in pursuit of the food' ('*virya*'), 'rapture' ('*pīti*'), 'tranquility' ('*passaddhi*'), 'concentration' ('*samādhi*') and 'equanimity' ('*upekkhā*'). It is mentioned in the *Samyuttanikaya* that these seven are essential for any kind of social or moral development. When a monk remaining secluded recollects and reasons about the doctrine, he adheres to the mindfulness factor of enlightenment, which is followed by other steps. After mindful he can discriminate, reflect on and investigate the doctrine with understanding. In this way he can reach to the path of perfection, which includes 'rapture' ('*pīti*'), 'tranquility' ('*passaddhi*'), 'concentration' ('*samādhi*') and 'equanimity' ('*upekkhā*'). The latter four are connected with the phenomenon of meditation, which is available through the cognitive and affective refinement.⁵

An individual having such moral qualities would be able to have sensitivity towards our environment. It is rightly mentioned in the *Tanhabaggo* chapter of the

Dhammapada that the thirst for enjoyable object makes a man blind of his own future and hence he can go to any extent for his enjoyment adopting injury to human and non-human beings including environment. This thirsty person is compared to a monkey desiring fruits (*so pravati hurāhuram phalamiccham va vanasming vānaro*).⁶ It is so dangerous that it is metaphorised as ‘poison’ (*‘visattikā’*).⁷ Hence it is advisable to eradicate the root of such thirst through the weapon of wisdom (*pañña cchindatha*), which is dependent on the paths mentioned above.⁸

An individual having such freedom can have ‘real sympathy’ towards nature, environment and non-human beings. An individual possessing such a mental state cannot do harm to others. If he cuts trees, injures animals etc. he will be condemned as found in the *Vinayapitaka*. It has also mentioned in the *Bhaiṣajya-skandhaka* that how different trees serve us as medicines in our everyday life.⁹

4. A Few Recommendations to Overcome the Crisis

From the above discussion we may draw the following conclusions. Only advice to protect environment or to adopt ‘non-violence’ (*‘ahimsā’*) will fall flat upon others until and unless they are enlightened with wisdom. The true solution of the environmental crisis will be neither technological nor legal. It must be stereological. It must involve the evolution of a significant number of human beings to a higher level of awareness, to a higher ethical sensibility. It does not mean that the technological and legal efforts to safeguard the environment are pointless, but we think there is at least a stopgap measure but not the ultimate solution. To Buddhism there is a potentiality in human being to evolve into a higher ethical sensibility. This will happen through the concerted practice and discipline. The whole Buddhist tradition consists precisely in a sustained effort to devise effective methods for undertaking this transformation. The tradition says that we have our own resources though the task is very difficult. If we can master over the method, the energy in pursuit of the good, patience, the living kindness, the concentration and the wisdom to bring these substantial resources to bear evolve automatically in a man. With this inner tranquility alone outer tranquility, free from pollution, may come into being.

First, in order to arrive at such stage it is essential to go through some rigorous meditative training so that we can control our sense-organs including the ‘inner one’ (*‘antah-karana’*) or mind. To the Buddhists the ‘Eight -fold path’ (*‘astangika-marga’*) is the correct path to know the right knowledge of reality, which ultimately leads to the control of sense-organs. If it is realized that each and every object is transitory or momentary, ‘essenceless’ (*‘sunya’*), our mind, being controlled, can reduce the thirst for enjoyment. An individual, being free from mental pollution, can achieve peace. That is why; Buddha himself is called an embodiment of peace and an aesthetic pleasure called *‘santarasa’* i.e., *an aesthetic sentiment of quatitude*. By virtue of worthy of it he is called *‘Sāntātma’* (*a being full with quatitude*) and *‘Sānta-manas’* i.e., someone possessing quatitude in mind. It ultimately leads to the environmental protection.

Conclusion

It has been shown with some arguments that according to the text *Dhammapada* the mental pollution due to excessive thirst is the cause of environmental pollutions. As Buddha was more taken as a physician rather than a philosopher, his diagnosis as shown is, I think, accurate and treatable like other diseases. Hence some prescriptions have been made to prevent our mental and subsequently environmental pollutions after adopting the three-fold training of the ethical conduct (*sila*), meditation (*samadhi*) and wisdom (*prajna*). These are again related to seven factors of enlightenment like mindfulness, discrimination of principles, energy for the pursuit of fruit, rapture, tranquility etc. If these methods are completely mastered upon, the energy in pursuit of good, patience, loving kindness, concentration and the wisdom will come into being. With this inner tranquility alone the outer tranquility, free from pollution, may follow. In order to arrive at this stage it is also necessary to adopt rigorous meditative training following ‘Eight-fold Path’ (*astangika-marga*) and considering everything as ‘momentary’ (*ksanika*), ‘essenceless’ (*sunya*) etc.

Notes

1. “*Phandanam capalam cittam durakkham durnivārayam ujum karoti medhāvī usukāro’va tejanam.*”
Dhammapada 3/1.(The following text has been followed: Narada Thera (1993) (Trs): *The Dhammapada* (Pali texts and translation with stories in brief and notes) The Corporate Body of the Buddha Educational Foundation, Taiwan), henceforth, *Dhammapada*.
2. “*Subhānupassing viharantam indriyesu asamvutam bhojanam hi amattaññum kusūtam hīnavīriyam tam ve pasahati māro vāto rukkham’va dubbalam’*”
“*Asubhanupassim viharantam indriyesu susamvutam bhojanam hi ca mattaññum saddham ārabdhavīriyam tam ve napasahāli māro vāto selam’va pabbatam’*”
Dhammapada 1/7-8.
3. Kata Crosby and Andrew Skilton (Trs) (1996): *Bodhicaryāvatāra*, V 2i :91-99, Oxford University Press, p. 96.
4. *Mahāparinibbanasutta* of *Dīghanikaya*– V 67-68.
5. *Samyuttanikāya*. 2/29.
6. *Dhammapada* 24/1.
7. *Ibid.* 24/2.
8. “*Yathāpi mūle anupaddave dalhe Chinno’ pi rukkho punareva rūhati, Evampi tanhānusaye anūhate Nibbattati dukkham idam punappunam’*”
Dhammapada 24/5.
9. *Vinayapitaka*, 1/4/7. 2/4/47 and 59/ *Bhaisajya-Kandaka*.

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Chapter 12

Engineering Ethics and Engineers' Responsibility Toward the Public: Aiming for Cooperation Between Engineers and the Public

Hidekazu KANEMITSU

Introduction

Engineering ethics emphasize professional engineers' responsibility toward the public. From a historical perspective, engineers attempted to establish the social position of their profession by clearly specifying their norms of conduct with the enactment of a code of ethics. Many of those codes today stipulate that "engineers shall hold paramount the safety, health, and welfare of the public," with those words carrying important implications. At the same time engineers were expressing their responsibility to the public, there were also attempts to found the engineers' responsibility on philosophical grounds.

However, current education regarding engineering ethics pays little attention to the origin of the notion of engineers' responsibility toward the public, so I intend to examine how it came to pass that engineers bear such a responsibility. To do so, I will refer generally to discussions on the origin of this responsibility, and specifically to those discussions that focus on the influence of engineering on society. Subsequently, I will consider what engineers can do to carry out this responsibility. To consider this question, I will attempt to define the concept of "the safety, health, and welfare of the public," by examining the scope of the term "public" and looking at what engineers can do to meet that goal. Through these examinations, I will prove that merely highlighting engineers' unilateral responsibility toward the public is insufficient to achieve such a goal as a society and show that there also must be a focus on the reciprocal relationship between engineers and the public. Finally, I will present the challenges for the future, including consideration of the current Japanese situation.

1. Influence of Engineering on Society and Responsibility of Engineers

The significance of engineers' responsibility toward the public seems to be self-explanatory, insofar as we look at the existing engineering code of ethics. However, engineers can argue that imposing responsibility in their relationship with the public is an unrealistic and excessive requirement (Cf. Florman 1976, 21-2).

How is it possible to establish what responsibility toward the public engineers should hold? According to Todayama, the answer lies in (1) the distinction between occupation and profession, and (2) the social-contract model that was adopted

as a philosophical foundation (Todayama 2007, 292-3). All occupations bear, for example, responsibilities for honesty in their dealings with clients and employers, or for compliance. However, in addition to these minimum responsibilities, professions also must demonstrate superordinate responsibility. Protecting the safety, health, and welfare of the public, or caring for environment, are examples of superordinate responsibilities that professions bear. And the social-contract model explains the need for these “supererogatory” responsibilities. According to this model, a profession establishes a code of ethics in which it directly promises to carry out extraordinary responsibilities that are not required of occupations. These responsibilities are considered a reciprocation for the prerogatives that society has given to the profession, such as high education and training, monopolies on business, autonomy, discretion, high social positions, and so on (*Ibid.*).

However, this foundation encounters the same criticism I mentioned earlier, because such “supererogatory” responsibility is once again considered an excessive requirement, even if it does result from the improvement of engineers’ social status. Alpern argues not that engineers have special moral obligations but that ordinary moral principles normally demanded of ordinary individuals can be applied to the engineers’ circumstances. He begins his discussion with what he calls the Principle of Care:

Other things being equal, one should exercise due care to avoid contributing to significantly harming others. (Alpern 1991, 188)

This principle, of course, holds for everyone, not just engineers. A driver, for example, must recognize the dangers around the car, attend carefully to the driving, skillfully control the car, and be willing to risk one’s property and eventually person to avoid injury to others. “The ‘due care’ clause of the principle designates such things as apprising oneself of the harm that may result from one’s action, taking precautions to avoid such harm, and being ready and willing to make sacrifices in order to reduce the likelihood of harm” (Alpern 1991, 189).

Furthermore, Alpern notes that the degree of care due is a function of the magnitude of the potential for harm and of the centrality of one’s role in the production of that harm. For example, a greater degree of care is due from the driver of a gasoline truck than from an ordinary driver, since the driver of the gasoline truck is in a position to create greater harm. The truck driver must be more attentive and possess greater skill than an ordinary motorist does. Alpern refers to the general rule here as the Corollary of Proportionate Care:

When one is in a position to contribute to greater harm or when one is in a position to play a more critical part in producing harm than is another person, one must exercise greater care to avoid so doing. (Alpern 1991, 189)

Working from the Principle of Care and the Corollary of Proportionate Care, we have a basis for discussing the responsibility of engineers toward the public.

According to the Principle of Care, it is evident that engineers have a responsibility corresponding to their activity. Engineers' actions can greatly affect the public welfare. And given the nature of much technology, engineers' work affects the public welfare to a greater extent than do the activities of most other citizens. Thus, by the Corollary of Proportionate Care, engineers can be demanded that they be willing to make greater sacrifices than others for the sake of public welfare (*Ibid.*).

According to this argument, engineers' responsibility toward the public is not particular to them alone. Others who engage in the engineering project, such as managers and high-level executives, can affect the public welfare and so are similarly subject to higher standards. In Alpern's words, "This higher standard against which engineers are to be judged does not require supererogation of them; it is merely the consequence of the *ordinary* moral requirements of care and proportionate care as they apply to the circumstances of engineers" (*Ibid.*).

According to Alpern's argument, then, excessive moral requirements are not imposed on engineers alone. It is through the Corollary of Proportionate Care that engineers bear a particular responsibility, and supererogation is not demanded. However, even granting that Alpern's argument can ably explain the origin of engineers' responsibility, it would face some problems when we ask what engineers actually do to fulfill their responsibilities. First, it is not clear to what extent engineers should consider the scope of their influence. Although engineers can affect the public, not every ordinary activity an engineer undertakes will cause global-scale harm. Second, carrying out responsibilities to the public can create several deterrents. Alpern himself concedes this fact, and he refers to "moral courage": "Since significant disincentives and obstacles will often stand in the way of meeting these ordinary moral requirements, engineers can expect to have to exhibit a certain degree of moral courage in the course of their everyday work" (Alpern 1991, 189-90).

What can engineers do to carry out their responsibility toward the public? This is a considerable question in the practice of engineering ethics. I will consider each problem in the following sections.

2. Argument about "the Public"

As previously mentioned, many engineering codes of ethics contain a clause concerning engineers' responsibility toward the public. However, the term "public" in such clauses is vague and does not provide clear guidance on how we should understand the scope of responsibility engineers ought to bear.

Airaksinen (1998), for instance, defines the term "public" in relation to being influenced by professional practice. According to him, the public consists of "those who are influenced by professional practices without being clients" (Airaksinen 1998, 671). Those who are not influenced by professional practices are defined as an "audience" (*Ibid.*)

Davis (1998), however, does not consider influence by professional practice to be the only condition of defining the public. According to this interpretation, the public "would refer to those persons whose lack of information, technical knowledge, or time for deliberation renders them more or less vulnerable to the

powers an engineer wields on behalf of his client or employer” (Davis 1998, 57). Accordingly, to hold paramount the public safety, health, and welfare, engineers should avoid injury instead of those who are in a position of relative innocence, helplessness, and passivity, or they should give information regarding risk.

By eliminating ambiguity over the term “public,” we can consider the problem more clearly. For example, when we examine whether the astronauts in the *Challenger* disaster constitute “the public,” we find that we must first clarify the term “public.” The astronauts were informed of the dangers from the formation of ice on the boosters, but they were not informed of the danger posed by the O-rings. Based on Davis’ interpretation, we regard the astronauts as part of the public with respect to the O-rings and, in contrast, not as part of the public with respect to ice formation on the boosters. Given this interpretation, to hold paramount the safety, health, and welfare of the public in regard to the O-rings, an engineer should advise cancelling the launch or should insist that the astronauts be briefed to get their informed consent to the risk of the O-rings (Davis 1998, 57-8; Murata 2006, 114-6).

Using Davis’ interpretation, we can define the scope of the responsibility engineers ought to bear. Namely, engineers bear the responsibility for those who can be damaged by their activity, and yet cannot actively take action to avoid that harm.

There is also a position that emphasizes the concept of informed consent as the responsibility of engineers. Schinzinger and Martin (2000) argue that the problem of informed consent should be the “keystone” in the interaction between engineers and the public (Schinzinger and Martin 2000, 76).

Focusing on the idea of “engineering as social experimentation,” Schinzinger and Martin discuss the responsibility of engineers. Any engineering project is carried out in partial ignorance. And “the final outcomes of engineering projects, like those of experiments, are generally uncertain. Often in engineering, it is not even known what the possible outcomes may be, and great risks may attend even seemingly benign projects” (Schinzinger and Martin 2000, 73). Therefore, “monitoring” is “as essential to engineering as it is to experimentation in general” (*Ibid.*).

In Schinzinger and Martin’s argument, the public is regarded as the “subject.” Thus, informed consent is introduced as the “keystone” in the interaction between “engineers as responsible experimenters” and “public as subject.” However, informed consent generally exists in the context of a one-on-one relationship between a doctor and a patient, so they do not intend to apply the usual notion of informed consent to the engineering field. They instead endorse “a broad notion of informed consent, or what some would call *valid consent*” (Schinzinger and Martin 2000, p. 78).

In addition to the conditions required for normal informed consent—such as a full disclosure of information, a voluntary relationship, and competence to make a rational decision—Schinzinger and Martin suggest “two requirements for situations in which the subject cannot be readily identified as an individual.” In one such case, “Information that a rational person would need, stated in understandable form, has been widely disseminated.” In another, “The subject’s consent was offered in proxy by a group that collectively represents many subjects of like interests, concerns, and exposure to risk” (Schinzinger and Martin 2000, 79). Thus, engineers’ responsibility

to the public is made known, and the engineers undertake “to monitor projects, to identify risks, and to provide clients and the public with the information needed to make reasonable decisions” (Schinzinger and Martin 2000, 81). Informed consent clearly plays an important role here.

However, several issues argue against the position that emphasizes informed consent in the engineering field. When it comes to validating consent, problems may still remain, including the method of disclosing information and the representativeness of the group from whom consent is sought (Ishihara 2006, 56). Furthermore, even if it is possible to establish informed consent, there is a danger of underestimating the significance of those from whom consent is sought, by putting them in a passive position of giving only “consent” and nothing further. In addition, by gaining informed consent, engineers may not be held responsible for doing something wrong. The concept of informed consent, in this case, carries the danger of becoming a vehicle for “passing the buck” (Murata 2006, 117-20).

After all, it would appear that discussions about the public safety, health, and welfare all emphasize the engineers’ standpoint. The view of the public as innocent, helpless, passive, and vulnerable, under Davis’ definition, may put the engineers in a paternalistic relationship with the public as they seek to “hold paramount the safety, health, and welfare of the public.” Schinzinger and Martin’s discussion seemingly takes the public’s standpoint into account, but as previously mentioned, the idea that engineers offer information and the public gives its consent accordingly can place the public in a passive position as the public waits for the engineers to begin their work.

To realize the safety, health, and welfare of the public, engineers certainly must conduct themselves actively, however, it seems insufficient to emphasize only the engineers’ perspective: One must also take into account the public’s active participation in seeing to its safety, health, and welfare. It is necessary to consider a responsibility in the interaction between engineers and the public, rather than a situation that merely highlights engineers’ unilateral position in regard to safety issues.

For example, Murata (2006, ch. 1) discusses engineering ethics in terms of an interaction between designers (engineers) and users. Ishihara (2006, 55-6), meanwhile, argues that informed consent is inadequate in dealing with risk information and that “risk information in engineering ethics should be thought of in the light of risk communication between experts and laypersons in the society” (Ishihara 2006, 56). Keeping these observations in mind, I will examine the public safety, health, and welfare in terms of a reciprocal relationship between engineers and the public.

3. Reinterpretation of the Responsibility toward the Public

Given that the existing engineering code of ethics insists on “holding paramount the safety, health, and welfare of the public,” Baum argues that engineering societies “must think this through all the way and provide *workable* means that enable engineers to reasonably fulfill this responsibility” (Baum 1994, 128). However,

engineering societies “have not seriously considered how this might be implemented in real-world situations” (*Ibid.*). Baum offers a sympathetic interpretation of this failure to act: “The engineering societies discovered that it is extremely difficult if not impossible (1) to come up with a truly workable procedure under which engineers could reliably determine what is in fact in the best interests of the public and (2) to provide protections necessary for engineers who proceed to act on this knowledge in ways they sincerely believe hold the public safety, health, and welfare paramount” (*Ibid.*).

Because engineers usually engage in projects as a team, no single engineer is in a privileged position to make decisions involving complex technologies that can have an effect on the public. Therefore, Baum says, “there is no defensible justification for engineers—individually or collectively—to take the decision-making responsibility onto themselves” (Baum 1994, 132). Baum offers the only morally justifiable procedure for making decisions in such complex cases: “[f]or all affected parties or their delegated representatives to be provided with all of the available information relevant to the decision and for them to have an equitable say in the final decision” (*Ibid.*). Baum then proposes a change to the “paramount” clause as follows:

Engineers have a responsibility to

1. recognize the right of each individual potentially affected by a project to participate to an appropriate degree in the making of decisions concerning that project;
2. do everything in their power to provide complete, accurate and understandable information to all potentially affected parties. (Baum 1994, 132)

According to Baum, it is also the engineers’ responsibility to give the public an opportunity to participate in the decisions concerning a project, rather than give the public only the opportunity to consent. Involving the public in the decision-making process makes it possible for engineers to understand what the public cares about and for society as a whole to support the engineers’ attempts to uphold the “paramount” clause. The public can then be regarded as those who actively participate in their own safety, health, and welfare, and the interaction between engineers and the public will include that realization.

Implementing this procedure, of course, remains an issue. Baum himself states that “I still do not have a detailed solution to the problem of how engineers might be able to provide information to all potentially affected parties, particularly in cases of large-scale technologies for which the at-risk groups are not clearly identifiable and/or readily accessible” (Baum 1994, 133). However, he continues, “I can suggest one step”

This step suggests that engineering societies should play a leading role in transmitting information about risks from engineers to potentially affected parties. Specifically, Baum argues that “it is up to the engineering societies to open their doors to interested nonengineers and to participate in a constructive dialogue to

devise information-transmittal procedures” (*Ibid.*).

Taking this step would respect the right of the public to be informed and would lighten the heavy burden of moral responsibility that the “paramount” clause imposes on engineers. Respect for public safety, health, and welfare is currently often presented in terms of a conflict, with engineers showing loyalty to their clients or employers, and enforcing the “paramount” clause is often left to whistle-blowers. However, if the procedure Baum suggests is developed and the “paramount” clause is thus changed, engineers will be able to “practice in accordance with their code of ethics without having to be omniscient, self-sacrificing moral heroes or heroines” (Baum 1994, p. 134).

As Baum states, a crucial reason for developing this plan is that “nonengineer members of the general public have a moral obligation to be actively involved in collaborative efforts to have the responsibilities for information processing and decision making spread more evenly across the population” (*Ibid.*). Most laypersons are currently unable to increase the availability of information they receive from engineers about potential risks, and if they lack proper information, they cannot be said to carry a moral responsibility. However, Baum points out that “there are at least a few who have both the ability and willingness to do so” among members of the public, such as members of environmental and consumer organizations who seek out such information on a voluntary basis, freelance writers and attorneys who do so for a fee, and government employees and journalists who do so as part of their regular jobs. The heart of the problem then becomes the high degree of apathy and even active resistance on the part of engineering societies to interact with laypersons (Baum 1994, p. 134-5).

The relationship between experts and laypersons, however, appears to be changing. In Japan, scientific communication has become more prevalent, through activities such as Café Scientifique, which take scientific discussions out of their cloistered settings and into everyday society. In a statement titled “Towards Dialogue with Society,” the Science Council of Japan (SCJ), regarding science communication as a crucial activity, says it “will launch any feasible actions for development of public awareness and confidence in science.” To that end, SCJ conducts Café Scientifique sessions all over Japan. A similar initiative, called “Technology Café,” is now being attempted by professional engineers in Japan. According to Hiyagon (2007, 1), who is part of this new initiative, Technology Café is an “interactive communication between engineers and the public” held by the Society for the Study of Engineering Ethics, which is part of the Chubu Branch of the Institution of Professional Engineers, Japan (IPEJ). Technology Café is characterized as an extension of practical research into engineering ethics among professional engineers, and its main purpose is to determine how engineers can act morally and better achieve accountability. The group also intends to help engineers relate to laypersons by directly engaging in dialogue with them, and it trains engineers to explain technological terms and activities to ordinary citizens. Taking that approach makes sense, since engineers’ products directly affect civil life and therefore place engineers in a closer relationship with ordinary citizens than scientists have.

Conclusion

Engineers' responsibility toward the public is essential to engineering ethics, inasmuch as those ethics account for the impact of engineering on society. For engineers to carry out their responsibility and for a society to achieve the public safety, health, and welfare, an emphasis on the unilateral responsibility of engineers must yield to an interaction between engineers and the public. Cooperation between engineers and the public is necessary to achieve the public safety, health, and welfare and address challenges for the future.

The first step toward achieving these goals is for engineering societies to take the initiative in facilitating communication relevant to technology. Engineering societies must be actively committed to enhancing the quality of communications between engineers and laypersons.

To establish such communication, engineers and the public both require educating. For engineers, possessing expertise does not guarantee a capability to explain that expertise to a lay audience, and they must learn how to express their knowledge in a comprehensible way. For the public, a minimum of technological literacy is required. The public's technological knowledge will grow from interaction with the engineering experts, but the literacy that enables such communication in the first place is an essential first step.

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Chapter 13

On the Restorative Justice Approach to the Abolition of Death Penalty in Taiwan

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Introduction

Death penalty is sometimes recognized as “nation killing” or “judicial murder” against the human rights. Nowadays, due to the respect for the human right to life, international legal documents measure the will of nations for the protection of human rights in terms of the abolishment of death penalty.

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, recognizes each person’s right to life. It categorically states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”(Article 5). In December 2007 and 2008, the United Nations General Assembly adopted resolutions 62/149 and 63/168, calling for a moratorium on the use of the death penalty.

Since then, other regional bodies or civil society coalitions adopted resolutions and declarations advocating for a moratorium on executions as a step towards global abolition of the death penalty. This is also true for Taiwan.

By the 1990s, Taiwan’s Criminal Code mandated compulsory death sentence for 89 specific crimes and carried possible death sentence for another 108 criminal offenses. Although calls for the abolition of death penalty in Taiwan have been heard for decades, its voice had never been so loud and clear until the year of 2000 when religious leaders, scholars, lawyers, and activists from different tracks of society made their strong appeal to the former President Chen for an end of death penalty, or, at least, a moratorium (Chen, 2000). In May 2001, the Minister of Justice announced that Taiwan would end capital punishment within three years.

After that, it took a few years for the abolitionists to realize that the will of political power could not be counted on, and it would be a long term struggle both within and outside the criminal justice system. In September 2003, the Taiwan Association for human Rights, the Judicial reform foundation, Amnesty International Taiwan, and Fujen Catholic University John Paul II Peace Institute, and other NGOs launched “Taiwan Stop Execution of Death Penalty Alliance”. Since December 2005, no executions have been carried out. However, the number of death inmates has been increasing. In 2006, the Taiwan Alliance to End the Death Penalty was formally initiated in order, on the one hand, to promote conscious-awareness of the public, and on the other hand, to force the politicians to fulfill their promises.¹ So far, there are 43 prisoners on death row.

During the political transitional period of the shifting of the regimes, Taiwan has been running into a serious crisis of distrust. Meanwhile, as some statistical

researches paradoxically revealed, the support for death penalty has not seemed to wane, even though the public has been overshadowed by the general atmosphere of doubts of criminal justice.² Although public opinion polls show strong support for capital punishment, 53.23% of those pulled support replacing the death penalty with life imprisonment without parole.

The ethical debate on the death penalty between local retentionists and abolitionists used to center either on the theories of punishment, be it deterrence, rehabilitation, incapacitation, or retribution, or on the expressive meaning of societal solidarity against heinous crimes. Neither of these approaches really solves the complexities and dilemmas of capital punishment in terms of freedom and security, rights and responsibilities of the offenders and the victims.

Recently, due to the newly emerging criminological trend of restorative justice, a new battle front has been drawn for the two parties. To respond to the challenges posed by the rivals, the discourse of the abolitionists needs to integrate a new way of judicial thinking in order to show how the abolition of the death penalty can be an indispensable key point to help build a community of care, security, and peace. This paper is going to argue this by drawing insights from the theories of conflict resolution, relational justice, and ethics of care.

1. Justice in Transition: Restorative Justice

People used to believe that moral concepts, such as justice, were something unchanging and universal as eternity. However, as David Garland has rightly pointed out, “even if past generations believed that their invocation of justice was an appeal to an absolute value, it is clear that the conceptions of what this value demanded, and of what justice implied, have changed over time in important ways”, and “hereby one conception of justice slowly gave way to a rather different one, causing consequential changes in penal practice.”(Garland, 1990) If so, what new understanding of justice and penal reform will restorative justice bring to the system of criminal justice? What would this change our attitude toward the penal practice of the death penalty?

The answer, we believe, lies in the understanding of the basic tenets and core values of restorative justice. Restorative justice is originated from the reformation trends of criminal jurisprudence. But it is said that its philosophical presumes and ethical implications can be traced a long way back to the ancient teachings of conflict resolution in many traditional cultures, especially in the aboriginal contexts. It is believed that its root of values has already been embedded deeply in the cultures of Greece and Rome, and corresponded to the religious notions of mercy, forgiveness and reconciliation in mainstream faiths (Braithwaite,1999).

However, what is restorative justice is by no means easy for definition. The replies could be classified into two types, namely, process-based and justice-based. Process-based approach chooses to emphasis the importance of encounters between the stakeholders in the crime and its aftermath rather than the outcomes. On the contrary, justice-based approach believes it would be better defined on the ground of the outcomes in terms of the values of restorative justice. A definition that tries to

combine the two elements proposed first by Van Ness and then accepted widely in academic circle is,

Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behaviour. It is best accomplished through inclusive and cooperative process.³

With further distinctions concerning stakeholders, “the Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters” issued by the United Nations Economic and Social Council in 2002, according to which restorative justice has been clearly defined in terms of three basic elements, that is, restorative process, restorative outcome and parties.

‘Restorative outcome’ means an agreement reached as the result of a restorative process. Examples of restorative outcomes include restitution, community service and any other programme or response designed to accomplish reparation of the victim and community, and reintegration of the victim and/or the offender.

‘Restorative process’ means any process in which the victim, the offender and/or any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party. Examples of restorative process include mediation, conferencing and sentencing circles.

‘Parties’ means the victim, the offender and any other individuals or community members affected by a crime who may be involved in a restorative justice programme.⁴

To put it simply, restorative justice emphasizes the restoration, rebuilding, or reconciliation of societal relations broken by the crimes. It includes not only the restoring of rights and dignity of the victims, but also the reconciliation among all the stakeholders, whether it be individuals, groups, or communities, of the whole society (Bazemore and Walgrave, 1999). Different from the criminologist Beccaria, restorative justice does not assume that crimes only lead to legal problems between the offenders and the government authorities representing the interests of the general public, and that as long as the criminals are punished, justice has been done. On the contrary, it strongly argues that offences are usually due to the conflicts between members of societies or between the offenders and violators, and that the results of crimes are the damage of interests, as well as the loss of trust, peace and solidarity between the individuals. Therefore, it insists that the criminal process should grant some room for all the stakeholders to face the societal causes of crimes, to ask the violators to remedy the loss of the individuals and repair the societal relationship torn down by the crimes, in order to achieve the goal of crime prevention (Christie, 1977; Braithwaite and Daly, 1994).

Generally speaking, at least for many scholars and activists, from the point of view of restorative justice, if criminal justice is the last formal resort of conflict resolution in societies, then its main task is to achieve the peace and justice through the legal process with force as minimal as possible. One of the leading characters of this trend, John Braithwaite once put it clearly and distinctively, “a more decent way to run a criminal justice system is with the minimum level of punishment that is possible while enabling the state to maintain its promises to the security of citizens” (Braithwaite and Daly, 2000). Since the overwhelming majority of studies have shown that capital punishment does not deter murder, death penalty, instead of long term imprisonment, is against the principle of minimum.

With evidence remains to show that legal system set up by hands of mankind can not be totally avoid of convicting the innocent, that the practice of the death penalty is usually applied in ways of discrimination based on race, sex, and class, and its no unique penal benefit at all but obvious tendency to turn the societies to be more and more brutalized and exclusive by imposing the death penalty more often than ever before, we should be very careful of the existing death penalty law (Van Ness, 1986).

Furthermore, according to some results of related empirical studies, the practice of death penalty would not express and reinforce the societal solidarity with the victims against heinous crimes, but paradoxically lead to the public distrust of the enforcement of criminal law and jurisprudence in general. It is said that public confidence in law enforcement seems lowest in those jurisdictions that still allow the execution of offenders (Cragg, 1992). And the reason for that, as it is believed, is mainly because it communicates implicitly to the public the fear of crimes,

Capital punishment cannot build confidence that people can for the most part be trusted to obey the law because, by insisting that execution is the only appropriate way of dealing with them, it communicates fear and lack of confidence in the ability of the law to accomplish its goals in less severe ways....there must be real doubt that a significant number of people can be trusted to obey even the most fundamental of laws in the absence of this form of response (Cragg, 1992).

In addition, by using such an ultimate weapon, instead of other restorative measures, the mechanisms of social conflicts are not dismantled. Nor are the criminals commanded to take their responsibilities to make up what they have wronged. And the last but not the least, the devastated societal relationship has been repaired either.

More importantly, restorative justice does not assume that criminal justice can be disentangled from social justice. Hence, the practice of criminal justice should notice the structural injustice of society. The plea and confession of the offenders should not be ignored or overlooked just because of their wrongful deeds. To know why they eventually committed the crimes and how society can take precedent adjustments and strategies to prevent crimes are very important indeed (Roach, 2000).

As stated above, it is not surprising that scholars of restorative justice argue for the paradigm shift of criminal justice, given the new ideas of how criminal justice process and penalty should be re-institutionalized. This turn can be witnessed by the change of the epistemological model and the root metaphor of criminal justice. Since healing and restoration are the vital values of restorative justice, legal models more appropriate for the cooperation between parties should be more dominating and prominent.⁵ The traditional image of justice, the goddess of justice with a sword in one hand and a scale in the other hand, as the root metaphor, has now been gradually replaced by a new image, the dove of peace with olive branches, which represents forgiveness and rebirth, or the symbol of the circle of hands held together to symbolize solidarity and mutual trust.⁶

2. Rethinking Restorative Justice Values

The conception of justice does change. Note worthily, it does not take place in isolation, but interactively with other notions of value. It is believed that restorative justice values could be grouped into two categories, normative and operational values. The former reveals the ethical ideals that the world ought to be, including active responsibility, peaceful social life, respect, and solidarity. On the other hand, the latter expresses norms that should be implemented in restorative programmes, namely, amends, assistance, collaboration, empowerment, encounter, inclusion, moral education, protection, and resolution. (Van Ness, 2005) Obviously, these values are not independent, but correlated with each other. Due to the space limit, it would not be possible for us to discern them one by one. Instead, we would like to underscore the kernel of them by discussing three theories frequently mentioned in discussing the ethical ideals of restorative justice, namely, the theories of relational justice, conflict resolution, and feminist ethics of care. Then we would like to undergird the claim of abolition of death penalty from the perspective of restorative justice on the ground of these three theories.

Relationships have been ignored by the criminal policies. That is why the law only regulates the freedom and credibility of individuals. However, relational justice highlights the centrality of human relationships as its starting point, that is, to connect the community aspect of justice to its individual aspect. As stated,

One of the foundations of this new approach is to regard crime primarily as a breakdown in relationships; even in those cases where the offender does not personally know the victim, a relationship can be said to exist by virtue of their being citizens together, bound together by rules governing social behaviour. Crime is only secondarily to be regarded as an offence against the state and its laws (Schulter, 1994).

Accordingly, crimes usually originate from the loose ties of familial and societal relationships, which help turn the anti-societal feelings into criminal behaviors with specific incentives. For individuals who lack support from the web of societal relations, penal punishment fails to have the effect of moral education.

Sometimes even the death penalty can not intimidate the prospective not to offend.

Therefore, relational justice argues that the best strategies of crime prevention is to implement the rites or ceremonies of re-integrative shame, that is, to reintegrate the inmates back to society, affirming they are normal agents just like us, while at the same time expressing the condemnation of their crimes, and therefore stimulating their shameful mood for repentance (Braithwaite, 1989).

The theory of conflict resolution argues that sometimes conflicts might be property, instead of harmful cause. In a highly industrialized societies like Taiwan, it can not be more correct to say, "Conflicts might kill, but too little of them might paralyse" (Christie, 1997). Crime is sort of internal conflict between members of society and is usually dealt with and confined by the criminal justice procedure. Therefore, in a criminal law court, the victims and the offenders have been replaced by the abstract two parties, the executives and the lawyers, and the conflict turns out to be the attack and defense of legal language. Lost is the opportunity to discuss in public what should be the core of social values at stake. In his ground-breaking article 'Conflicts as Property', Nile Christie rightly criticized the modern criminal control systems as one of the many cases of lost opportunities for making the best use of conflicts,

The big loser is us-to the extent that society is us. This loss is first and foremost a loss in opportunities for norm-clarification. It is a loss of pedagogical possibilities. It is a loss of opportunities for a continuous discussion of what represents the law of the land....A further general loss – both for the victim and for society in general – has to do with anxiety-level and misconceptions (Christie, 1997).

Hence, the victims hold onto the feelings of agony and anxiety and lose control over their lives. Understandably, they tend to regard the offenders as 'inhumane beasts' or 'the crumbs of society' that should be gotten rid of. On the other hand, the violators have no opportunities to explain, to apologize, or to ask for forgiveness. As for the breeding ground of crime, the traditional theories of justice have nothing to do with it. On the contrary, the theory of conflicts resolution wants to help the stakeholders of crime to negotiate satisfying outcomes for restoration with the help of fair and impartial third parties as facilitators, so that the victims can receive a sincere apology and financial compensation; the offender can be re-educated into a moral agent, and the unjust structure of society can be transformed (Ellis, 1995; Cochran, Jr, 2000).

Feminist ethics of care propose a new understanding of justice as caring. Justice as caring, according to Michael Slote, is the application of morality as caring in evaluations of laws, institutions and societies. That is to say, evaluations of public policy ought to be treated what is similar to or parallel to the evaluation of acts in terms of caring (Slote, 1995). Therefore, X is a just law, if and only if, it expresses the will of care, no matter if it is out of the practical law-makers or the hypothetical agent of law. The basic tenet of this approach is just as Scott D. Gelfand said,

We can determine whether a law is just by ascertaining whether caring legislators might vote for it...premised on the claim that we can, in fact, ascertain or determine what types of statutes caring legislators might support (Gelfand, 2004).

In practice, what the premise above requires can be done by using parents in a nuclear family as a heuristic device to determine what laws are morally right or wrong. Here 'heuristic device' means the moral exemplars, ideals, or paradigms. To put it in another way, what law is for the civilians is what parents are for their children. Hence, if the law is one means for moral education, the government would realize that a society of peace and security means neither the exclusion of the violators, nor a state of no harm or no crimes. It demands more. Tighter social ties and mutual care among members of society are in need (Braithwaite and Daly, 1994; Martin, 1998).

The legislator will be concerned with both restoring the relationships that were injured or destroyed as a result of the criminal act and reintegrating the wrongdoer into society...it implies that the state will not 'permanently place the wrongdoer outside of society.' After all, unless the child does something that is absolutely horrifying (and even that may not be enough), the child is still part of the family and her well-being is taken into account when attempting to determine how to respond to her behavior (Gelfand, 2004).

Since the death penalty seems to reveal totally giving up hope on the violators, and the states nowadays have other alternative penalty, like long term imprisonment, to protect the rest of societies from brutal crimes, consequently, feminist ethics of care would not put death penalty into practice (Whitehead and Blankenship, 2000; Hurwitz and Smithey, 1998).

Conclusion

Some retentionists in Taiwan also try to introduce the victims' right into the system of jurisprudence in criminal cases in the name of restorative justice. Accordingly, they would like to maintain death penalty as a way to alleviate the great pain of loss for the families of the victims. According to their point of view, it is the only way to restore the victims, as well as society, to justice. Whenever there is a heinous crime committed, the call for the death penalty emerges.

However, as have pointed out, death penalty as an excessive and disproportional punishment does not fit the new understanding of restorative justice, either on the ground of the tenet of underlying values, or in terms of the dominant model of restorative justice.

Notes

- 1 **This forerunner of the organization is founded in 2003, named “Taiwan Stop Execution of Death Penalty Alliance.”** After one month, it has renamed itself of “Taiwan Replacement of Death Penalty Alliance.” see <http://www.taedp.org.tw/index.php?load=read&id=329>
- 2 http://www.jrf.org.tw/newjrf/RTE/myform_detail.asp?id=2337
- 3 **Van Ness, Daniel, RJ City,**
<http://www.pfcjr.org/rjcity/latest/RJ%20City%20Draft%20-%204-30-04.pdf>
- 4 **Resolution 2002/12, E/2002/INF/2/Add.2, Section I, par.2, 3, &4.**
- 5 **That is why some scholars insist their theories are restorative theories not theories of restorative justice.** See Aleksandar Fatic, *Punishment and Restorative Crime-Handling: a Social Theory of Trust*, (Aldershot: Avebury, 1995), 169-193 Of course, some others believe that restorative justice and criminal justice can be jointed together, but have different ideas of how. Regarding this issue, there should be another paper to deal with. We will not go into this problem further at this point. The only thing to make clear here is that because restorative justice focuses more on the relationship of the different parties, not deserve of individuals, it can not be directly applied in form of distributive model.
- 6 **Circle has been used as the logo of restorative justice frequently. see Restorative Justice Online,** <http://www.restorativejustice.org/RJOB/howard-zehr-on-partial-justice> 以及 Restorative Justice Education Conference, http://www.psstrategies.co.uk/restorative_justice_education_conference.htm

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Chapter 14

Against Perpetual War: Kant's Arguments for Achieving Perpetual Peace¹

Dara SALAM

Introduction

In his essay *Perpetual Peace* (1795), Kant argues against the presupposition that war is a human propensity attached to human nature and that constant war is the human being's incessant hunger for power and supremacy. Kant strongly criticizes the attempt of those philosophers who have praised war as "an ennoblement of humanity," without any consideration for the destructive and devastating effects of war. Kant reminds philosophers of the pronouncement of the Greek who said: "War is bad in that it produces more evil people than it destroys" (1795, 8: 365; p.112).² For Kant, war is waged for the sake of glory and to show valour. "Thus warlike courage" Kant contends, "with the American savages as with their European counterparts in medieval times, is held to be of great and immediate value- and not just *in times of war* (as might be expected), but also *in order that there may be war*" (1795, 8: 365; p.111). In the *Perpetual Peace* essay, Kant attacks the savage behaviour of the European conquerors against the native peoples of the colonized world. The actual text of the *Perpetual Peace* deals with the Preliminary and Definitive Articles, which are necessary for achieving perpetual peace. However, the two Supplements and Appendixes to *Perpetual Peace* deal with rather a more difficult and complex issue, which is the guarantee of perpetual peace that comes at the price of resolving the problem of the opposition between morals and politics. I will concentrate more on the latter aspect of *Perpetual Peace* and leave the elaboration of the Articles aside, though they will be referred to enhance the argument.

I shall argue that it is Kant's philosophical and political ambition to outline a theory of perpetual peace, which can on the one hand refute the presupposition that there is a human inclination towards war; and on the other hand, to provide the necessary and sufficient conditions for achieving perpetual peace. However, we should bear in mind that Kant is not prescribing any kind of recipe or guidance on the basis of which we can achieve peace. Rather, what Kant is concerned about in the essay is to outline the arguments *why* we, as political and moral agents, are not committed to bring about peace, since we ought to follow the moral maxims that should not contradict our political principles. Thus, he is not concerned about the question of *how* we should bring about peace. The argument advanced here will be mainly based not only on Kant's basic premise that nature guarantees perpetual peace, but also on the most problematic and perplexing issue, though less debated in the literature, of the disagreement between morals and politics and the establishment

of their harmonious coexistence. Yet, we need to show how Kant's natural teleology argument for nature's 'guarantee' of perpetual peace is consistent with individuals' moral obligation to pursue peace. I shall first argue that in Kant's thought natural teleology is not the source of normativity. The normative source is the rational will of human beings whose moral obligation to achieve perpetual peace is made possible and facilitated by natural mechanisms. Second, following on from this point, I shall argue that the main thrust of *Perpetual Peace* is that perpetual peace is possible only if the world of politics and political maxims are in accord with the universal moral laws. Thus, ought implies can. In *Perpetual Peace*, Kant rejects the thesis of the applicability of ethics to real life situations. He shows the hypocrisy of political agents, who gives a moralised tone to politics, and thus he argues for institutional peace and justice rather than the moralization of politics.

1. Nature as a Teleological System of Ends

In the first supplement, Kant argues that "perpetual peace is *guaranteed* by no less an authority than the great artist, *Nature* herself (*natura daedala rerum*)"³ (1795, 8: 360; p.108). Kant's idea of nature, the great artist who helps bringing about perpetual peace, or more precisely facilitates the occurrence of perpetual peace, is, at first sight, ambivalent as he takes it to be the *guarantee* of perpetual peace. Kant states that,

The mechanical process of nature visibly exhibits the purposive plan of producing concord among men, even against their will and indeed by means of their very discord. This design, if we regard it as a compelling cause whose laws of operation are unknown to us, is called *fate*. But if we consider its purposive function within the world's development, whereby it appears as the underlying wisdom of a higher cause, showing the way towards the objective goal of the human race and predetermining the world's evolution, we call it *providence* (Ibid).

Kant's emphasis on purposiveness and the causal relationship between nature and human agency becomes clearer especially in the *Critique of Judgement*, where he fully treats the natural teleology argument. Kant talks of purposiveness and ends. An end is the object of a concept when the concept is the cause of the object, and thus, "the real ground of its possibility" lies there (Kant 1793, 5: 220; p.105). However, purposiveness is "the causality of a concept with regard to its object." (Ibid.) Thus, an object can become an end if it is causally effected by a concept, i.e., the result of a design. So, natural things as the system of ends have purposive functions. For instance, grass is necessary for livestock and the latter is necessary for human beings. (Kant 1793, 5: 378; p. 250) This talk of the teleological order of nature as a system of ends shows that human beings are the ultimate end of nature, "in relation to which all other natural things constitute a system of ends in accordance with fundamental principles of reason." (Ibid, 5: 429; p. 297) All other ends are to be considered through human beings' connection to nature and their capability to use

nature externally and internally. Kant identifies two sorts of end that are significant for human beings. They are happiness and culture. They can become ends of nature in so far as they are the result of our conceptualisation of them. However, the concept of happiness is not that human being has in abstraction of their instincts; “rather, it is a mere idea of a state to which he would make his instincts adequate under merely empirical conditions.” (Ibid.) The main point here is that the purposive functions of natural things are not mere indications of biological evolution. Kant also wants to emphasize the role of moral agents and their interference in the course of nature. Indeed, Kant states that human being has “the aptitude for setting himself ends at all and (independent from nature in his determination of ends) using nature as a means appropriate to the maxims of his free ends in general.” (1793, 5: 431; p. 299) Kant identifies this aptitude as the “culture of skill,” as the “foremost subjective condition of aptitude for the promotion of ends in general; but it is still not sufficient for promoting the *will* in the determination and choice of its ends, which however is essential for an aptitude for ends.” (Ibid)

The question of ‘guarantee’ in *Perpetual Peace*, thus, can be analyzed in light of the observations Kant makes in the third *Critique* about natural teleology. Kant’s analysis, in the third *Critique*, of the question of the physico-theology is important to understand that his natural teleology argument does not lead to a theological view of nature and not to the affirmation of predetermined causes, which guarantee perpetual peace. Kant defines physico-theology as “the attempt of reason to infer from the *ends* of nature (which can be cognized only empirically) to the supreme cause of nature and its properties.” (1793, 5: 437; p. 303) Kant’s attempt in the third *Critique* is to reject the inference of the concept of an intelligent cause, as the supreme cause of nature, from the purposive functions of natural things. This rejection is explicitly stated in the *Critique of Judgement*: “Now I say that physico-theology, no matter how far it might be pushed, can reveal to us nothing about a *final end* of creation; for it does not even reach the question about such an end.” Kant continues his attack on physico-theology by saying that, “it cannot determine this concept [of intelligent cause] any further in either a theoretical or a practical respect,” since “the principles for *determining* that concept of an intelligent world-cause (as the highest artist) are merely empirical, they do not allow us to infer any properties beyond what experience reveals to us in its effects.” (Ibid, 5: 437-8; p. 304)

In fact, Kant gives a *secular* notion to nature in the *Perpetual Peace* essay after several years of the publication of the third *Critique*, where he clearly rejects physico-theology. In *Perpetual Peace*, Kant states that “it is more in keeping with the limitations of human reason to speak of *nature* and not of *providence*, for reason, in dealing with cause and effect relationships, must keep within the bounds of possible experience” (1795, 8: 362; p. 109). Nature, according to Kant, has placed human beings on her vast stage where finally peace will prevail between them by the very fact that nature has made it possible for everyone to live and occupy different parts of the world. War has driven human beings to the most inhospitable regions to populate them. This has forced human beings to have “more or less legal relationships” with one another (Ibid, 8: 363; p. 110). Kant here values nature significantly and assumes that in nature there is a great harmony

and interdependency between its components that only man can destroy by their incessant war against each other and nature. But, in what way Kant believes that nature can be a guarantee of perpetual peace? If nature, in fact, guarantees perpetual peace, why then human beings should make it a duty upon themselves or strive to achieve perpetual peace? Are not the language of natural guarantee and duty in conflict? To answer these questions we need to see how the free practical reason of moral agents can rationally will and use natural teleology and, therefore, realize perpetual peace.⁴

Kant argues that although human beings' propensity toward misdeeds and evil are widespread, human beings are free to choose between good and evil. For Kant ethics is based on the idea of freedom (1785, 4: 387-8; p. 43). The inclination and tendency toward war and evil deeds are not ingrained in the human nature. They are, rather, reversible and individuals are capable of producing peace and good. Individuals are not causally determined to be evil. Rather, nature and its causal mechanisms provide us with sufficient means to act and will freely and choose good and peace instead of war. It is nature that favours "man's moral purpose," and guarantees "that what man *ought* to do by the laws of his freedom (but does not do) will in fact be done through nature's compulsion, *without* the free agency of man" (1795, 8: 365; p. 112). The duty to act in a certain way, Kant argues, is not to be conceived within the mechanical course of nature. Rather, the duty to act toward achieving perpetual peace is pertinent to the moral law and the free action of practical reason. Kant states, "If I say that nature *wills* that this or that should happen, this does not mean that nature imposes on us a *duty* to do it, for duties can only be imposed by practical reason, acting without any external constraint" (Ibid). Thus, according to Kant, the mechanical course of nature operates according to certain laws of nature that have impact on our course of action. However, the choice of a specific action by an agent is made freely and according to the maxims that are consistent with moral laws and that are motivated by the sense of duty. It is important here for Kant that any morally good action is done *from duty*, or to put it in Kant's language, it is not sufficient that a morally good action "*conform* with the moral law but it must also be done *for the sake of the law*" (1785, 4: 390-1; p. 45). This sense of duty, which should be aroused by a moral law, emanates only from a good will, and hence Kant's opening sentence in the first section of the *Groundwork*, that nothing is unconditionally good "except a *good will*" (Ibid, 4: 393-4; p. 49). The duty to work to achieve perpetual peace is, therefore, concomitant with the mechanisms of nature which provide us the means in order to achieve such a duty.

Kant conceives, before the *Perpetual Peace* essay, in the *Groundwork* (1785) and other subsequent writings, of the problem of the conflict between what morals requires and what our self inclination and motivations require. Since ethics, as the doctrine of morals, is led by the idea of human freedom to choose between good and evil, individuals are free to choose to abide by the law and to act out of duty and the maxims of their actions can become a universal law of nature. Now, for Kant the duty to work towards perpetual peace is the ultimate requirement of morals. In the *Perpetual Peace* essay, Kant realizes the existence of this problem and tension between self-love and moral principles for organizing the state and establishing

a republican constitution. This is a problem because individuals' "self-seeking inclinations" would deter them from fulfilling and "adhering to a constitution of so sublime a nature." He, nevertheless, rejects the idea that this can only be possible within "a state of *angels*" (1795, 8: 366; p. 112). The natural mechanisms, according to Kant, will orient these self-seeking inclinations towards a common purpose of establishing peace that rational human beings strive to achieve. For this reason, Kant believes that the problem of establishing a republican constitution "can be solved even by a nation of devils," as long as they are rational beings (Ibid). Note that Kant believes that rationality is a condition for organising a good state, i.e., when reason becomes practical self-seeking inclinations will be directed by it and forms a good constitution. This passage about 'a nation of devils' is significant in supporting the argument that Kant grounds the 'guarantee' of perpetual peace not in nature and its teleological order; rather, in the rational will of agents. For Kant, the problem of a good organization of the state comes to the fore when there is a tension and conflict of interests between individuals, a phenomenon not alien to the nature of human beings, whose private intentions are in conflict with the universal laws. Thus, Kant states that,

In order to organise a group of rational beings who together require universal laws for their survival, but of whom each separate individual is secretly inclined to exempt himself from them, the constitution must be so designed that, although the citizens are opposed to one another in their private attitudes, these opposing views may inhibit one another in such a way that the public conduct of the citizens will be the same as if they did not have such evil attitudes (1795, 8: 366; p. 112-3).

Thus, in order to solve the problem between self-seeking inclinations and practical reason in the context of the republican constitution, which is the best form that preserves the rights of individuals, Kant does not resort to moral education, i.e., to teach human beings to be moral or to improve them morally. Kant, on the contrary, believes that these conflicting inclinations and hostile attitudes present in human beings have to be submitted to coercive laws. Hence, a good citizen who obeys the law and preserves the status of peace is the one who has rationally submitted to the law and is not necessarily a *morally* good citizen.⁵

It is argued above that nature, understood in its *secular* notion, is not inconsistent with our duty to pursue peace and that individuals' self-seeking inclinations will be channelled by practical reason and subject to the laws. Now, when Kant talks about organizing a state and bringing states and individuals into a condition of perpetual peace by enforcing a law, he does have in mind all three levels of law or right: *political*, *international* and *cosmopolitan* right. The natural teleology argument that Kant uses here is the presence of certain natural and cultural phenomena that help human beings to form constitutions. Thus, when people use reason to subject their selfish inclinations and propensity towards war to the laws and realize that by creating a good constitution, they can overcome their discords. It is not people's moral attitudes that produce a good political constitution, Kant argues, "on the

contrary, it is only through the latter [i.e., through a good political constitution] that the people can be expected to attain a good level of moral culture” (1795, 8: 366-7; p. 113). Kant does not defend or promote amoral politics. Rather, he argues for political morality which is that a good state and institution should give rise to a good moral condition in which people can act according to the universal moral law.⁶

On the *international* level, which is concerned with the organization of relations between states, the natural mechanisms are at play through the *differences of language and religion*. Kant believes that the international right and the relation between states require separate independent but neighbouring states. He rejects the idea of a world government or state. He rather confirms the establishment of a league of free states.⁷ For, Kant believes that the amalgamation of states under one superior power would lead to dominion by one universal power and to despotism. To prevent this despotism to occur, nature, Kant reiterates, wills that people are separate and she prevents them from mixing by means of their *linguistic* and *religious* differences (1795, 8: 367; 113-4). This concept of right in the form of natural differences form a base of justification for the Second Definitive Article of perpetual peace that, *The right of nations shall be based on a federation of free states* (See, Kant 1795, 8: 354; p. 102).

Then Kant speaks of the *spirit of commerce*, which is the characteristic feature of the *cosmopolitan* right. This spirit is a motive, though not a moral motive, for states to have a peaceful relation and it is counter to the propensity towards war. It, Kant states, “sooner or later takes hold of every people, and it cannot exist side by side with war” (Ibid, 8: 368; p. 114). Notice that this spirit does exist among states, which creates peaceful relations between them. It does not, however, constitute the content of the cosmopolitan right. For, the content of this right is expressed in the Third Definitive Article that: *Cosmopolitan right shall be limited to conditions of universal hospitality*. (Kant, 1795, 8: 358; p. 105) It is therefore clear that Kant’s hypothesis that nature guarantees perpetual peace consists in the idea that the natural purposiveness function so as to make it *possible* for people to will and work towards perpetual peace. The mechanisms of nature are the necessary tools which help human beings to make use of, and it is our duty to construct the form of political constitution, which is not the role of nature, that is in accord with the universal moral laws. But, how Kant resolves this conflict between the political and moral in a form of government where political agents, sometimes, endeavour not to abide by the moral laws, or selectively follow them? This is the core problem that occupies Kant’s thought about the idea of perpetual peace, and it is to this problem I shall now turn.

2. Institutional Peace against Moralizing Politics

In the first appendix to *Perpetual Peace*, Kant addresses directly the question and problem of the opposition between morals and politics, and only in the second appendix he establishes a harmony between them. In the first appendix, Kant clearly states that ought implies can. He argues that,

Morals, as a collection of absolutely binding laws by which our actions *ought* to be governed, belongs essentially, in an objective sense, to the practical sphere. And if we have once acknowledged the authority of this concept of duty, it is patently absurd to say that we *cannot* act as the moral laws require. For if this were the case, the concept of duty would automatically be dropped from morals (*ultra posse nemo obligatur*).⁸ (1795, 8: 370; p. 116)

Thus, if we take the formula that ought always implies can, then there can be no conflict between politics, as a *practical* “branch of right,” and morals, as a *theoretical* “branch of right,” that is, between “theory and practice.” The conflict can arise only when morals is understood in utilitarian terms, i.e., when it is understood as a “general doctrine of expediency.” This means that morals is taken as a “theory of the maxims by which one might select the most useful means of furthering one’s own advantage - and this would be tantamount to denying that morality exists” (Ibid). Although Kant views morals always as a limiting condition to politics, directing it according to the theory of right, he accepts reluctantly, to a certain extent, a utilitarian approach to politics. He argues thus, “it is true, alas, that the saying ‘*Honesty is the best policy*,’ embodies a theory which is frequently contradicted by practice. Yet the equally theoretical proposition ‘*Honesty is better than any policy*’ infinitely transcends all objections, and it is indeed an indispensable condition of any policy whatsoever”⁹ (Ibid).

Now, the problem that Kant conceives of in organizing the state is that the practical man, the politician or legislator, will often deviate from the theoretical doctrine of right under the pretext that “man will never *want* to do what is necessary in order to attain the goal of eternal peace” (1795, 8: 371; p. 117). Kant identifies two types of people, each of whom acts differently with regard to the opposition between morals and politics, and with the concept of right. One is the *moral politician*, who chooses political principles that are consistent with those of morals. The other is the *political moralist*, who makes morals a subaltern doctrine to politics and designs it according to his own advantage as a statesman (Kant 1795, 8: 372; p. 118). The principle of the political moralist is not based on the concept of right. Rather, what she does is to treat politics as separate from morals and the concept of duty. Her principle, which is based on the separation of public right, i.e., *publicity* from the realm of politics, would mean to treat “the problems of political, international and cosmopolitan right as mere *technical tasks*” (1795, 8: 377; p. 122). The moral politician, however, treats them as *moral tasks* in order to achieve perpetual peace. The latter’s principle, according to Kant, must be the foundation for any constitution deemed to be truly republican, because with this principle individuals and states’ relations can be regulated. Kant believes that it is not possible to choose a pragmatic middle ground between the morally right and politics as a doctrine of expediency. He then concludes that politics must be subordinated to morals, that “all politics must bend the knee before right” (1795, 8: 380; p. 125). One can interpret Kant’s insistence on this union as the worry that if this union does not hold and breaks down, then great evil will follow.

The moral politician is, then, the free agent who uses reason to apply the mechanism of nature, recognizing the duty to work towards perpetual peace. Bernd Ludwig argues that the republican constitution will be promoted by the moral politician and she is the moral agent who will bring the opposition between morals and politics into a settlement (Ludwig 2006, 193). I think Ludwig misses the point and does not fully appreciate Kant's thrust on the disagreement between morals and politics. It is very important to note that it is not the moral politician who will eventually bring morals and politics into harmony. The moral politician is, nevertheless, the moral agent without whom this cannot be achieved. However, one has to realize that Kant's thought is institutional, in the sense that institutions, and not benevolent dictators or morally good statesmen, will eventually bring about perpetual peace. Based on this line of argument, the *Perpetual Peace* essay can be construed as rejecting the assumption that any moral theory can be applied strictly to politics and reality. Kant's insistence on the thesis that moral judgements should not be corrupted by power is his deep concern about political hypocrites who are incapable of moral judgements. If politicians cannot act morally and out of duty, then there need to be those who can make moral judgements without being corrupted by political power and who cannot be suspected of "disseminating *propaganda*" (1795, 8: 369; p. 115).

Conclusion

I have argued above that Kant's natural teleology argument for the guarantee of perpetual peace is that the purposive function of nature is causally related to the will of human agency. After all, it is the collective rational will of human agency that makes it a duty upon one another to achieve perpetual peace. Our duty to pursue peace, as moral agents, is not in contradiction with the course of nature, since Kant rejects the physico-theology view. I argued that this contradiction can only arise when political agents defeat their own purposes, i.e., stand against moral laws. However, Kant does not appeal to the moral improvement of political agents. In this sense, I argued that if applied ethics is understood as the idea of applying a strictly moral theory to politics specifically peace and justice, Kant's *Perpetual Peace* serves as a counter example to this idea. It is also interesting to notice the controversial thinking of the contemporary democratic peace theory and how it is optimistically built on Kant's perpetual peace. The assumption of this theory is that democracies are less prone to fight each other. However, Kant explicitly states that the reason that states do not wage war is not only because they have republican constitutions or democratic regimes, in the language of democratic peace theory.¹⁰ Rather, because states on the international scene are separated by other natural and cultural facts, such as economic interests and power. This point is demonstrated by the irrefutable fact that although modern democracies are less likely to wage war against each other, they have nevertheless waged numerous wars against other, supposedly non-democratic, and less powerful states.

Notes

- 1 A version of this paper was presented in the Fourth International Conference on Applied Ethics in November 2009, at Hokkaido University, Sapporo, Japan and at the Graduate/Faculty Seminar in Political Theory at the Centre for Ethics and Global Politics, LUISS University, Rome. I am grateful to the participants of both events for their helpful comments. I am particularly grateful to Howard Adelman, Tom Bailey, Gianfranco Pellegrino and Alex Cistelecan for their insightful comments and suggestions, as well as to Lea Ypi, Aakash Singh and Randall Curren for their helpful written comments.
- 2 **Kant's texts here are cited according to Kant's *Gesammelte Schriften***, edited by the Royal Prussian Academy (1900-), and all references are first to the volume number and page numbers in that edition, and then to Reiss, H. S. (ed.) *Kant's Political Writings*, in reference to *Perpetual Peace*.
- 3 **'Nature the contriver of things (i.e., of the world).'**
- 4 **For the relation between nature and morality in the *Critique of Judgement***, see Paul Guyer (2005), esp. pp. 314-343.
- 5 **I argue here that Kant in *Perpetual Peace* does not believe in moral education.** However, for an argument that Kant believed in moral progress, see Kleingeld (1999).
- 6 **See note 5.**
- 7 **Many scholars have argued that Kant's position on this issue is not clear and it is rather perplexed.** For a treatment of this point, see Kleingeld (2004); see also Habermas (2008) who argues that Kant's alternative between a world state and a league of states is incomplete. I think even though Kant affirms a cosmopolitan constitution, this however does not commit him to endorse a world state.
- 8 **'No one is obliged to do anything he is incapable of doing.'**
- 9 **Does Kant, here, affirm that ethics can be seen, sometimes, as a theory of good and not right?** This goes beyond the scope of this paper.
- 10 **The democratic peace theory has created a debate between its supporters and critics, and the literature on this is extensive.** For the articulation of the theory, see Doyle (1983), and for an overview of the debate, see Brown, Lynn-Jones and Miller (ed.) (1996).

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Chapter 15

Religious and Ethical Debate on Overzealous Therapy: the Polish Lesson

Sylvia Maria OLEJARZ

Introduction

The purpose of this paper is to elucidate religious and ethical reasons behind overzealous therapy in Poland. The light on this issue will be shed by Karol Wojtyła's philosophy of personalism as well as by the teaching of the Roman Catholic Church Wojtyła enclosed in his works-*Evangelium vitae* and other encyclicals.

The main aim of this work is not only to describe what the overzealous therapy is, but also to explain the roles that religious and ethical arguments play in the debate on this issue going on in Poland. Another important goal is to show what can be learned from Polish example. These endeavors are aimed at contributing to the increase of understanding of applied ethics. This contribution may be small but it is intended to stimulate further explorations.

Thus, the *objectum materiale* of this paper is the overzealous therapy problem. The *objectum formale* which means the aspect in which I would like to consider this issue is the scope of religious and ethical arguments posed by Polish scientists. In order to be consistent with the formal object I would like to apply an appropriate method. It is going to be an analytical one which can lead the reader in a clear and coherent way to the final goal - understanding the complexity of problem with the overzealous therapy in the context of Polish culture.

Firstly, I am going to present the crucial notion of the overzealous therapy in the context of creating the bioethical bill. Secondly, I am going to lead the reader through the main arguments – religious and ethical. This will be followed by the discussion of the survey conducted in Polish society. Then I am going to consider the conditions of the resignation from the overzealous therapy and dying with dignity. And finally, the reader will be given a conclusion based on previous approaches and answering the question: “what can we learn from Polish bioethical lesson?”

The gauntlet thrown, we cannot step back, no matter how much fear and uneasiness we feel. Let me start the exploration.

1. The General Outline of the Features of Polish Society in the Context of Controversies Around the Bill on Overzealous Therapy

Nowadays, an intense debate is conducted in Polish society about the details of a bioethical bill regulating the overzealous therapy. Apart from the political turmoil, which is eminently disruptive to the harmony of democratic dialogue, I am going to

analyze the cultural factors which by Polish authorities can be considered a keystone of the moral decision-making process.

Polish culture is deeply rooted in the Catholic tradition which throughout the centuries has been shaping the mentality and worldview of the country's inhabitants. This belief has permeated into the customs, social rules and laypeople's way of thinking. The Ten Commandments have always been recognized as the most important determinants of moral standards. Such a situation can be looked at from two different perspectives. On the one hand, a tendency to maintain one moral system for all citizens seems to be a perfect resolution. Everyone can have the same values and norms which makes it easier to keep this kind of society under control. On the other hand, an isolated mental environment carries the risk of blind praise for the one, righteous conception. Consequently, people susceptible to suggestion may be lead to imprudence or ceding their own will on religious authorities.

However, it should be noted that both the supremacy of the Roman Catholic Church and the process of constructing the model of monotheist nation may sometimes contribute to the arousal of many distortions and the phenomenon of reactance (Brehm, 1981) against the Decalogue norms and teachings of *Magisterium Ecclesiae*. Why does it happen?

The research on group processes implies that if people remain together as a monolithic [monotheistic as well] group for a long time, if they cannot escape the setting, and if they have to interact with each other according to rituals, norms of etiquette, status relationships and collective means of controlling, conflicts will evolve (Bales, 1970).

Inevitably such a conflict has arisen over the bill on overzealous therapy. Society, (which means authorities as well as laypeople) is basically divided into two parties. One insists on extrapolating to the debate the arguments based on Catholic justification of morality. The other refrains from such superstitious way of thinking and wants to eradicate this clerical justification from the rational discourse in a democratic and sovereign country which Poland tends to be.

Then, what is the kernel of the overzealous therapy problem? Let me acquaint you with the complexity of this interesting issue.

2. Can of Worms: An Explication of the Problem

Before starting to analyze the main problem, one should take a look on the realm of the language. It is said that borders of our thinking about the world might be established by the borders of our language (Wierzbicka, 1992). *Die Grenzen meiner Sprache bedeuten die Grenzen meiner Welt* (Wittgenstein, 1921, 14.). Then, we have to note that some English equivalents of the term related to the discussed issue (*aggressive medical treatment, therapeutic tyranny* or *futile therapy*) do not correspond adequately with the Polish phrase *uporczywa terapia*. The English expression "overzealous therapy" is more likely to reveal the *modus operandi* encompassed in the Polish one. This expression implies the struggle for keeping some *status quo* at any costs. And it should not be mixed with the phrase "futile therapy" (an oxymoronic expression coined in English speaking countries).

The working group of End-of-Life Ethics in Poland, consisting of medical professionals, theologians, lawyers and bioethicists, reached the consensus about the definition of this kind of therapy by introducing another expression – “persistent.”

“Persistent therapy is the application of medical procedures with the goal of supporting vital functions in a terminally ill person that results in prolonged dying and is associated with excessive suffering and/or with violation of patient’s dignity. Persistent therapy does not include basic nursing, control of pain and the other symptoms or feeding and fluid administration, as long as these actions are beneficial to the dying person” (Advances, 2008, 91).

This definition was controversial for some political camps. Unfortunately, bioethical issues are often the subject to political argument. Particularly, there are many problems with implementation of bioethical projects in Poland.

Coming back to the point, the core problem of overzealous therapy is something more than the degree of patient’s autonomy and doctor’s responsibility for their health and life. The kernel of this dilemma is a strong disagreement about the limitation of human life. Man purports to cherish the desire for an all-embracing control. Such destructive wish together with irresistible *hybris* (hubris, haughtiness) leads him into the trap of cul-de-sac where he cannot transcend his own feelings, sufferings and desires. This is the most harmful thing that can happen to the human being as it reduces him to the biological entity and infringes the meaning of human existence and moreover, the sense of dignity. We are afraid of suffering, losing control of our bodies and we are so scared of death. This is natural. But what is unnatural and shameful iniquity is the debilitating of the value of the infirm, who are suffering and whose life is fading, and considering it as a *Lebensunwertes Leben*. This might seriously threaten the equilibrium of human morality. Such an arraignment needs to be well justified and embedded in the religious and ethical context. If euthanasia is morally reprehensible, abandoning overzealous therapy can be considered as an acceptable act of death with dignity. Thus, there is nothing more pertinent than scrutinizing religious and ethical argumentation applied to the case of abandoning overzealous therapy in Poland. Let me show the analysis of the arguments.

3. Arguments Applied to the Case of Abandoning Overzealous Therapy in Poland

In the discussion on abandoning overzealous therapy we can distinguish two vivid arguments coming from the religious and ethical realms. They are expressed in the context of the national debate between experts in various scientific fields. As the main aim of the debate is to establish the bioethical bill on overzealous therapy, which will be a generally binding law, interlocutors have to take into consideration all of these arguments and must achieve as far-reaching consensus as possible.

It is important to note that although in Poland the state and the Church are

officially separated, the voice of Catholic representatives is authoritative and influential. A proof of this fact we can find in a specific trait of Polish legal system which tends not to stand in opposition to the natural law. Consequently, any bill which might contribute to proliferation of “the civilization of death” is rejected and condemned first from the pulpit and then from the parliament rostrum.

Let me explain widely religious argumentation and ethical (contr)argumentation.

3.1. Religious (and Anthropological) Basis for Argumentation of the Roman Catholic Church

Talking about Catholic argumentation we cannot omit religious conviction or rather separate it from the most important question: what is the understanding of the human being according to this faith? The most essential anthropological elements in the teaching of the Roman Catholic Church are the following statements:

1. Human life has an inherent, undeniable, primary, sacred, but not absolute value, from the conception till the natural death and that is why it ought not to be harmed or killed, regardless of its stage or condition.
2. Human life does not belong to us, this is a gift which ought to be respected and task, vocation, which ought to be fulfilled (without our will we were called to life on this world and inevitably our temporal existence tends toward the death, life is only deposited in our hands).
3. Human physical life, with which the course of human life in the world begins, certainly does not itself contain the whole of a person’s value, nor does it represent the supreme good of man who is called to eternal life. However, it does constitute in a certain way the “fundamental” value of life, precisely because upon this physical life all the other values of the person are based and developed (Declaration on Procured Abortion, 1974, 736-737).

Then, how can those statements refer to the case of abandoning overzealous therapy?

First of all, the Roman Catholic Church applies here an anthropological basis for argumentation. Who is the human being? Human being is the only one entity in the world which was created for his own. He consists of the body (*basar*), soul (*nefesh*) and the source of life’s spirit (*ruah*). Elder brothers in faith – Jews mention also the fourth human eminent component – the heart (*leb*).

In this understanding the entity consisted of *basar*, *nefesh*, *ruah* and *leb* constitutes the person. This person is the most important norm and morality gauge. It is very essential to recognize human being as an entirety consisting of those elements and irreducible to any of them. But often happens a reduction to only one element.

Having elicited this information let me proceed to the pinpoint presentation of a vision proposed by the greatest authority in the Roman Catholic Church, especially for Poles - Karol Wojtyła.

3.2. Karol Wojtyła (John Paul II) and the Concept of Personalistic View on the Person

Not only are Karol Wojtyła’s anthropology and ethics deeply rooted in the

message encompassed by Gospel, but also in the metaphysics, philosophy of St. Aquina and in phenomenological approaches.

It is entirely important to bring up the key notions: nature, person, natural law and personalistic norm, which are the leitmotives of Wojtyła's philosophy. Let me provide a short presentation of them.

What is nature? Wojtyła defines it in the metaphysical way as "the essence of a thing taken as the basis of all the actualization of the thing" (Wojtyła, *The human person...*, 1970). The acting actualizes the essence of a thing, which means that what is in the potentiality comes to the reality. In acting we can see the true nature of things. Then the Pope very strongly postulated that the person should be integrated with the nature of the human being.

But who is a man? Man is a free and rational agent (Wojtyła, *Thomistic...*, 1961), who is an individual substance of a rational nature (as Boethius stated before: *persona est rationalis naturae individua substantia*). And in this sense nature is integrated into the person (Wojtyła, *The human person...* 1970). Human being has to act in accordance with his nature. His intrinsic implications and tendencies inscribed in him can bring him to his own *teleos*. The person is some kind of *suppositum* which is the subject of existence and acting. All the time person is *in fieri*, he is becoming through his own acting and deeds; he can fulfill and transcend himself by acting in accordance with his own nature.

What is the natural law? It is the voice in which God calls man to participate in his own providence, since He desires to guide the world – not only the world of nature, but also the world of human beings through the man himself, through the man's reasonable and responsible care (John Paul II, *Veritatis...*, 1998, 67).

What is a personalistic norm? – "whenever a person is the object of your activity, remember that you may not treat that person only as a means to an end, as an instrument, but you must allow for the fact that he or she has or at least should have distinct personal ends too" (Wojtyła, *Love and ...*, 1960). The person and his dignity is the norm of every act and proceeding of a human.

In the context of those definitions let me elucidate Wojtyła's teaching about the dignity in the face of death.

First, we have to present his direct explanation again. He claims, that "the euthanasia in the strict sense is understood to be an action or omission which of itself and by intention causes death, with the purpose of eliminating all suffering." (John Paul II, *Evangelium...*, 1995, 65).

Next, he states the crucial words which are very well known and very often quoted in Polish society. For the clear and better understanding I will quote as follows:

Euthanasia must be distinguished from the decision to forego so-called "aggressive medical treatment"[...] procedures which no longer correspond to the real situation of the patient, either because they are by now disproportionate to any expected results or because they impose an excessive burden on the patient and his family. In such situations, when death is clearly imminent and inevitable, one can in conscience "refuse

forms of treatment that would only secure a precarious and burdensome prolongation of life, so long as the normal care due to the sick person in similar cases is not interrupted" (*Iura et Bona*, 1980, 551). Certainly there is a moral obligation to care for oneself and to allow oneself to be cared for, but this duty must take account of concrete circumstances. It needs to be determined whether the means of treatment available are objectively proportionate to the prospects for improvement. (John Paul II, *Evangelium...*, 1995, 65)

These words are based on moral, metaphysically grounded order, in which everything stands on the proper place: there is time to be born, time for experience happiness and sadness, health and suffering, and finally there is time for agony and death. This order seems to be so natural and proper. The problem begins when we do not want to accept that sequence and when we try to omit some of its elements. In such a case this hierarchy becomes disordered and the person starts to lose direction, also the moral one, towards distinguishing between what is good and what is bad. And then, to reduce his moral and cognitive dissonance, a person tries to move the boundaries between the good and bad. John Paul II could see this dangerous situation when pieces of legislation, created by the people, were far from the order inscribed in the natural law. Some of these laws were directed against the suffering and the weak. Arguments, based on the human right for having "high quality of life" or right to self-determination, used in such pieces of legislation are good in essence, but in the whole social context they lead to wrong conclusions and regress.

We have to underline that John Paul II very much appreciated the technological progress of science, also biotechnological, but he strongly insisted on not separating this progress from the personalistic concept of the man. The progress has to serve the human being, but cannot destroy neither the person's identity nor his relation with the community and with God. The progress in science has to go together with high moral quality of the person. New technologies create new challenges. Only a well prepared, highly moral person can raise the weight of challenges in technological science:

The enormous development of *biological and medical science*, united to an amazing power in technology, today provides possibilities on the very frontier of human life which imply new responsibilities. In fact, today humanity is in the position not only of "observing" but even "exercising a control over" human life (John Paul II, *Christifideles...*, 1988, 38).

And just next to those words John Paul II explicitly states the inherent right of each person to life:

The human being is entitled to right [to life], *in every phase of development*, from conception until natural death; and in *every condition*, whether healthy or sick, whole or handicapped, rich or poor (John Paul II, *Christifideles...*, 1988, 38).

In the light of Karol Wojtyła's teaching, let me scrutinize his statement on the issue of overzealous therapy. For better systematization of my analysis I will try to encompass main premises in points below:

1. An artificial prolonging of human agony (the process of dying, when death is

imminent) is derogatory to human dignity because it contributes to enormous torment and is burdensome to patients and their families.

2. Using disproportional treatment to fight the imminent death doesn't stay in accordance with the human nature. Such attitude is an example of denying human finiteness.
3. The person has the moral right to resign from the overzealous therapy in the face of imminent death and this is not euthanasia (this is not suicide).
4. The person has the right to die in a natural way, without implementation of aggressive medical apparatuses which might cause additional suffering, stress and fear.
5. Human being as a *persona rationalis naturae individua substantia* has the moral duty to accept his own finiteness and the imminence of death.
6. Each person has the right to live but it doesn't mean that when the agony comes he must try to keep on living at all costs (by implementation of therapy disproportional to state of agony).

These implications are not only some theoretical premises. In the face of his imminent death Karol Wojtyła proved his beliefs and faith and refused the implementation of an aggressive treatment. He asked about a possibility of being placed in his apartment as he didn't wish to die in the hospital. For Polish people, his attitude toward life and death was the most important example of dying with dignity, respect and peace, regardless unbearable suffering and weakness.

Let me provide a very short outline of ethical secular argumentation.

3.3. Ethical (Contr)argumentation of Secular Bioethicists in the Discussion with Catholic Bioethicists

Polish bioethicists who are not involved in the Catholic or at least personalistic reasoning of the moral norms tend to use "purely rational" argumentation in discussion with their adversaries. Their voice is very important, complementary and very necessary in bioethical debate in Poland

Very shortly I will list here the main arguments which are posed in the case of overzealous therapy:

1. Overzealous therapy should not be limited only to the case of imminent death; patients should have the right to withdraw "futile" treatment in every stage of their disease.
2. Constraining overzealous therapy only to the terminal stage of imminent death is a non-justified suggestion [from Catholic Church].
3. The code of medical ethics states that in the terminal stage a physician has no obligation to implement overzealous therapy, reanimation or the application of extraordinary means (article 32). In such a situation, when death is imminent, there are not too many possibilities to offer to such a patient.
4. If overzealous therapy is futile, unreasonable and unnecessary, then it is a malpractice, a medical mistake.
5. Autonomy of patients is the most important principle.
6. The right to refuse such a limited version of overzealous therapy stands in the opposition to the principle of human autonomy.

7. A refusal of overzealous treatment might reinforce the belief that this refusal is nothing different than euthanasia (Szewczyk, 2009, 24-25).

The language and the style of reasoning are the most important elements in bioethical debate. It cannot be purely ideological language. However, “rational”, utilitarian arguments might discourage patients. Some of the Polish bioethicists and politicians tend to use in their language expressions like “profit” and “loss” or “a balance between benefits and losses”. This kind of nomenclature is associated with calculation characteristic for economical language. Most of patients might think that the crucial issue is not the person, but the cruel question: “how much”? It is not the core matter of this article, but the questions associated with money on the ground of medical ethics are very essential and I have intention to explore this topic in my next paper.

Coming back to the point, in the bioethical debate all over the world we can observe the utilitarian-style calculation. Utilitarian ethicists try to “rank” human life from the highest “level of quality” to the lowest one. Understood in this way, human life would never have the equal value.

Utilitarian bioethicists are proud of providing arguments such as minimizing pain of human being or the self-determination and autonomy of patients. In the name of those principles they rather opt for the right to euthanasia. And the “construct”, which is called “a resignation from the overzealous therapy,” is rather a target of ironical attacks. If a human being as a self-determined entity has a right to decide about his death in the moment of unbearable pain of terminal disease, why not extend this principle on non-terminal cases of unbearable pain (Callahan, 1992, 54)?

Here lies the crucial difference between the utilitarian euthanasia and the Catholic concept of “a resignation from the overzealous therapy”. Patients have the right to have their pain relieved but it doesn’t mean “to be killed”. Euthanasia will remove the pain together with its “carrier” – the patient. Here we have to vividly note that the resignation from the overzealous therapy doesn’t refrain from providing painkillers, nutrition or hydration. The intention of euthanasia is to hasten the death in the name of removing the pain. The intention of the resignation from the overzealous therapy is to accept the imminent death and to die in accordance with one’s own beliefs. These statements are the cause of many disagreements and litigations.

To end this part of the analysis of the Polish bioethical discussion it has to be noticed that frequently a debate between the Catholic side and representatives of secular side (bioethicists, legislators, politicians) begins from the accusation that Catholic scholars want to put the confessional elements into the universal law of state and by doing so they try to “discriminate non-Catholics”. Such an accusation is unfair and should be eliminated from (bio)ethical discussions. At the moment we are again coming back to the problem of the possibility of constructing the “universal ethics”. Maybe we needn’t be back, maybe the concept of natural law is sufficient? However, for laypeople in their particular experience of suffering and dying the most important thing will always be their own hierarchies of values. The influence of various emotions and feelings will shape their decision on the matter of death.

Now let me show some survey conducted among laypeople in Poland.

4. Survey in Polish society

I would like to mention some current polls conducted by Centre for Public Opinion Research in Poland on the representative sample of 1096 adults. According to this research, 48% state that physicians should meet the expectation of the suffering, terminally ill patients by providing them with medicines for hastening death. 39% of the respondents have the opposite opinion and 13% cannot answer. In the case of terminal disease when it is impossible to relieve the patient's suffering 61% admit that the law should allow for a termination of patient's life by painless means at the request of the suffering patient and his family. And among the mentioned 61% no doubts in this issue have 26%. 31% have the opposite opinion and among them 17% are strongly against. 8% of the respondents have no opinion in this matter. The support for euthanasia understood as the hastening the death of the suffering has increased by 13 % points between 2005 and 2009. And the rate of euthanasia's opponents decreased by 6% points. It is important to notice that within 4 years the rate of respondents without any opinion on this issue decreased from 15% to 8% (Polish Press Agency, research conducted by Centre for Public Opinion Research in Poland, 1-6 X 2009).

How can we interpret this data? The Polish have started to have deeper interest in and awareness of bioethical issues - especially those concerning death and dying with dignity. The "quality" and "comfort" of painless dying have become more important than the matter of moral concerns on the problem of hastening death. Poles actually started to declare the will to do so. However, we have to remember that between the declared and the actual attitudes might always exist deep hiatus.

5. What can justify a resignation from the overzealous therapy?

I would like to mention the two conditions of the termination of treatment proposed by Dieter Birnbacher:

1. If further treatment is clearly detrimental to the patient, or the risks for his life and well-being strongly outbalance the chances to prolong life and to improve well-being,
2. If a competent patient refuses to be treated, or has made an advance directive to the same purpose (Birnbacher, 1999).

Those statements are very pragmatic and justified by a hopeless health condition and self-determinate will of the patient. But is there something that can balance the hopelessness and helplessness of the terminal situation?

Polish Working Group on End-of-Life Ethics proposed some conditions and principles that morally justify the resignation from the overzealous therapy. These conditions have different connotations than Birnbacher's statements:

1. Human life is treated as a value not conditioned by health, quality of life, patient's autonomy or his ability to think and express own will.
2. The difference between life worthy and unworthy of its continuation is arbitrary, since the dignity of human being is not conditioned by the

biological status of organism.

3. The only justification of resignation from overzealous therapy is providing the dying person with a natural death with dignity, and not providing savings in the health care system (Bołoz, 2009).

Those justifications, based on Catholic values, assume the concept of human dignity that John Paul II approved of. Although these values are rooted in Judeo-Christian tradition, I want to stress that the respect for human life and for the process of dying should be similar regardless of religion and culture. I know that scientists argue that the concept of “human dignity” which is derived from Jewish and Christian concepts of creation in the “image of God” cannot have normative validity in the secular world (Kurata, 2006, 38). I totally agree. The context is different, but how can we conduct common deliberations? I would also like to add that the concept of human dignity might be conditioned by various factors. If one bioethicist talks about human dignity in the Christian context and another one discusses it in the secular context, important is that both could keep similar respect for human life and never accuse each other that their arguments are implausible. Then we can reach the mutual understanding and maybe even far-reaching consensus. And this is the exact aim of bioethical disputes, no matter whether within Poland or all over the world.

Conclusion

My main aspiration was the struggle to answer one crucial question: “How and what can others learn from the Polish bioethical lesson?” In my conclusion I would like to offer the final suggestions on this matter.

1. The case of overzealous therapy in Poland revealed the deep moral crisis and disorientation. This uncertainty is used by various political groups for winning the seats in Parliament. Consequently, we have to learn from the Polish case not to involve bioethical issues in the business of any political party. Bioethical settlements cannot depend on politics! Such a situation inevitably leads to moral chaos.
2. In Polish society which in 95% consists of (declared) Roman Catholics people started to refrain from the values propagated by the Church. The current data shows that 61% of the respondents support euthanasia and this support for the concept mentioned has increased in comparison to previous data from 2005. Therefore we can deduce from this situation that sometimes very strict, orthodox norms might cause the phenomenon of withdrawal from the austere community. Of course we have to be very careful and consider other factors which might have influence on this phenomenon. Between declared and actual attitudes there might always exist a deep hiatus.
3. In Poland we can observe rapid changes in the chosen values - transcendental and religious are replaced with hedonistic and vital ones. Especially important have become: comfort, pleasure and the high quality of life. This shift in values' hierarchy brings a change in the concept of the person. The most important criteria seem to be self-sufficiency, independence and a

we could not see what the human dignity is and how to use this concept in applied ethics. And for sure, without such an experience we cannot conduct a debate with other interlocutors.

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Chapter 16

The Right of Initial Acquisition over the Priority Commonly owned Natural Resources: Some Considerations

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Population, as Malthus said, naturally tends to grow “geometrically”, or, as we would now say, exponentially. In a finite world this means that the per-capita share of the world’s goods must decrease. Is ours a finite world?¹

Although humanity owns the earth collectively, and although the high seas and Antarctica are treated as a Global Common, (Malanczuk, 1997) the remainder of the land is covered by states. While self-determination of peoples is enshrined in constitutive documents of global order, collective ownership is not.²

Introduction

In her book *Water Wars*, Vandana Shiva (Shiva, 2002) focuses on the increasing difficulties that individuals are facing all over the world to ensure themselves a share of that water that the “free market” has decided (and successfully managed) to privatise in such a way to cut out a large -and certainly bound to grow- share of the world’s population. The interesting analysis that Shiva does, considers the historical paths that document the cancellation of the equal rights, common property, of the conservation and the reasonable use of the hydro resources. Her examination takes into account the theoretical level as much as the practical one.

Starting from this work, I shall follow her steps in investigating what has brought us to live the dramatic current socio-environmental situation. Shiva mentions the right to appropriation affirmed by the Far West colons in the “creation process” of the United States of America (based on the *qui prior est in tempore, potior est in jure*), to next move to the analysis and critique of John Locke’s (Locke, 1963) theory of property as a connatural right to the human being. I shall briefly explain this approach to ownership, and use Robert Nozick’s *Anarchy, State and Utopia* (Nozick, 1974) more recent contribution to deepen the analysis of the controversial definition of property and the rights that the State should grant to its citizens. In this respect, I shall pay attention to an interesting aspect of Nozick’s theory of justice: it has to be historical. Considering Shiva’s critique of the current socio-environmental crisis as the result of yet another form of Western neo-colonialism, it will appear increasingly difficult to defend the morality behind

the political allowance for the privatisation of common resources. To complete the offensive on privatisation, I shall later consider Garrett Hardin's 'Tragedy of the Commons' (Hardin, 1998). Finally I will consider Mathias Risse's notion of Egalitarian [Common] Ownership and its influence in the moral evaluation and the shaping of the State.

Before going any further however, an aspect that deserves attention, but that will not be expanded in this occasion for lack of space, should be considered; Shiva concludes *Water Wars* with an important consideration in line with the critical evaluation of the Western-centred approach to property clearly stated throughout the book: privatisation of common resources such as water is completely inconsiderate of the non-Western cultural heritage and social duties. In fact, it should not be forgotten that, according to the Indian tradition for example, based on the myth of the descendance to the Ganges, each individual is responsible for the *kumbh*, the jar of holy water. Denying access to it, not only affects negatively the excluded ones in a material way, but it also damages these individuals at a spiritual level, as they cannot contribute any longer in preserving what is their moral duty to look after: water. In the next two sections I will consider two different positions that will attempt to defend property rights from Shiva's critique.

1. Property Rights as A Way of Legitimising the State

In § 27 of the *Second Treatise of Government* John Locke writes:

Whatsoever then (one) removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property [...] For this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough and as good left for others.³

The condition that Locke makes is that a person "may not rightly appropriate more than she can use before it spoils" as Clark Wolf puts it, (Wolf, 1995: pp.794) is a truly important aspect to take into consideration when analysing Locke's role in the shaping of the capitalist model into the savage consumerist one that has led us to the current critical environmental situation.

In his famous book *Anarchy, State and Utopia*, Robert Nozick proposes a theory of justice based on property rights. He utilises Locke's right of initial acquisition as the primary input to his theory, to then criticise its unsatisfactory vagueness. Nozick underlines the blurriness of Locke's approach to property in defining when one has "mixed his labour" with the thing, and when one can claim to have left "enough and as good" for others. The latter of these two definitions is the one that Nozick takes more into account, defining it as the "Lockean Proviso", (Nozick, 1974: pp.175-182) but, in my opinion, its strong interlink with the former must be considered more in depth in order to understand Nozick's view on the role of Authority (the State) in ensuring justice. Nozick's interpretation of the Proviso

requires that, as Peter Vallentyne puts it:

no one be worse off in overall wellbeing with the appropriation than he/she would if the appropriation were not to take place (i.e., if the object were to remain in common use). Given that common use is generally inefficient (e.g., because individuals do not have sufficient incentives to preserve the resource), this interpretation of the proviso sets a low baseline and makes it relatively easy for individuals to acquire full private property in unappropriated things.⁴

Nozick's real intention with the justification of the right of initial acquisition is to create a backbone for the central claim of his work. Starting from the assumption that in a state of Nature all individuals fully own themselves, Nozick wants to establish how a State can be legitimate even without the consent of its -expected to be- citizens. In doing so, he affirms that nothing but a night-watch State (being this a minimally interfering version of the State, as it limits itself to "only" protect against violence, fraud, theft and breach of contract) could be tolerated as legitimate without the consent of all those to be governed. There are some substantial presumptions in Nozick's approach that, in my opinion, are not questioned sufficiently, and I shall highlight them below. As pointed out by Vallentyne in his paper 'Robert Nozick, Anarchy, State and Utopia', (Vallentyne, 2006: pp.89) a particularity of Nozick's theory of justice that is often overlooked is that it is *historical*. The establishment of what is just to do in the present should always be based, at least partially, on what happened in the past. Past consent and wrongdoings are relevant variables to interpret in order to establish what is just to do in a certain given circumstance in the present.

Without entering too in depth this critique of Nozick's definition of historical justice, it should not be forgotten that, differently from end-state theories such as Rawls' theory of justice or utilitarianism, Nozick defends a process theory focused on ensuring justice through the lenses of entitlements: I am entitled to earn that much or own these properties as long as I do so within the legal framework accepted and applied by my community or society. Equally important to remember is that Nozick allows for some exceptions within his system. He does in other words acknowledge the need for a physiological readjustment of injustice through *a posteriori* understanding of exceptional situations where a particular reading of the specific situation should be applied. In some sense he expects that the individual should understand when the need of the other should be sufficiently great to move him or her to help the unfortunate but it is not quite clear to me where this input should come from. Possibly from a religious/theological dimension that he – like Locke before him- keeps separated from the political framework. A more accurate analysis of this aspect of Nozick's view would certainly be an interesting investigation to do, but for reason of space I will not be able to carry on any further in this occasion. What I am interested in focusing on at this stage however, is that, applying this "exceptionalness" of treatment to the property rights context, it would become quite easy -pushing the approach to the extreme for the sake of the

argument- to justify examples like the squatting of an apartment owned by a rich property owner by some homeless person. In this case, the focus would be centred on the past injustice that saw an initial discrepancy of opportunity between the two social groups that could now be compensated somehow by accepting the squatting as a valid form of compensation. Surely the example is open to many critiques but it was only used to underline some possible adaptation of what can be considered to be worth of exceptionalness and thus, I will not focus on them any further here.

I am aware that this way of adapting Nozick's own definition of historical justice is inaccurate if read strictly in line with his view, but if we move the focus to establishing the best possible way of making this valuable concept central and consistent in a theory of [environmental] justice, then perhaps such a misrepresentation of the original idea will eventually become a useful re-adaptation of the initial input given by Nozick. In the example above in fact, the argument would defend that (based on the example of the well used by Nozick) that I should allow the use of the house as long as I can prove that the person in need was not in a position to acquire the apartment previously and no other accommodation are available. However, even this version could be interpreted in drastically different levels of strictness. For example, being particularly demanding of human beings, in a classical capitalist system where the "social elevator" is expected -or even praised- to be an integral part of the motivational process that each individual should have, the most obvious result would be *not* to allow the homeless person in at all. The resulting question of this chain of thoughts would be: why should I care if someone within the same system that grants equal opportunities to everybody did not succeed in getting their share? According to Nozick, and more in general to the libertarian tradition, I should not.

Certainly this way of intending the historical justification of entitlements rises many controversial questions: what if I am rich within the [currently] legitimate economical system but I acquired my funds and properties through the exploitation of a morally condemnable situation (for example the acquisition of properties from outlawed Jews by collaborators of the Nazi-Fascists regimes in Europe during WWII or the exploitation and approval of slavery as a way of increasing one's income)? Would such an example not push us towards considering that the historical evaluation of facts is indeed a good approach to justice but it cannot, as Nozick argues, be so strictly contingent on the history of one single individual? And finally: would this mean that a priorly poor person winning the lottery should have the obligation to help the next poor? According to an extreme reading of Nozick, the answer should be negative, but at the same time, as we mentioned above, in some sense an inclination towards helping an "exceptionally" difficult situation should always be there. This unstable way of dealing with ethical dilemmas would lead us back to re-evaluate the term historical in this context.

One suggestion could defend the need for a historical readjustment to a "multi-generational level": after all, as earlier underlined by Shiva when stressing the importance of considering the historical paths of injustice, the huge economical discrepancy between rich and poor countries, as well as between more or less wealthy individuals, has undeniably not been created in a lifetime, but rather through

the additions and subtractions of more than one generation. As a result, the State must be more directly involved and it must adopt a broader view that takes into account multiple historical injustices that are bound to be missed if we approach the problem of justice from an individualistic prospective as Nozick suggests us to do.

This controversial and interesting consideration related to what should be the role of the State in ensuring the best way -be it mono or multi-generational- to track down the path of a historical injustice will be analysed more in depth when taking into account Risse's work, but it is clear already that Nozick's and Risse's starting positions do not differ significantly: they both want to find a way of legitimising the State as they share the initial scepticism that such an entity is in fact beneficial for the individual subscribing to it. In addition they have a similar approach to the role that history should play in the evaluation process of what is just to do in a certain given context. Their paths diverge in the way of implementing these values: while Risse will ask from the State an active role in ensuring certain boundaries not to be trespassed, Nozick is tempted -in a fairly standard libertarian fashion- to reduce the role of the State to a minimal interaction with the individual. In the next section I shall focus on an even more extreme advocate of such an approach: Garrett Hardin.

2. The Tragedy of the Commons

We live in an era of ecological crisis, on top of an economical one. This parallel should perhaps not be a surprise, as in the past decades many arguments have been raised in favour of a deeper reanalysis that has brought us to live the current state of affairs. The problematic situation related to the limits of a proper ecological revolution on the exploitation of natural resources has been analysed by Garrett Hardin in his 'The Tragedy of the Commons' (Hardin, 1998) where he underlines the danger of accepting a vicious circle of damaging actions against the environment in the name of the liberal market. (Wolf, 1995: pp.800) The human tendency to bend the rules to one's own advantage, Hardin argues, would provoke a loss of natural resources in the long term if non-protective measures (ensured instead by the introduction of separatory private fences) would not be to refrain people from using nature "too much". The specific example used by Hardin takes into account a situation where, within a group of rational herdsmen sharing a common pasture field, every one of them will be tempted to add one more cattle in the field in order to take more personal advantage from the commonly owned field. This, Hardin argues, is the tragedy: they are bound to seek unlimited profit within a limited world.

However, this uncompromising truth about the human nature and our interaction with Nature is, in my opinion, far from convincing for a number of points which I shall highlight below. The first critique that I would move against Hardin's approach is its acceptance of suffering (of the others, of course) as part of life, against which we cannot do much and in fact we should not even try. In line with his view, Hardin re-affirmed in 'Lifeboat Ethics: The Case Against Helping the Poor', (Hardin, 1974: pp.561) that it is to be accepted that the most vulnerable, the weaker, the poorer, should be left to die to allow us, the good, wealthy Westerners to progress and continue in our selective exploitation of the, in theory, commonly

shared Earth. In this respect, it is in my opinion peculiar to accept as reasonable -and even less so morally justified- to think that, while I am allowed to pollute the atmosphere in a way that will affect an indigenous person in the rainforest in Peru for example, the inversion of the roles could not be acceptable according to Hardin. The moral obligation to also “equally share” the positive aspects of the globalised world we currently live in -as for instance the possibility to alleviate poverty and overcome the scarcity of resources in certain regions of the planet- is non-existent for him. In fact, if a situation in which I could help the very same person should arise, I would be morally justified in not doing so for the sake of not “wasting” the available always-too-scarce resources in a pointless enterprise that will only slow down the progress of [the whole] humanity. I would not help her, so the argument goes, for the good of the community, but this attitude seems to me a weak way out to justify our inclination towards being selfish. On this point, I think it is somehow strange that Hardin is so negative in his reading of the human nature, but does not apply the same strict pessimism to his own theory. More generally, the paradox highlighted above shows the difficulties that one would encounter in trying to prove the morality of such an attitude towards our fellow men.

The second and third critiques of Hardin’s view take advantage of the work of a fierce opponent of the Tragedy of the Commons’ approach, namely Vandana Shiva, and, in a less direct way, Mathias Risse. The second unconvincing point is based on the Western-centred view of ownership of land and the priority of individualism over the community. This feature is common in the Western culture and it tends to be taken for granted in the process of “globalisation” of the world, but in truth it is not shared by all of the planet’s inhabitants. Quite the opposite. The lack of consideration of this important aspect highlights two additional sub-critiques: the implicit conviction that Western society’s values are superior to the others (in line with Hardin’s idea of preserving the best for the benefit of the whole world), and the focus on individualism as the best possible option among the ones produced by the Western culture (after all, Marxism could as well function as a emblem of the West’s leading role in the shape of world politics). I do not subscribe to either of these two assumptions. The third and last critique is based on the lack of scientific analysis of how and why the Tragedy of the Commons takes place. Also in this case, the critique is subdivided into two further points. First, as rightly pointed out by Shiva, (Shiva, 2005) the Tragedy of the Commons started *because* of the privatisation of the common land, and the subsequent overexploitation of the land by the rich owners that cared only about the increase of their profit and not at all about the environmental impact that such excessive use of the soil could have had on the region or country.

This is indeed the same attitude that many multinationals have nowadays when polluting for the sake of profit. Their “moral” justification lays on the claim that their duty is only towards their shareholders and not towards their stakeholders. This seems to me a rather poor excuse for not feeling guilty of unethical behaviour. The second point follows on from the first and considers the role of the State (the supposed entity capable to defend *all* its citizens’ rights in an equal way, at least in the Western democratic countries) in allowing injustices and disparities to keep

increasing. In this respect, it will be interesting to take into account Risse's analysis of the State. Despite starting off from a relatively similar approach as mentioned above, in his work Risse gives a description of the State very much in contrast with Nozick's: the State is the entity that works against the majority of people, unless it is capable of following some a priori -in Risse's eyes non-negotiable- conditions, which clash with the moving principles of exploitation dear to the various examples of multinationals that seem to have reached a power beyond the State itself and that I shall consider more specifically next.

3. The State

In order to make no mistakes as to the real meaning of international law, we must always remember that it must not run counter to the nature of the State. No State can reasonably be asked to adopt a course which would lead it to destroy itself.⁵

As seen above with Nozick, and as it will be shown later when focusing on Risse, State legitimacy is a controversial issue. Before proceeding in underlining how the latter philosopher differs from the former, some important aspects of contemporary society should be considered. As pointed out by Paul Angermeier in his article on conservation biology 'The Natural Imperative for Biological Conservation', (Angermeier, 2000: pp.376) governments are better than anarchy to choose a policy in favour of ecosystems preservation. Nonetheless, it is a fact that up until now, governments have kept on damaging ecosystems all over the world causing many conservation ethicists and environmentalists to wonder if that is indeed the case.

From unsuccessful privatisation to exploitation of the territory, unwise decisions by politicians of "developed" countries can be questioned from an economical point of view as well as a moral one. Examples such as the case of the summer of 1995 (Bakker, 2000: pp.4-27) in England and Wales with the government intervening directly in making exceptional decision over the previously privatized waters (1989), have shown the limits of the right to private property in the face of pressing public issues. The peculiarity that this example took place in UK, one of the leading powers of the world in political as well as economical terms, shows that Shiva's battle for the respect of human rights is indeed global. Clearly in fact, even in an established global market that increasingly sees the private investor as an entity to be preserved, and many times encouraged especially in developing economies, we should still be capable to recognize the limitations of an indiscriminate commitment to the rules of the free market.

The foreign trade of a nation must not be estimated in the way in which individual merchants judge it, solely and only according to the theory of values (i.e. regarding merely the gain at any particular moment of some material advantage); the nation is bound to keep steadily in view all these conditions on which its present and future existence, prosperity, and power depend.⁶

According to certain views, (Shiva, 2005 and George, 2003) the concept of globalisation, even the term itself as we use it, is misleading and deceptive. Behind a very dogmatic interpretation (or perhaps misinterpretation) of Adam Smith's idea of market competitiveness, (Smith, 1974) different levels of power have refrained from any process of critical evaluation of their actions in absolute terms, and most importantly, in relation to the interest of the ones that make the very existence of the State possible: its citizens. On the contrary, the situation has developed in such a way that, under the flag of neoliberalism, the State feels entitled not to give any moral guidance, and even less so, ethical restrictions to multinational companies in order not to lose the economical advantages that the few at the top of the social pyramid receive in a "rising economy". This makes the State, paraphrasing Michael Likosky, (Likosky, 2003) an oligarchic probusinessmen entity that has continuously degenerated in the course of the last decades. The analysis that Likosky proposes sees the end of the Cold War as a negative turning point that made the whole globe available to the few lucky elected ones. Few are concerned with long-term environmental damage and unfair policies, because the motivational input is given by an individualistic behaviour that is not concerned with the neighbours, future generations or lower social classes. This self-imposed distorted approach to socio-environmental behaviour can be easily contrasted by giving the deserved relevance to John Rawls' assertion (Rawls, 1999) that we ought to consider future generations in the evaluation of an equation of just action or nonaction, as well as Amartya Sen's (Sen, 2006: pp.26) affirmation that the fact that certain rights are not achievable and would not be achievable under the current circumstances, does not make such rights disappear.

4. The Egalitarian Ownership Counterargument

In contrast with extreme interpreters of Locke's philosophy such as Hardin, in his paper 'Common Ownership of the Earth as a Non-Parochial Standpoint: A Contingent Derivation of Human Rights', Mathias Risse (Risse, 2007) defends an Egalitarian [Common] Ownership of natural resources shared by all human beings. In doing so, he underlines once again the existent difficulty in assessing when it is possible to affirm that something has a "human involvement" in it or not, when using a Lockean approach to property. After all:

States may themselves adopt vastly different systems of ownership, explicating what forms of control, benefits from ownership, transfers, or possibilities of exclusion owners may have, as well as different ideas about who can own what and how. Also, some states have insecure property rights, are unable to enforce what rights there are, or control access to their territory. And there may be indigenous people who reject notions of ownership altogether.⁷

Risse argues that the only solution that could be morally acceptable in order to justify a State (given that by default the State is a threat in itself for individual

ownership, and thus hardly tolerable), would be to have a system of States that should be bound to refrain from violating ownership rights. In the last part of his work, Risse seems to suggest that democracy, if a State would be *robustly* (Risse, 2007: pp.33) respecting its citizens' ownership rights -and all the expansions derived from that-, is bound to be the political form of government that the system would "naturally" select as the most appropriate way of ensuring justice as well as preserving a minimal ground of common ownership that would avoid environmental disasters. A possible critique would highlight that, after all, in the very same analysis produced by Risse, the current Global Network of States that we consider to be "good representatives" of democracy have been shown to be the result of structural injustice, and at the same time, incapable of dealing with environmental issues in a satisfactory manner. The failure of substantial results by these democratic authorities thus, could suggest that a "benevolent dictator" willing to defend the ownership rights of her/his citizens, as well as ensuring better environmental policies, could work just as fine, or perhaps even better, than a system that, until now, has not proven to be very effective in relation to issues concerning the environment as well as the defence of those minimal rights of which Risse speaks.

An answer to this critique though, comes from the historical analysis of the facts so crucial for an objective assessment of where we, as a global community, should be moving towards. Such a response would point out that the very same process of the pseudo-democratic entities considered rotten from the inside as the product of a historical process that wanted them to be functional to an unjust approach to politics. In this light the words attributed to Dag Hammarskjöld, the third UN secretary-general, are very significant:

The UN was not created to take humanity to heaven, but to save it from hell.⁸

Now, however, we have our eyes open, and we can choose to shape the market in accordance to democratic values as Risse and Shiva suggest in different ways, and not the other way around as it has been in the past. If humanity will have the strength to pursue this mission, Risse's "vision" does not seem that improbable anymore.

Conclusion

By taking in consideration Vandana Shiva's critique on the privatisation process that is gradually restricting access to water to a large number of people around the world, this paper has tried to underline the evolution of property rights in Western society and its impact at global level. To do so, John Locke's theory of initial acquisition has been considered, along with two recent interpreters of it: Robert Nozick and Garrett Hardin. In line with a classical libertarian approach -even if in different ways- both views suggested a State capable of being as external as possible from the life of the individuals living in it. Given the worsening of the socio-environmental condition at global level however, a critique towards such a way of intending the role of the State has been moved, using Mathias Risse suggestion that if a State can be legitimised at

all, that could only pass through the insurance that it is a just entity able to prevent the single individuals to take personal advantages that would result in commonly shared dramas. Even if possibly paternalistic in the beginning -due to the current disparity of knowledge and resources among fellow human beings-, such a version of the State could ultimately help humanity in reaching true democracy, the only antidote to present and future crisis.

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Notes

- 1 Hardin, 1998: pp.305.
- 2 Risse, 2007: pp.25.
- 3 Locke, 1963: pp.329.
- 4 Vallentyne, 2006: pp.92.
- 5 Von Treitschke, 1916: pp.595.
- 6 List, 1885: pp.144.
- 7 Risse, 2007: pp.18.
- 8 Hammerskjöld, 2007: pp.22.

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