MEDICINA NEI SECOLI ARTE E SCIENZA, 13/1 (2001) 199-209
Journal of History of Medicine

Articoli/*Articles*

MORAL NORMS AND HERMENEUTICS IN CLINICAL BIOETHICS

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SUMMARY

Clinical bioethics applies moral norms to clinical situations, but this kind of application is not of an impersonal, deductive kind. In the stories of illness the suffering voices of the patients have to be heard and interpreted, to discover the real meaning of their resort to medicine. In a hermeneutical perspective, moral norms have a symbolic nature, because they command a good personal attitude toward the other persons and they prohibit an hostile intention of exploitation, domination, abuse.

The case of PVS (permanent vegetative state)

To ascertain what is the epistemological status of clinical bioethics and in which way moral norms are applied to concrete situations, we would like to start from a widely debated *dilemma*, the *dilemma* of patients in a persistent (and for the sake of our reasoning we suppose, more precisely, permanent) vegetative state, people who have lost their capacities to disclose human distinctive intellectual and relational properties[1]. They live in a kind of sleep without dreams and even if you assume (as we do) that they are still persons and must be treated as such, you have to question what sort of care they do deserve.

Our thesis is that is not possible, on *strict medical ground*, to establish the futility of artificial nutrition and hydration (ANH), because ANH are usually perfectly appropriate to sustain life for years, are neither highly invasive nor sophisticated and do not impose psychological burden (the patients are unconscious).

Key words: Clinical bioethics - Futility - Persistent vegetative state - Moral norms - Hermeneutics

However, prolonging life is not the absolute aim of medicine[2]. Furthermore, the application of the notion of terminality is not easy to apply to this clinical situation. The disease leads to death in some weeks if you stop ANH, but could you define terminal a condition that may be frozen for decades just feeding the dying person?

The central point thus becomes evaluating whether it is worthy merely prolonging an unconscious life and we tend to conclude that a complete assessment of the situation should also include a nonconsequentialist evaluation based on *the meaning of human action*. This will allow to establish the proportionality of the treatment on properly moral grounds.

More generally speaking, we maintain that understanding the meaning of an action in the context of interpersonal relationship is not equal to weighing benefits and burdens through an utilitarian calculation; rather it is a matter of interpreting the role of this action in the context of a whole practice. Now PVS is a new, unique and complex situation and it is not surprising that it is the object of *different interpretations*. Some equate PVS patients to cadavers, others to people in a painless torture, an invisible prison, an exile (from which it is not even possible to send the only relevant message: please let me go). Others recognize this tragic inhumane condition as the extreme figure of weakness and dependence of our limited human condition, where the inherent dignity of every person does not and must not (from a social point of view) depend on the level of his intellectual performances.

Whatever is your opinion and interpretation of this clinical situations, it is clearly difficult to try to solve the related ethical problems, by simply *deducing behavioural rules*, in an algebraical way, from general moral norms like *do not kill, defend human life, feed other people, do not discriminate against the sick, the poor, the unproductive*. For istance, to have an attitudine of unqualified committment to the sacred valued of human life implies to express such a committment in actions that simbolically testify to that proximity and that translate our concern for the patient (as for a brother of us) in ways as significant as possibile for his individual history. But then you

still have the duty to find out which are these significant ways. As you see, the radical question relates to the status of *ethical moral norms*.

The theological debate on moral norms

The philosophical and theological debate on the statute of moral norms has shown in the last decades some of the limits of that type of *deontological approach* which claimed to deduce syllogistically from a general precept a casuistic evaluation so analytical and rigorous as to be able to outline with absolute certainty the threshold between licit and illicit, based only on the material configuration of the gesture and not considering the interpretation of its significance[3].

Such a syllogism was articulated according to a framework of the following type[4]. What man is (metaphysical starting-point) is observed and what he should be is deduced from this observation, concluding that a determined duty can never be transgressed. In a similar but not identical perspective, faith in God (theological starting-point) makes you recognize the goodness of the divine order addressed to the moral agent and norms are drawn from it by a deduction which does not allow for exceptions. By the limits of this paper we will not reconstruct here the critical reflection on this type of schema and we will limit ourselves to a classic exemplification relative to the limits of the negative norm which prohibits killing.

If the order *do not kill* (understood materially and not symbolically) continues to be valued (as certain deontologists claim with certainty) also in situations where it is recognized as licit to take the unjust aggressor's life, one must realise that its meaning is anything but obvious and does not coincide with what the common sense would literally intend. What is the non obvious meaning of the veto against killing?

A first hypothesis is that *do not kill* is actually equivalent to *do not kill the innocent*, with which however there is the problem of meaning (objective? subjective?) of the notion of *nocens* (not innocent) and of the criterion with which to balance the level of the defence compared to that of the attack (saving how many lives justifies killing the aggressor?).

A second hypothesis is that *do not kill* is equivalent to *do not kill, unless killing is the only way of saving a greater number of human lives*. This is an assertion which connotes the original precept of a conditioned valency and of an evident utilitarian tone, so that the difficulty is raised of justifying the deduction of a norm which should be absolute (do not kill the innocent) through the specification of another wider one (do not kill) which would only be relative.

A third hypothesis is that *killing* the aggressor is not, in some cases, exactly equivalent to killing but to saving a life by killing: in such a circumstance the action of killing would be included in the description of a wider positive act (of saving), which would comprise among its partially undesired aspects that of eliminating a life. It is intuitive however that in this way many forbidden acts (forbidden if described in isolation and externally) could be reabsorbed (through an opportune redescription of the act of which this is part) into a licit act which includes and justifies them. At this point what significance would it have to speak once again of an absoluteness of the prohibition?

In a recent case of Siamese twins, the two sisters were dying because the one and common heart was not sufficient to keep them alive. An italian Catholic surgeon refused to intervene affirming that it is never possibile to sacrifice an innocent life. Not even to save another newborn. Only God gives and takes life. We have replied that the surgical operation is intended to rebuild the cardiovascular system of the stronger sister, whose heart has sustained for a time the weaker sister, who has been profiting by the greater vitality of the other. Unfortunately this rebuilding implies an unintended and unavoidable consequence, the immediate death of a child. It is neither a sacrifice nor an exploitation, because we treat both newborns with the same love and care, though we choose a different course of actions for each of them, because they live different clinical and prognostical conditions. It is not a question of God, but of (a malicious biological) nature and of a congenital disease. God wants medicine to defend life and to save as many patients as possibile, and in this case two lives are giving up if none operates. What happens in an Intensive Care Unit when the only existing artificial ventilator (forgive the unreal abstraction of the example) is not enough anymore to sustain the two previously ventilated patients? Would anyone interrupt the ventilation of both, just to avoid a so-called discrimination?

As you see we have adopted a different description of the same medical action.

What has been said for the order *do not kill* is also valid for almost every other negative moral norm which is presumed always valid and without exceptions.

Thus it is not true that it is never licit (from a Roman Catholic moral point of view) to use contraception and even to practise sterilization. It is legitimate to resort to sterilization if there is no other way of preventing a procreation which is the fruit of sexual activity which is unavoidably inhuman and lacking in unitive meaning. So the veto can be reformulated thus: it is not licit to sterilize someone in order to render infertile the use of his genital sexuality, unless that use is not desired and not morally due (the case of the prevision of rape is most known and discussed), since it does not constitute a moral problem to deprive of procreative meaning an action already deprived of every unitive significance[5].

In the opinion of some contemporary theologians (and in our opinion) there is only one way to save the absolute character of the norm and at the same time its capacity to constructively apply to concrete situations: thus it must be recognized that *the* (substantive[6]) *moral norm commands without exception if understood symbolically*, as a prescription concerning first of all the human attitude towards another person. If however the norm is understood in a materialistic sense[7] this must admit the exceptions raised by particular cases which are always more complex than the conduct externally described by the general precepts. The moral norm is therefore valid without exception if understood as a prescription of a practical personal attitude, an attitude which cannot be represented or ordered other than through acts ordered or forbidden determinedly.

Understood thus, such a norm appears to be irreducible, as however ethical theses of the teleological type would want, to the precept of maximizing the so-called premoral goods (life, health, pleasures...). The actual difficulties of consequentialist ethics, all centred on the evaluation of the consequences of an action, are shown particularly in the description of the *expressive actions*, wanted and carried out not primarily for the acqui-

sition or production of results, but as the externalization of a personal disposition, that is as the manifestation of a desire (for example the desire which enlivens the sexual relationship) which the moral agent has recognized as deserving of approval (and to which lovers promise fidelity)[8].

Clinical Bioethics and Hermeneutics

Ethics seeks a rational justification of moral evaluations. However to show the reasons why something is done or decided is right, does not signify - as we have said - deducing the evaluation from a general maxim with an objective and impersonal procedure, such as for which the subject can estrange himself from the context, forget his own feelings and behave as a rational decider engaged precisely in connecting a norm (which he recognizes once and for all) to a problem (which he describes from the exterior). In reality the more morally important the decision, the more integrally (and therefore the more emotionally) *involved the subject* feels, the more the subject is invited to discover whom he really is and what he really wishes to be, the more the subject finds in the situation appropriate elements for understanding the sense of the general norms (which until then had guided him spontaneously). The concrete content of the decision (the imperatives *do not kill, do not betray, do not envy* applied to particular people) thus becomes a symbol of the total idea of good life, which attracts the subject's desire and therefore forces him to check integrally his own moral disposition.

The interpretative work concerning the meaning of an action, work which practical reason must carry out in applying itself to the individual case, can be opportunely illuminated and exploited in philosophical terms, referring us to the kind of understanding required by the *hermeneutical method*. Having originated as a reading technique for religious and legal texts[9], hermeneutics has been used to advantage in a philosophical context as a paradigm of an understanding which requires a *fusion of horizons*[10] between the text and its interpreter, and which can only be accomplished if he who understands puts his suppositions into play, transposing himself into the world of the text, there recognizing a truth which concerns him and letting it act upon himself.

By analogy, concerning the moral act, the hermeneutical perspective maintains that a human action can be understood and judged only in as much as the observer (or the moral agent himself) perceives and gathers meanings and intentions, allowing himself to become involved in a participatory fashion (as not as detached spectator) in the world of values, which the act expresses[11]. If an action has a moral *meaning*, this can in fact only happen in a human *context*. The meaning of an act (and thus also the meaning of illness), as also the meaning of a word or statement in a literary text or the meaning of a graphic mark in a picture, can be named only considering the history in which it is inscribed and to whose configuration the act contributes, and only accepting to be called and questioned by the truth which such an act witnesses and proclaims, provoking us to take a position.

In other terms moral disapproval (or approval) of a particular action can be justified only if it includes the hermeneutics of the meaning of such an action and the consideration of the personal attitude of the agent. Obviously this leads to *avoiding every naturalistic fallacy*. In fact no text when considered materially (i.e. examined as a series of ink marks on a sheet of paper) has significance; in the same way, no biological explanation can provide understanding of the human sense of a gesture; to find a meaning and translate it into a linguistic product, the reader of a text and the interpreter of an action must put themselves on the intersubjective level on which human communication takes place[12].

> *We use to say that the meaning of a movie-frame cannot be understood if one cannot look at the entire sequence of the film. In the same way you cannot morally judge a single, isolated human action if you ignore the history and the context that enclose this action and give it its real meaning. The same medical enterprise of taking a kidney from a man and passing it to another may be part of a violent robbery or of an astonishing example of generosity.*

Regarding *clinical bioethics*, the hermeneutical perspective includes as fundamental task that of relating the particular action (on which it is intended to formulate a judgement) to the concrete subject who lives that specific circumstance. A subject with his own unique tastes, preferences, behavioural styles and

individual wishes. The personal world of the sufferer must therefore be taken into consideration, the meaning of his words and gestures must be discerned and one must reveal the real intention which links his actions, which often appear contradictory.

> *The patient seeks to* 'make sense' *of events and to do what is best; autonomy as lived out is not just the exercise of an arbitrary power of choice, but an attempt to choose well in the context of one's lifestory, with its own plot, aims and values. The health care provider*[13] *can play a crucial role in restoring autonomy by helping the ill person reconstruct meaning in the face of the threat posed by events*[14].

Moreover, the caregiver and the patient together are interpreters of the illness and joint authors of the illness narrative. In particular, the caregiver, listening with the third ear,

> *attends not only to what is said but also to what is unspoken and to what is unspeakable, all the while conversing with the patient to test the fit of the patient's experience with similar experiences*[15].

Often the clinical bioethicist meets sick people who confide their difficulties in discerning the best solution to the moral dilemma they are faced with: to continue treatment or not, to reveal a diagnostic truth or not, to resort to interrupting pregnancy or not. Likewise it is not an infrequent experience to receive requests from patients whose liberty and competence in decision-making appear, at least initially, to be disturbed by personal psychological conflict and family pressure, disorientated by tempting but illusory market publicity, distorted by omnipotent and triumphalist representations of medicine, representations which unfortunately cause the immaturity of the individual growth to collude with corporate or commercial interests. In such cases the subject seems to be guided by *an ambivalent intention* and thus finds himself, more or less consciously, facing the task of making the most suitable choice for his own life, taking into consideration and evaluating his feelings, fantasies, and worries, in which confusedly he feels the presence of his own fragmented identity.

> *Every psychotherapist knows that sterility can express a conflictual desire, an unwillingness to become a father or mother with which the conscience does not agree. Inability to have a child may cover incapacity to love a child. The unconscious has reasons that reason does not know [...]. For this reason when facing every request for induced fertility it would be better to delay the medical response of rushing into treatment and to leave space preliminarily in order to interpret the symptom. Freud defines somatic manifestations as* 'organ language', *precisely to indicate the communicative intentionality and the meaningfulness of the sense. Of course greater self-knowledge is not sufficient to solve the problem of sterility (although sometimes one unexpectedly unblocks incomprehensible obstacles), but helps nevertheless to face it better*[16].

In some clinical stories the *suffering voice* cannot be heard and has to be perceived, found and understood even by the patient, who is in search of a meaning:

> *[...] helping sick people to* 'find their voice'. *Once we concentrate on the voiced quality of conversation about moral matters, questions of interpretation necessarily arise. Such questions, raised in the context of illness, are fundamentally questions of meaning. The doctor is drawn into a dialogue with the patient and asked to help make livable sense of sickness or injury. This demanding moral work requires not only reasoning skills but reading skills as well. It requires imagination. Metaphor is the preferred language of imagination and one of the chief elements of moral life; it is the vehicle of empathy*[17].

Unfortunately the practice of applied ethics today deals mostly with abstract theories of action, balancing-procedures among general principles, detached views from nowhere places and impersonal techniques of justifications. A rationalistic attitude undervalues what actually moves people to act, i.e. motives and passions.

BIBLIOGRAPHY AND NOTES

1. This article is based on a research sponsored by F.A.R., University of Pavia and then of Insubria (Varese), financial years 1996 and foll., on the subjects: *L'assistenza sanitaria negli enti di diritto pubblico: nuove questioni etiche e deontologiche* and *I rapporti tra bioetica, psicoanalisi e psicoterapia*.
   Not to burden the text with the double reference he/she, his/her and so on, we shall use only the male pronouns, aware as we are of the risk of sexism.

2. We take these passages from CATTORINI P., REICHLIN M., *PVS: A Presumption to treat*. Theoretical Medicine 1997; 18: 263-281.
3. This article has been presented, in a first draft, at the International Meeting, organized by the Académie Internationale de Philosophie des Sciences, Académie Internationale des Sciences Religeuse, Centro di Studi per la Filosofia Contemporanea-CNR, Università Vita-Salute San Raffaele, *Interpretation and Sense of Illness*, 21-24 maggio 1998, with the title *Application or Interpretation? The Role of Clinical Bioethics between Abstract Principles and Concrete Situations* (the publication of the Proceedings is foreseen -for what we have been told- in *Analecta Husserliana*).
4. We don't take in consideration here deontological positions like those of Kant, Ross, Rawls, but particularly those appealing to divine revelation or natural law or metaphysical anthropology.
5. PERICO G., *Stupro, aborto e anticoncezionali*. La Civiltà Cattolica 1993; 3: 37-46; CICCONE L., *"Non uccidere". Questioni di morale della vita fisica*. Milano, Ares, 1984, pp. 348-350.
6. With the term *substantive* we translate the concept of *materiale* referred to the so-called *norme generali materiali di azione* (*sittliche Handlungsnorme* in the German language), that is ethical norms prescribing or forbidding concrete human actions (actions that may be described with sufficient precision) and expressed by synthetic (non-analytic) judgements.
7. That is separating such a norm from the intention which presides over such actions, from the context in which these actions are inscribed and therefore from the situational and personal meaning which the norm has. Included in its symbolic valency a commandment is always valid but it is not possible to deduce from it syllogistically judgements on concrete acts. ANGELINI G. (a Roman Catholic moral theologian) writes on these themes in *L'evidenza e la fede*. Milano, Glossa, 1988, p.436: *The "killing" in question in the commandment which prohibits it is certainly an act defined 'materially': but not defined 'materialistically', that is defined not considering intentional dispositions which preside over its accomplishment. When it is understood in such a'materialistic' sense, ineluctibly it would go against the problem of the thousand exceptions, which even a commandment so undoubtedly fundamental must recognize (legitimate defense, war, capital punishment, etc.). 'To kill' is the name of a practical intention of man, of a way of wanting relating to another man: and of a way of wanting which immediately appears bad*. The concrete act of killing therefore represents symbolically a moral attitude of hostility, contempt, wish to debase and annihilate the other; an attitude which is also conveyed in other acts (externally lighter): such as in insults, scornful expressions and affectations of superiority. See ANGELINI G., op. cit. p. 437.
8. LATTUADA A., *L'etica normativa. Problemi metodologici*. Milano Vita e Pensiero, 1985, p.19.
9. See FERRARIS M., *Storia dell'ermeneutica*. Milano, Bompiani, 1988. See also: *Encicl. del Novecento*. Roma, 1977, v. II, under the heading *Ermeneutica*, pp. 731-740, GADAMER H.G. places the meaning of *ermeneùein* in the oscillation between the translation and the practical indication, between communicating and requiring obedience.
10. The reference is to GADAMER H.G., *Verità e metodo*. Milano, Bompiani, 1983. In human sciences the single event does not simply serve to ratify a law which then, coming down again to the application domain, renders the anticipation possible. The ideal of *Geisteswissenschaften* however is to understand the phenomenon itself in its unique and historic concreteness, discovering how a particular individual or people has become what it is.

11. For the analogies between text and action see RICOEUR P., *Dal testo all'azione. Saggi di ermeneutica*. Milano, Jaca Book, 1989. A hermeneutical perspective in the sphere of generative ethics is that of by CATTORINI P., REICHLIN M., *Bioetica della generazione*. Torino, SEI, 1996.
12. *[...] the action can be treated as a text and the interpretation, through the motives, as a reading. Reconnecting an action to a composition of motives is like interpreting a text or part of a text depending on its context* writes RICOEUR P., *Sé come un altro*. Milano, Jaca Book, 1993, p.146. By the same author see *Dal testo all'azione. Saggi di ermeneutica*. Milano, Jaca Book, 1989, in particular the chapter: *Il modello del testo: l'azione sensata considerata come un testo*, pp. 177-198.
13. And - we add - the clinical bioethicist as articulator of the perspectives of case participants, as facilitator of dialogue between parties, as recaller of contexts often obscured, as Socratic interlocutor (in Leder's words, 1994, p.255).
14. LEDER D., 1994, p.248.
15. CARSON R.A., *Interpretation*. In: REICH W.T. (Ed.), *Enc. Bioethics*. New York, Simon & Schuster, 1995, p.1285: *Contrary to the impression created by the stainless-steel apparatus and vital-sign monitors of rescue medicine, what is required of the caregiver in patient encounters is less often swift judgement and deft action than a discerning reading of the situation at hand. What does the ailment in question mean? Is the suffering to be relieved or endured, and in what measure? What can one reasonably expect to be the result of this or that intervention? Are there fates worse than death? Answers to such questions must be thought through and talked about person by person, case by case. In this process of reflection and conversation, defensible courses of action evolve.* See p. 1287.
16. VEGETTI FINZI S., *Biotecnologie e nuovi scenari familiari. Una prospettiva psicoanalitica e femminista*. Bioetica 1994; 1: 60-82.
17. CARSON R.A., *Medical Ethics as a Reflective Practice*. In: CARSON R.A.- BURNS C.R. (Eds.), *Philosophy of Medicine and Bioethics*. Dordrecht, Kluwer Acad. Publ., 1997, pp. 181-191.

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