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Being a Physician and Being Ethical

by

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Being a physician is being ethical. There is no morally neutral definition of being a physician. We cannot simply describe what it means to be a physician without thereby describing attitudes and actions which are ethical at their very core: Being a physician is being an individual with the knowledge and skills, the attitudes and loyalties, required to prevent and cure diseases, and to alleviate pain and suffering. The moral praise worthiness of such activities is not generally in dispute.

But what if being a physician includes assisting in a suicide, or engaging in mercy killing, or both? Shall the dictionary then have to redefine "physician," "doctor of medicine?" "Medicine" now is defined as "the science and art dealing with the maintenance of health and the prevention, alleviation, or cure of disease."¹ Are some physicians, and some of the public, now asking physicians and the general public to understand that assisting in a suicide or mercy killing, if added to the practice of medicine, will perfect it? How perfect it? By going beyond the mitigation of suffering to its elimination. But if this is added to what it means to be a doctor of medicine, is being a physician still synonymous with being ethical? The struggle over the correct answer to that question is of deep concern to both physicians and ethicists, and, for that matter, all of humanity.

But the proper answer to that question will not come to those who conceive of the physician's task in the way it is depicted in *Webster's Ninth Collegiate Dictionary*, as cited above. According to Edmund Pellegrino, medicine "is not science, but an art, informed both by science and ethics."² Medicine applies the knowledge obtained from science and ethics to the "alleviation of suffering, or the cure, care, or prevention of human illness."³ The sociologist Eliot Friedson also regards medicine as applied knowledge but considers science to be the distinctive and sole source of its knowledge. And, though there has been some more general recognition in the past twenty years that ethics may contribute to medicine, Pellegrino's evocation of theology and theological ethics is insufficiently appreciated. And it is necessary to think theologically in order to understand and to practice medicine.

My contention is that what separates those who favor assisting in a suicide

and mercy killing from those who oppose such practices is a different theological perspective. I wish to examine the presence of these differing theological perspectives within two important court cases. It is important to realize that theological assumptions and formulations are being made in settings which are assumed to be free of theological and religious thinking, and that these theological assumptions and formulations can, and do, make all the difference in some cases. I wish, then, to contend as well, that being a physician and being ethical is, in part, informed and shaped by one's theology. This I will illustrate by exploring how theology frames our conceptions of 1) the nature and bases of human rights; and 2) the nature and bases of virtue. In the first instance, I will relate human rights to the questions around assisting in a suicide and mercy killing. In the second instance, I will focus on the virtue of love or charity.

A. Theological Perspectives on Human Rights

There are three major traditions represented within the majority and dissenting opinions of the Massachusetts Supreme Judicial Court in the Brophy case.⁴ These traditions are all alive and functioning. They are a source of some major conflicts over ethical issues in the United States and in many other nations. I refer to the following three traditions: 1) the tradition of calculated rights (Utilitarian and Libertarian); 2) the tradition of natural rights (Hobbesian and Lockean); and 3) the tradition of natural obligations (all major religions and many philosophies drawing on them).

1. The Tradition of Calculated Rights

This was the theological perspective of the majority opinion in the Brophy case as delivered by Judge Liacos. First, some facts about the case.

Paul Brophy, a firefighter in his mid-forties, was diagnosed as being in a semi-vegetative state from April of 1983 and at the time of the decision in September of 1986. All therapeutic medical interventions were being withheld and Brophy was breathing on his own. His care could best be described as aimed at "comfort only" and it was excellent. He was free of bed sores, for example. Food and water were being given through a G-tube and it was not creating any adverse side effects. Medical experts testified that Brophy was not imminently dying and that he could live for a number of years, perhaps more than twenty or so. The majority, five of nine justices, was convinced that a lower court correctly understood Brophy's comments to others earlier in his life as a wish on his part to be allowed to die under these circumstances. He had, for example, once said that he did not wish to live if he were to be in a situation like that of Karen Ann Quinlan.

The question, then, as Judge Liacos frames it, is whether there is a state interest to implement this wish, one that supersedes any other possible state interest to the contrary. Liacos asserts that state interest in carrying out Brophy's alleged wish by citing a right of self-determination which he regards as having deep roots in the history of the United States. To make his argument, he quotes John Stuart Mill:

[T]he only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a significant warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because in the opinion of others to do so would be wise or even right.⁵

Liacos feels compelled to offer additional reasons for depicting Brophy's wish, and the state's interest in carrying it out, as expressing a reasonable choice to die a natural death rather than to be the subject of life-sustaining care. He considers Brophy to be in a situation in which efforts to sustain life are in conflict with medicine's obligation to relieve suffering. In what sense, however, can Brophy be considered to be suffering? He argues that Brophy is in some kind of twilight zone in which "the body lives in some fashion but the brain (or a significant part of it) does not."⁶ On this very point, he cites another court case in which medical procedures used to sustain life in such circumstances are said to be "accurately described as a means of prolonging the dying process rather than a means of continuing life."⁷ And he also cites other sources that speak of such continuation of medical intervention as "protracted agony" and the choice to forego it as "a right to die with dignity."⁸ In short, Liacos is contending that individuals should be free to assert a right not to live under certain circumstances.

Within the majority opinion, as delivered by Liacos, no inalienable right to life, under the protection of the state, is asserted on behalf of Brophy. Rather, a right not to be interfered with is set forth, a private sphere in which the value of one's life may be calculated by the individual. Effectively, the state has no interest in protecting a life that is not desired. Justice Stevens of the U. S. Supreme Court is explicit about this in his dissenting opinion regarding the case which involved Nancy Cruzan: "A State that seeks to demonstrate its commitment to life may do so by aiding those who are actively struggling for life and health."⁹ Liacos sees no struggle for life in Brophy, and Stevens sees none in Cruzan. Nor do they regard such a struggle as something individuals in their circumstances would wish to carry on. And, so, a state need have no compelling interest in each individual life, for the right to life is not inalienable and it may understandably be wished away.

But why am I thinking of the views of Liacos and Stevens as theological? Religious faith is directed at an object of ultimate devotion and ultimate authority. What Liacos and Stevens are doing is investing in the individual selves the ultimate authority over whether they live or die. Liacos and Stevens might wish to counter this by claiming that the state has some authority too and it limits, in some circumstances, this authority of the individual. Even so, there are those whose theology would not grant the kind of authority to individuals granted them by Liacos and Stevens. Indeed, the other two traditions represented in the Brophy decision would not make the obligation to protect life contingent on whether or not individuals and states decide that they have such an obligation in one context or another.

2. The Tradition of Natural Rights

Of the seven judges in the Brophy decision, three wrote dissenting opinions. Justice Lynch dissented because, as he said, "My principal objection is that the

State's interest in the preservation of life has not been given appropriate weight."¹⁰ And, Lynch adds, "the majority nullify, if only in part, the law against suicide."¹¹ For Lynch, the State's interest in the preservation of life is an interest in preserving the particular patient's life and in preserving the sanctity of all human life. "Maintaining the sanctity of life," says Lynch, "may well be the reason society invests the State with sovereign authority."¹² Lynch mentions both Hobbes and Locke as sources for this view.

Strictly speaking, if Lynch were to state his case in purely Hobbesian terms, the reason for submitting to a sovereign is to preserve one's own life. This they do in their quest for pleasure and avoidance of pain. Left to themselves, without a sovereign power to curb them, individuals would live in a state of war, seeking things for themselves, and endangering their lives and those of others in their greed. Since, for Hobbes, the drive to preserve one's own life is a powerful and natural one for everyone, he argued that the right to life is natural, and it is a claim no rational individual would surrender to a sovereign. Indeed, the legitimacy of governments rests on their actual ability to protect human life. To commit suicide, from a Hobbesian perspective, is irrational and efforts should be made to prevent it. Lynch does explicitly see the State's interest in the prevention of suicide as that of "the prevention of irrational self-destruction."¹³ Not all refusal of treatment is to be regarded as an instance of such irrational self-destruction. But, in Brophy's case, what is being refused is not burdensome and invasive, and its refusal will be the reason he dies, and so there is reason to invoke the state's interest in preventing what can be seen as a suicide. For the sake of caution, Lynch would favor preserving Brophy's life, insofar as the provision of food and water is involved.

Lynch, however, is not expressing his opinion in a purely Hobbesian way. He speaks of a state interest in preserving the *sanctity* of all life. This puts one in mind of the Declaration of Independence in which the self-evident and inalienable right to life is bestowed on the individual by the Creator. How consistently Hobbesian Lynch is in his thinking is not something one can glean from what he says in his dissenting opinion. What is clear is that individuals have a definite right to life and to the State's protection of that right, including also protection against irrational destruction by individuals of their own lives. In Hobbes, the theological basis for this affirmation is a doctrine of human nature, one that depicts individuals as seeking their own preservation. No one can be expected to regard it as reasonable to ask or require anyone to relinquish the right to preserve one's own life. Indeed, it is not even possible to take away a right that belongs to individuals by their very nature, hence inalienable. In this tradition, rights, not obligations, are primary. But a third tradition was represented in that Brophy decision in which obligations are primary.

3. Rights based on Natural Obligations

Justice Nolan feels compelled, not only to dissent, but also to write a separate opinion. Though, like Lynch, he asserts a state interest in protecting Brophy's life and all of life; and though, like Lynch, he views removing food and water in this

case as the proximate cause of death, he wishes to delineate what he regards as the basis of U.S. laws:

I can think of nothing more degrading to the human person than the balance the court struck today in favor of death against life. It is but another triumph for the forces of secular humanism (modern paganism) which have now succeeded in imposing their anti-life principles at both ends of life's spectrum. Pro dolar.¹⁴

Nolan explicitly evokes a religious and theological difference between his perspective on life and that of the majority. He wishes to put that theological quarrel into the record.

As Nolan is aware, modern paganism thinks of itself as secular but that does not mask its affinity with its ancient expressions which were religious rivals of Christianity and Judaism. Before Greece embraced Christianity, Greek physicians did administer poisons. This was true despite the fact that the Hippocratic Oath, an ancient Greek document, prohibited giving poisons and doing abortions. That Oath did win out but it did so as Christians embraced it, and Christianity came to supplant ancient Greek and Roman religions and cultures.

Nolan's affinity for a certain Christian view is abundantly clear. He notes that the principle of double effect does not apply to Brophy's situation. Since the G-tube was in place, food and water were not at that point of a medical intervention. To deny Brophy food and water is therefore to intend death rather than comfort as such. Nolan does accept the withdrawal of all medical interventions for the sake of comfort but not for the sake of death, even if the decision to avoid all burdensome treatments may have the unintended effect of shortening life. But Brophy's death will be due to starvation, and in approving his death, Nolan contends that the court is approving euthanasia and suicide. And, says Nolan, "Suicide is direct self-destruction and is intrinsically evil. No set of circumstances can make it moral."¹⁵ Although Nolan does not speak of rights in his opinion, there is no doubt about his rejection of any "right" to commit suicide or to request euthanasia. Asserting such "rights" would be to ignore the moral obligation to avoid actions aimed at killing oneself or having oneself killed.

Nolan is exhibiting the Christian perspective, shared by the Jewish tradition, in which obligations, not rights, are the primary moral concepts. I wish to illustrate briefly the significance of this.

Whereas Hobbes and Locke depict human beings as striving to preserve their own lives, the Jewish and Christian traditions have a social concept of human striving. Indeed, one can identify natural moral obligations by asking what is logically and substantively requisite for the formation and sustenance of human communities. Among the requisites of community are the obligations to refrain from killing, ourselves and others, and to procreate and nurture our lives and those of others. Such nurture includes sustaining our parents in their old age, and thus honoring them.¹⁶ This obligation to bring others into being and to nurture their lives, a natural proclivity for human beings, is not recognized as such by Hobbes and Locke. In turn, Mill recognizes no natural obligation to refrain from

killing ourselves; the natural basis for deciding whether to continue our own lives rests on our quest to experience pleasure and avoid pain. From this perspective life itself can be reasonably viewed as too painful or devoid of pleasure to sustain.

What, then, are rights, given the Jewish and Christian acceptance of certain natural obligations? A right is the expectation that these natural obligations will be fulfilled and observed in human relations. I have a right to life because others are obligated to refrain from killing me and to nurture me. Individuals can claim as a right that such obligations be met and fulfilled. The state has as one of its fundamental purposes the enforcement of the obligations to refrain from killing and to nurture. We have laws not only against murder, for example, but also specifically against child neglect and abuse. Starving one's child would be a failure to nurture, which, even short of the child's death, would justify intervention. The right to nurture and the protection of one's health and life is actualized by the obligations regarded as naturally binding and requisite to the sustenance of our communal life as well as of the life of a helpless and dependent child. The right to life is not some attribute of the child or a claim it makes, but rather identifies what is owed that child by those who made and make its life possible, and who in turn owe their lives to the restraint against killing and nurture exhibited by others, individually and communally.

The professing Christian and Jew will likely see these natural obligations, on which the actualization of human rights depend, also as Divine commands, part of what it means to love God and neighbor. Nevertheless, these naturally occurring requisites of community are known by our cognitive faculties and they are binding on all human beings. If these Divine commandments were not also recognizable by our natural faculties, God's judgment of our lives would be grossly unfair, insofar as God would have created us without the ability to recognize what God as the ultimate judge of our actions expects of us.

We have briefly reviewed three differing theological traditions regarding the foundations of human rights. In the tradition of calculated rights, Mill can affirm the rationality of suicide and assisting in it, since it is a calculus of the individual's own happiness, or lack of it. And, it is our nature as humans to seek our own pleasure (happiness) and to avoid pain (unhappiness). Where only the individual's calculus will not harm others, interference in the freedom to make this calculus and act on it is an unjustified deprivation of individual freedom. In the Hobbesian and Lockean tradition of natural rights suicide is irrational and the effort to prevent it keeps the individual from an act that is not an expression of freedom, that is, of being in rational control of one's decisions. This is so because human beings naturally seek to preserve their own lives, not to destroy them. In the Jewish and Christian traditions, suicide and assisting in a suicide have been regarded as morally wrong. Refraining from killing ourselves and others and nurturing our own lives and those of others are an expression of our natural proclivities to form and sustain communities. To act in accord with what is requisite to forming and sustaining human relations and cooperative action is an expression of freedom; to act against these requisites of community is to act against our own natural proclivities and lose our freedom to realize our nature and destiny as human beings.

In this day and age, it is not possible to take for granted that those who profess to be Jewish or Christian will reflect the doctrine of human nature which has dominated the theology of these traditions; they will not necessarily find the foundations for human rights in these natural obligations which are an expression of our social nature, and render possible and actual our communal life and individual life itself. Of course, one could argue that if professing Christians and Jews affirm perspectives found in Hobbes or Mill, then these perspectives become part of Christian and Jewish traditions. Be that as it may, what I have tried to illustrate so far is that what we think theologically about the nature of being human does make a difference with respect to whether or not suicide and assisting in a suicide are ethically acceptable and hence whether or not the physician who assists in a suicide or engages in mercy killing can still be regarded as ethical.

B. Theological Perspectives on Virtue

To illustrate the significance of theology for what we regard as virtuous, I wish to focus on the virtue of charity. When I speak of charity, I am speaking of love, of compassion, that is, of an ingredient that all agree should be found active within the physician/patient relation.

Edmund Pellegrino, in the same article already cited, refers to "love" as "charity" and depicts it as a theological virtue.¹⁷ For Pellegrino this virtue has at least two important manifestations: 1) It limits the pursuit of self-interest, such as the pursuit of fees, fame, or the unwillingness to treat risky patients, whether legally risky or infectious, like AIDS patients; 2) It limits the "right to privacy" in certain ways so that, for example, physicians have no obligation to terminate a life, should not conceal a person's AIDS infection from a spouse, and should not assert their autonomy to do research to justify aborting a fetus for that purpose.

Pellegrino, at least in the article in question, appears to treat charity as a distinctly Christian virtue. I do not wish to take up that aspect of his essay here. Rather, I wish to argue that love as a limitation on self-interest and a right to privacy is a theological virtue, and as such is, in certain respects, a virtue required of all physicians and not Christians only.

1. Love as a Limit to Self-interest as an Ultimate Loyalty

There is a general consensus that physicians should serve the best interests or good of their patients. To do this requires, among other things, an impartial perspective. Suppose, however, that a physician's primary loyalty is to wealth, or fame, or safety. Any one of these, or all of them, may become a god or gods when the physician's own self interest is god, that is the ultimate object of veneration and loyalty. Even when wealth, or fame, or safety are not ultimate objects of devotion but yet devoutly sought, they literally constitute interests in a conflicting relationship with the good of the patient, especially when the patient is poor, or risky to take on.

Worship of one's self and making one's own good our primary desire

undermine an important assessment of what will attain what is good for the patient. The self is always at best a partial perspective from which to make judgments and decisions. So one way in which we try to achieve an impartial point of view is by limiting our estimate of our own worth and powers. Another way is to love others as we love ourselves.¹⁸ To do this is to draw more positively on the knowledge of what we consider good for ourselves and to seek that good for others.¹⁹ To do this is to love not only ourselves but also others with a love similar to the love we have for ourselves.

It is hard to imagine that physicians who love their patients as they love themselves would compromise care for a patient for the sake of cost containment. In the Good Samaritan story, told to illustrate what it means to love the neighbor as oneself, the Samaritan provides money to treat a person described as half dead, and promises to provide more, if more is needed. The Samaritan is not a gatekeeper but a gate opener.

2. Love as a Limit to a "Right to Privacy"

The Good Samaritan ideal involves love for God, as well as for one's neighbors. Love for God is, among other things, love for an ultimately impartial judge. The ideal standard of lovingly impartial judgments and practices is not found in ourselves, certainly not to a degree that precludes error and uncertainty. Love for God, a love in which the self is not the object of our highest devotion, is love for the ultimate source of our powers and capacities, includes our ability and willingness to love our neighbors as ourselves.

Love for God, when the self is not god, means also love for the natural obligations, the communal bonds, which tie us to one another as human beings. "My health" and "my body" are not seen as our own exclusive concerns, and what we do about our health and our bodies is seen as affecting others. There is no such a thing as harming only ourselves when we do what is hurtful and destructive of our health or of our bodies. How I live while dying affects others and our communities. Dying is no purely private domain or concern, even when it takes place in the relative privacy and intimacy of our own homes.

Love for God, when the self is not god, means also love for a community of worship and of moral instruction. It is in communities of faith and worship that inspiration and continued education in theology and virtue can be had. And it is in communities of faith and worship that we can express gratitude for the gifts we have, and for life itself, for we did not, and could not, endow ourselves, either with life or with the capacities we bring to it. Physicians will not be sufficiently prepared to serve the good of patients if their loyalties do not go beyond their loyalties to themselves and to their scientific and medical communities, to include loyalty to communities of worship and moral instruction.

Moses said all this well just after he was allowed to view the land promised to his people and shortly before his death. He said it in a speech to his people as he visualizes their entry into the land which is to be their place of worship. In this speech he urges them to love God and keep God's commandments, for to worship and serve other gods is the way of death: "Therefore," he says, "choose

life, that you and your descendants may live.”²⁰

In this essay, I have argued that what it means to be a physician is partly shaped and defined by a physician's theological perspective, implicitly or explicitly, as the case may be. And, what it means to be a compassionate physician is also partly shaped and defined by a physician's theological perspective. Thomas Sydenham, a famous seventeenth century (1624-1689) English physician, illustrates very well how a theological perspective can contribute to defining an impartial and compassionate perspective for physicians. I cite three of four things he wishes all doctors to take seriously:

First, that he must one day give an account to the Supreme Judge of all the lives entrusted to his care. Secondly, that all his skill, and knowledge and energy as they have been given him by God, so they should be exercised for His glory and the good of mankind, and not for mere gain or ambition . . . And, fourthly, that the doctor, being himself a mortal man, should be diligent and tender in relieving his suffering patients, inasmuch as he himself must one day be a like sufferer.²¹

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