

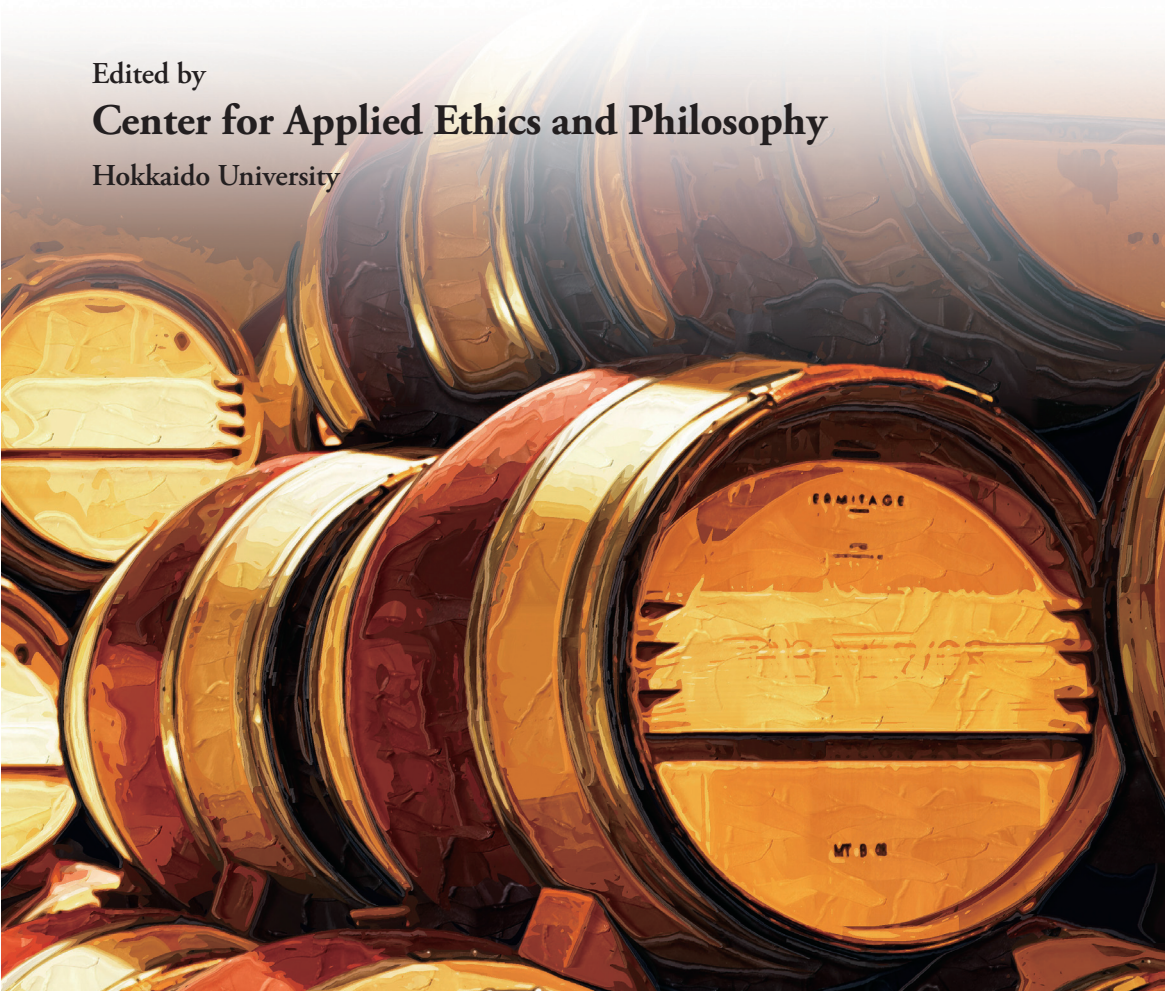
APPLIED ETHICS

Old Wine in New Bottles?

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Contents

Introduction	iii
Contributors	iv
Moral Disagreement, Moral Realism, and Vagueness-----	1
Thomas ADAJIAN	
Well-being, Desire, and the Problem of ‘Miswanting’: Rethinking the Philosophical Theories of Well-being and the Practice of Informed Consent in View of Psychological Studies -----	13
Makoto SUZUKI	
Moral Realism and Moral Disagreement: An Alternative Account-----	23
Laura SPECKER	
Responsible Research?-----	33
Carwyn Rhys HOOPER	
Human Enhancement and Human Nature -----	40
Takeshi SATO	
The Relationship between Neuro-Intervention of Memory and Moral Responsibility -----	53
Wanling CHOU	
Biocentrism and Synthetic Biology -----	62
Sune HOLM	
“Society in Science”: the DePGx Project and the Democratization of Health Policy Strategies through Public Deliberation -----	75
Claudio CORRADETTI, Gillian BARTLETT-ESQUILANT	
Moral Obligations of States -----	86
Anne SCHWENKENBECHER	
Honor in the Military and the Possible Implication for the Traditional Separation of Jus Ad Bellum and Jus In Bello-----	94
Jacob BLAIR	

Race-Based Welfare and Multiracialism -----	103
James GARRISON	
How to Evaluate Justice Using Nussbaum's Capabilities List? -----	113
Lydia de TIENDA PALOP	
Pragmatism, Participation and Powersliding: On the Reciprocal Relationship between Environmental Ethics Thinking and Practice -----	123
Leslie MABON	
An Oriental Perspective on the Ethical Issue of Physician-Assisted Suicide from Taiwanese Point of View -----	139
Su-Chen LEE	
Reaching and Engaging Employees through Business Ethics Training : A Study of Two Organizations to Enumerate Various Practices and Innovations in Business Ethics Training -----	148
Namrata JAJOO, Ranjeet KAKKAD, Rhishikesh DATAR	
Manga, Virtual Child Pornography, and Censorship in Japan -----	165
Chris MATHEWS	
A Study of Defensive Medicine in Japan -----	175
Sakura YAHATA	
Revision of Organ Transplantation Law in Japan: Brain Death, Presumed Consent, and Donation of Children's Organs -----	186
Keiko YASUOKA	
Parental Involvement and Children's Perception of Competence: From Gender Perspectives -----	199
Takayo SASAKI	

Introduction

This collection of essays is the final summation of the Fifth International Conference on Applied Ethics held at Hokkaido University on November 5-7, 2010. 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'.

May 2011

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Applied Ethics : Old Wine in New Bottles?

Moral Disagreement, Moral Realism, and Vagueness

Thomas ADAJIAN

Efforts to determine the moral status of Olympic gender testing must take into account the vagueness of both our concept of privacy and our gender concepts. The morality of voluntary euthanasia turns in part on the application of vague terms like “intolerable pain,” and on the degree of individual autonomy required. (O’Neill, 2010) Other end-of-life issues that have preoccupied medical ethicists are, arguably, affected by the vagueness of our concept – or concepts – of death. (Chiong 2005) The vagueness of the concept of a person, and of our concept of responsibility, both bear crucially on the moral status of abortion. (Meyers 2005, Kerchkhove and Waller 1997, Shafer-Landau 1995) The morality of laws concerning “reasonable force” turn on how that vague phrase is understood. Moreover, much moral deliberation, and popular discussion, concerns virtues and vices; and virtuousness and viciousness are clearly matters of degree. Finally, moral debates often mix, without clearly distinguishing, considerations along several dimensions – those bearing on individual good and those bearing on social goods, for example – each of which admits of degree. It would be easy, and gratuitous, to multiply examples. Does vagueness matter to applied ethics? There can be little doubt that it does.

Vagueness also bears, clearly, on the significance for meta-ethics of disagreement about controversial moral questions – or at least it does if those philosophers are correct who claim that vagueness plays a significant role in defusing the familiar argument that infers the non-existence of objective moral truths from the fact of moral disagreement (Shafer-Landau, 1995; Gert 2002; Wiggins 1990).

The present paper focuses on the dispute between those who offer vagueness-based defenses of moral realism against arguments from moral disagreement and those who reject such defenses. Vagueness-based defenses of moral realism, it is argued here, are undefeated by recent criticisms. So, inasmuch as questions about the existence of objective moral truths matter to philosophers concerned with controversial moral questions, and inasmuch as the goals of applied ethics would be furthered by a better understanding of the nature of moral disagreement, vagueness matters to applied ethics.

1. Moral Realism, Vagueness, and the Argument from Disagreement

1.1 Moral Realism

Moral realism is not a perfectly precise position, but something more like a cluster of views. Some theorists characterize it in terms of moral *truths*, some in terms of moral *properties*, some in terms of moral *facts*. Geoffrey Sayre-McCord says that the “common (and more or less defining) ground of moral realism” is the view that some moral claims are true. (Sayre-McCord, 2010) This presumably means, as Stephen

Schiffer remarks, that there are moral properties and that at least some of them are instantiated. (Schiffer 2002) Other writers add an objectivity condition: Russ Shafer-Landau, for example, takes moral realism to be the view that “what the moral facts are is determined independently of any stance or attitude taken by any actual or idealized individual towards the relevant states of affairs in the world.” (Shafer-Landau 1995, p. 84; cf. Brink 1984) Still others specify an irreducibility condition. Ralph Wedgwood, for example, claims that “non-reductive moral realism is the view that there are moral properties which cannot be reduced to natural properties.” (Wedgwood (1999), p. 199. Compare Enoch, 2009, p. 16, and Cuneo 2007) On all of these accounts, moral realism is a semantic/ontological thesis, not epistemic one. Moral realism is a thesis about the *existence* of *objective moral truths* (or *properties* or *facts*), not a claim about our knowledge of them, or a claim about how many objective moral properties/truths/facts there are.

1.2 Some Points about Vagueness

First, many theorists hold vagueness to be defined by the existence of borderline cases: a predicate is vague if and only if there are borderline cases of application, cases in which it is neither clear that the predicate applies, nor clear that it doesn't. (Sorensen 1988) Other writers identify vague terms as those that are tolerant: vague predicates are ones that demonstrate a certain tolerance to small changes. (Wright 1987) Still others define vague predicates as those regarding whose application there is no fact of the matter. (Sainsbury 1995) These are mentioned only to give the reader a feel for the phenomenon; for present purposes, these differences do not matter, and will be ignored.

Second, it is widely agreed that vagueness is ubiquitous. Almost every predicate outside mathematics is vague, and this includes moral ones. As John Rawls remarks, “[to] some extent all our concepts, and not only moral and political concepts, are vague and subject to hard cases; and this indeterminacy means that we must rely on judgment and interpretation ... within some range (not sharply specifiable) where reasonable persons differ.” (Rawls 2005, p. 56; cf. Keefe and Smith, 1997)

Third, most vague predicates are multi-dimensionally vague predicates of degree. That is: (a) they vary along more than one dimension; (b) along each dimension there are borderline cases; (c) there is no determinate way to weigh the dimensions. The distinction is originally due to Arthur Burks:

How much of a back does a chair need in order to be a chair rather than a stool? At what point does an item of furniture cease being a chair and become a chaise lounge? Various features are involved in being a chair, and a piece of furniture may be a borderline case because it lacks one or another of these... Since one cannot give these various features weighting factors (it would be arbitrary to say that having a back is one-third as important as having a certain length of seat, for instance), it is clearly impossible to arrange chairs and non-chairs in a non-linear sequence. (Burks (1946), p. 482)

Moral predicates, similarly, and uncontroversially, are vague multi-dimensional predicates of degree. The virtue of generosity, for example, varies along at least three dimensions, to oversimplify for the sake of illustration: frequency of giving, the amount given, and motivation for giving. (Shafer-Landau 1995) Along each dimension, there are borderline cases. And there is no determinate weighting of the three dimensions. At a more abstract level, moral permissibility is, arguably, multi-dimensionally vague. Arguably it involves both consequentialist and duty-based considerations. Each factor varies in degree and has borderline cases, and there is no single determinate way to weight them.

Fourth, because the writers who defend moral realism by appeal to vagueness hold that vagueness is a characteristic of properties as well as predicates – that it is ontological as well as linguistic – that assumption is adopted in what follows. Without pretending that that position is uncontroversial, the present paper moves back and forth loosely between talk of vague predicates and talk of vague properties.

1.3 The Argument from Moral Disagreement

A rough deductive version of the argument from moral disagreement goes like this: *All objectively real properties are such that there is agreement about whether or not they are instantiated. There is widespread disagreement about which moral properties are instantiated. So, moral properties aren't objectively real.* There is much to be said about the deductive version. But because many writers have suggested that the fact of moral disagreement is better explained by the non-existence of objective moral properties than by their existence (see, e.g., Mackie 1977), I concentrate on more modest and plausible abductive versions. Here is a workable one: *If moral properties are not objectively real, then the existence of widespread moral disagreement would be unsurprising. If moral properties are objectively real, widespread moral disagreement would be surprising. So, the existence of widespread moral disagreement supports the hypothesis that moral properties aren't objectively real over the hypothesis that moral properties are objectively real.* Schematically, the argument has this form:

1. If F-ness is not a real property, then lack of widespread agreement about whether individual candidates instantiate F-ness would be unsurprising.
2. If F-ness is a real property then lack of widespread agreement about whether individual candidates instantiate F-ness would be surprising.
3. So, the lack of widespread agreement about whether individual candidates instantiate F-ness or not supports the hypothesis that F-ness is not a real property over the hypothesis that F-ness is a real property.

But consider how the argument fares when a vague property is concerned:

- 1a. If baldness is not real, then the lack of widespread agreement about whether individuals are bald would be unsurprising.
- 2a. If baldness is real, then the lack of widespread disagreement about whether individuals are bald would be surprising.

- 3a. So, the lack of widespread agreement about whether individual people are bald or not supports the hypothesis that baldness isn't a real property over the hypothesis that it is a real property.

This argument fails. Lack of agreement about the application of vague terms is common and expected, not surprising. Since baldness is a vague property, the second premise is false. For the same reason, any version of the argument that involves vague properties fails. (Of course, it might be held that if a property has borderline cases, then it is not real. The difficulty with this is that it implies that there are almost no real properties – no chairs, games, deaths, persons, vehicles, color properties, and on and on.) Consequently, since there is good reason to think that moral properties are vague the force of the argument from disagreement against moral realism is blunted, for exactly the same reasons. (Defenders of the argument from disagreement could try to argue that, appearances notwithstanding, moral properties are, unlike almost all other properties, precise. It is hard to hold out much hope that this will succeed.)

2. Objections to Vagueness-Based Defenses of Moral Realism

The appeal to vagueness to defend moral realism has been objected to on a number of grounds. In what follows, these objections are stated and addressed. (Because many ethicists writing about these matters speak of vagueness and indeterminacy as if they were the same thing, that practice is adopted here.)

2.1 Indeterminacy, Morality, and the Goals of Moral Theory: Two Challenges

One philosopher claims that “it seems plausible that, whatever its underlying nature, morality has answers (difficult though they may be to discover)” to hard questions about morally controversial matters. (Loeb 1998, p. 290) The argument this hints at is driven by the claim that on any adequate meta-ethical view, hard questions about morally controversial matters have determinate answers. From this criterion of adequacy for meta-ethical views, it follows that moral realism is adequate only if hard questions about morally controversial matters have determinate answers. But if the moral properties are vague, then those hard questions lack determinate answers. So, the adequacy of moral realism is incompatible with the vagueness of moral properties.

The problem is that it's hard to see what independent motivation there is for holding that every adequate account of the nature of morality states that there are determinate answers to controversial moral questions. Consider a more general version of argument's crucial claim: *On any adequate account of X, hard questions about controversial X matters have determinate answers.* This entails that on any adequate account of baldness, hard questions about whether Smith is bald or not have determinate answers. That is simply false. It's also simply false, for example, that on any adequate account of biological classification, hard questions

about biological classification have determinate answers. As is well known, one prominent defender of moral realism, Richard Boyd, argues that scientific realism and moral realism both entail extensional indeterminacy, because moral goodness, like biological and other natural kinds, is a homeostatic property cluster. (Boyd, 1988) So, without special reason for thinking that moral theories must rule out indeterminacy, this worry may be set aside.

In a similar skeptical vein, it is claimed that an “account of morality that allowed for a great deal of indeterminacy” would be “disappointing,” on the grounds that “an important goal of moral philosophy is to find answers to moral controversies about which there is significant disagreement.” (Loeb, 1998, p. 289)

But this suggestion faces at least three problems. First, not every disappointing proposition is false. Second, while it’s one goal of *applied* ethics to find answers to moral controversies, it’s one goal of *meta-ethics* to determine whether or not there *are* answers to moral controversies. What is needed to give the objection force is either (a) a plausible argument to the effect that meta-ethical inquiries cannot yield results that require that the goals of normative ethics be re-evaluated, or (b) a plausible argument to the effect that meta-ethics is not part of ethics. Neither of these is likely to be forthcoming. Third, philosophical goals change. Consider the following parallel argument: *An important goal of epistemology is to explain how we can in principle validly deduce all the other propositions we know from self-certifying, absolutely certain foundational starting points. Hence, if there are no absolutely certain immediately justified beliefs from which we can validly deduce all the other propositions we know, an important goal of epistemology cannot be realized. That would be disappointing. Therefore, there are indubitable, immediately justified beliefs from which all the other propositions we know can be deduced.* If epistemologists should reject this argument, then ethicists should reject the parallel one just sketched.

2.2 Vagueness, Moral Realism, and the Number of Moral Truths

The aforementioned argument may turn on questions about how many moral truths there are. In this connection, David Enoch claims that appeals to vagueness cannot play a key role in defenses of moral realism:

if indeterminacy is to play a key role in the explanation of moral disagreement, it follows that most ... moral controversies – or the most important ones – must be indeterminate And given the scope of ... moral disagreement, this would leave very little – if anything – as determinate moral truths...[T]his is certainly not a victory for the realist. (Enoch (2009), 25n)¹

The argument here seems to be:

1 25n

1. Indeterminacy plays a key role in explaining moral disagreement only if most morally controversial questions don't have determinate answers.
2. Moral disagreement is widespread.
3. If moral disagreement is widespread, and most morally controversial questions don't have determinate answers, then there are few determinate moral truths.
4. If there are few determinate moral truths, then moral realism is false. (implicit)
5. So, indeterminacy plays a key role in explaining moral disagreement only if moral realism is false. (1-4)

This argument is valid. But the implicit premise, (4), without which the argument is invalid, is extremely questionable. The most important difference between moral realists and non-realists is that the former hold, while the latter deny, that there are moral truths – that moral properties are real and are instantiated. (Enoch's own version of moral realism, on which "there are irreducibly ethical or moral truths, truths that are perfectly objective and that are not reducible to... not-obviously-moral and not-obviously normative truths," doesn't mention the number of moral truths. See Enoch 2009, p. 16) Concerning the *number* of moral truths, moral realism says only that it is greater than zero. How *much* greater than zero is not at issue. This is a consequence of the standard definition of moral realism as a semantic/ontological rather than epistemic view. The only writer Enoch cites in this connection, Stephen Schiffer, offers a characterization of moral realism that is neutral as to the number of moral truths it requires. (See Schiffer 2002)

There are many strong parallels to the meta-ethical case elsewhere in philosophy. Consider the problem of universals in metaphysics. What distinguishes realism from nominalism is not whether universals are *numerous*, but *whether there are any of them at all*. As long as the number is greater than zero, how many universals a theory is committed to has no bearing on whether or not it is a species of realism. David Armstrong, the most influential realist about universals in the last thirty years, defends what he calls a "sparse theory of universals" (as opposed to "abundant" theories) that he calls *a posteriori* realism. (Armstrong 1980, 1997) No one objects, on the grounds that it isn't an abundant theory of universals, that Armstrong's view is not a version of realism. The situation is parallel in the philosophy of mind: Cartesian dualism is true if and only if the number of immaterial minds that exist is greater than zero. (A cognate point seems to hold for moral epistemology. Surely the main issue with regard to the latter is not *how much* moral knowledge we have, but whether or not we have any moral knowledge.)

Enoch's argument, consequently, needs the stronger premise than (4), namely, the premise *if there are no determinate moral truths, then moral realism is false*. But that in turn will require replacing premise (1), the claim that indeterminacy plays a key role in explaining moral disagreement only if most cases of moral disagreement lack determinate answers with the stronger claim that *indeterminacy plays a key role in explaining moral disagreement only if in no cases of moral disagreement are there determinate answers*. Even that will not suffice to make the

argument valid, however. Suppose that indeterminacy plays a key role in explaining moral disagreement only if in no cases of moral disagreement are there determinate answers. Still, as long as there is any moral agreement at all, there can still be determinate moral truths, and hence an explanatory role for indeterminacy. What is needed, therefore, is the stronger premise that moral disagreement is universal – that moral agreement *never* occurs.

Combining these new premises yields this:

- 1b. Indeterminacy plays a key role in explaining moral disagreement only if no cases of moral disagreement have determinate answers.
- 2b. Moral agreement never occurs.
- 3b. If moral disagreement never occurs, and no morally controversial questions have determinate answers, then there are no determinate moral truths.
4. If there are no determinate moral truths, then moral realism is false. (implicit)
5. So, indeterminacy plays a key role in explaining moral disagreement only if moral realism is untrue. (1b, 2b, 3b, 4)

The argument is also valid. But premise (2b), according to which moral agreement does not exist, is highly implausible. So the argument is unsound. Enoch's argument, then, either fails to engage moral realism or does so only on the extremely implausible assumption that moral agreement never occurs.

2.3 Appeals to Vagueness and Explanatory Power

Enoch offers another reason for suggesting that appeals to vagueness to explain moral disagreement are short on explanatory force. If, he points out, the question about the moral status of abortion has a determinate answer, then only one party to the debate has made a mistake. But if it is indeterminate whether abortions are morally permissible, then those who believe that abortions are permissible and those who believe them to be impermissible are both mistaken. Hence, appealing to indeterminacy means attributing a mistake to both parties, rather than only to one, which does not, he thinks, represent explanatory progress. (Enoch 2009)

Perhaps the idea is that, if two explanations of a disagreement are otherwise equally good, then the one that attributes an error to one party is preferable to one that attributes an error to both. But suppose that a certain sort of cognitive error or blindspot is known to be extremely common, and not known to be correlated with adherence to any particular (type of) view. Then, all else equal, an explanation that attributes that error to both parties will be preferable to an explanation that attributes the error to only one. That is the present situation. It's undeniable that most people have thinking clearly about matters with no determinate answers, or do not possess the concept of indeterminacy or vagueness at all. Moreover, it is a less serious mistake to hold that something morally permissible when it is in fact a borderline case than it is to hold that something is morally permissible when it is in fact morally impermissible. (It is a bigger mistake to judge that clearly bald man is hirsute, than judge that a man in the penumbral regions of baldness is hirsute.) If so, then the errors that the adherents of vagueness attribute to the disagreeing parties are in fact

less serious than the error that adherents of determinacy attribute. The charge of explanatory weakness does, then, not appear to stick.

(It might be objected that what does the work in the response to this objection is the irrationality of the disputants, not the vagueness of the moral properties.² But this objection is mistaken. First, the disputants' lack of a grasp of some facts *about vagueness* does a significant amount of the work. Second, it is misleading to call the failure to recognize indeterminacy "irrationality." Vagueness is, we know, a subtle, complex, and difficult-to-understand phenomenon. That people who don't think professionally about vagueness are not aware of the ubiquity of vagueness isn't surprising; many philosophers are not aware of it, or have not absorbed its significance for their theorizing. Consequently, it is unsurprising that many people don't recognize instances of borderline cases when they meet them. It is a virtue of the view defended here that it does not unrealistically attribute an unwonted degree of philosophical sophistication to the person in the street.)

2.4 Recognizing Vagueness

Some hold that, because we can *in principle* recognize indeterminacy, the persistence of disagreement about borderline cases is evidence that moral properties aren't real. (See Loeb 1998) Here is one such argument made explicit;

1. We can in principle recognize the existence of equally weighted or incommensurable moral values where they exist.
2. So, we can in principle recognize indeterminacy where it exists. (1)
3. If moral properties are objectively real and vague, and if we can in principle recognize indeterminacy where it exists, then there would be little disagreement about borderline cases.
4. There is a great deal of disagreement about borderline cases.
5. So, moral properties aren't both objectively real and vague. (2-4)

The argument is unsound. The inference from (1) to (2) is questionable, given the occurrence in both of the epistemic verb 'recognize'. Suppose that every case in which incommensurable moral values are in play is a case of indeterminacy. The fact (if it is one) that we can recognize the former doesn't imply that we can recognize the latter – any more than it follows from the fact that Lois Lane can recognize Clark Kent that she can recognize Superman. Moreover, (3) is far from clear. The in-principle ability to do something is consistent with the extremely infrequent exercise of that ability, as well as with its frequent exercise. The fact that people are *capable in principle* of recognizing indeterminacy where it exists doesn't predict that people *usually do* recognize it. We are capable *in principle* of doing many things that we usually, or even always, fail to do. Detecting indeterminacy where it exists, for many people, requires a significant amount of time and a significant amount of philosophical training. (Schiffer, 2002) Very few people have both. (Anyone who thinks that humans are good at recognizing indeterminacy should watch political

² This objection was raised by a member of the audience at the 2010 CAEP conference.

debate more closely. For a nice example, see http://news.bbc.co.uk/2/hi/uk_news/politics/8162969.stm, in which British politicians debate, at painful length, the vague QUESTION and unanswerable question “Do the British have enough helicopters in Afghanistan?” (Van Deemter, 2010)

Another variant of this argument draws on some experimental data about the famous Trolley cases. (Kohler 2010, Hauser et.al. 2007) The disagreement in question, which moral realism is held not to be able to explain, is the disagreement that afflicts experimental subjects presented with a pair of Trolley Cases. These experimental subjects, it is argued, were in ideal epistemic conditions: the non-moral features of the situation were clear; they were “sufficiently well-informed, clear-headed, and rational” to be able to fully grasp the non-moral facts and make rational judgments on their basis; and they were “as unbiased by ‘self-interest, self-deception, historical and cultural accident, hidden class bias’ and other such factors as possible.” (Kohler, 2010, p. 246) But they didn’t agree about the answers to the Trolley questions. Kohler consider and rejects the idea that the disagreement among the experimental subjects pondering the moral questions posed about Trolley Cases can be explained by the moral realist by appeal to the vagueness of the relevant moral properties, on the basis of a sort of appeal to authority: “no one considering [the Trolley Cases] thinks that the issue might be indeterminate or have no answer, especially not those working professionally on them.” (Kohler 2010, p. 248)

This argument reconstructed:

1. If objectively real moral properties exist, then, for every moral question which has a determinate answer, we can in principle discover it.
2. If we can answer every moral question which has a determinate answer, then if a moral question has no answer or an indeterminate answer, then we can in principle discover that fact.
3. So, if objectively real moral properties exist, then for every moral question that has a determinate answer we can in principle discover that answer, and for any moral question with no answer or an indeterminate answer, we can in principle discover that it has no answer or an indeterminate answer. (1, 2)
4. “No one considering [the Trolley Cases] thinks that the issue might be indeterminate or have no answer, especially not those working professionally on them.” (Kohler 2010, p. 248)
5. Whatever those who study the Trolley cases think about the answerability of the questions posed therein is true. (implicit)
6. So, the questions posed by the Trolley cases have determinate answers. (4, 5)
7. Every moral question either has a determinate answer or it has no or an indeterminate answer. (implicit)
8. So, it’s not the case that the questions posed in the Trolley cases have no or indeterminate answers.(6, 7)
9. If people in ideal epistemic conditions disagree on the answer to a question, then the question does not have an answer that we can in principle discover.
10. The experimental subjects, who were in ideal epistemic conditions, disagreed

about the answers to the Trolley questions.

11. So, the Trolley questions don't have answers we can in principle discover. (9, 10)
12. So, objectively real moral properties do not exist. (3, 8, 11)

This argument has serious weaknesses. First, of course, it's very doubtful that the experimental subjects were actually in "ideal epistemic circumstances." Hence it's unclear that their disagreement shows that we can't *in principle* discover that their questions have no or indeterminate answers. Second, of course, it is at best unclear that moral realism requires that we are in principle able to answer *all* moral questions that have answers.

Alternatively, construing Kohler's argument as an abduction, it resembles, in the end, abductive argument canvassed earlier:

1. If moral rightness is not a real property, then lack of widespread agreement among experimental subjects about the Trolley cases would be unsurprising.
2. If moral rightness is a real property then lack of widespread agreement among experimental subjects would be surprising.
3. So, the lack of widespread agreement about Trolley cases supports the hypothesis that moral rightness is not a real property over the hypothesis that moral rightness is a real property.

But, again, if moral rightness is a vague property, then lack of widespread agreement among experimental subjects would be unsurprising.

Conclusion

None of the objections discussed above provide good reason to doubt that the vagueness of moral terms can play a significant role in explaining moral disagreement. Those objections depend, variously, on dubious assumptions about the nature of morality, tendentious characterizations of moral realism, implausible assumptions about human recognitional capacities, and some defective inferences. Or so this paper has argued. Is this any help to applied ethics? Well, it is worth considering why moral disagreement matters. It does for at least two reasons. First, of course, we want to know the truth about moral matters, and we worry, rightly, if other apparently reasonable people disagree with us about moral questions. Second, moral disagreement can be a practical problem for the (non-philosophical) community in which it occurs, since it can make for unsupportable levels of conflict.

So suppose that, as has been maintained here, fewer moral questions have determinate answers than people usually suppose, because moral properties are vague. If so, then moral disagreement has a perfectly good explanation, and one that is consistent with the reasonableness of the disagreeing parties, and with our desire to know the truth about morality: the truth is that moral matters are often

indeterminate. We care about that, and we (philosophers and non-philosophers) are inclined to overlook the ubiquity of vagueness. Second, moral disagreement can helpfully be viewed in less individualistic and more communitarian terms than is usually done. Moral disagreement is ambivalence writ large. It is an expression of doubt in the community, where the community is itself considered as a knowing subject. And doubt is, in C. S. Peirce's famous phrase, an uneasy and dissatisfied state, from which we struggle to free ourselves. Now vague terms engender borderline cases, and the rational response to borderline cases is ambivalence, which is to say, disagreement. The vagueness of moral terms, and our frequent failure to recognize vagueness when it is in play, then, predict and explain the communal moral ambivalence we call disagreement. If a more secure grasp of this crucial fact about morality – that moral properties are vague – were to become widespread, that would go some way towards mitigating the bad practical, as well as theoretical, effects of moral disagreement. Vagueness, therefore, matters to applied ethics.

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Well-being, Desire, and the Problem of 'Miswanting': Rethinking the Philosophical Theories of Well-being and the Practice of Informed Consent in View of Psychological Studies

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1. Introduction

We tend to think that we would become (more) happy if we got what we want. This intuition makes the desire-satisfaction theory of well-being appealing: one's well-being or happiness consists in the realization of his or her (actual or informed) desires. In medicine and psychiatry, practitioners must acquire the patients' informed consent on their options partly because, supposedly, the options they prefer would make them better-off. Again, this assumption is closely related to the idea that you become (more) happy by getting what you want.

However, psychologist Daniel Gilbert and Timothy Wilson point out that we are so ignorant of what we like in the future that we often fail to want what we like (e.g. Gilbert and Wilson 2000). Due to this 'miswanting', Gilbert and Wilson argue, we often fail to become happy even if we get what we want. "...much unhappiness ...has less to do with not getting what we want, and more to do with not wanting what we like." (ibid, 179)

This paper examines the implications of the psychological studies they cite, over the desire-satisfaction theory of well-being and the practice of informed consent. Refining Gilbert and Wilson's conceptual distinction between wanting and liking, I will argue that we should re-construct the desire-satisfaction theory; your well-being consists not in the realization of what you want, but in the acquisition of what you will like. In medicine and psychiatry, practitioners need to recognize that what patients want is not always what they would like. They are recommended to assist patients to prefer what they would really like. This can perhaps be done by correcting the shortcomings of patients' imagination before their consent, or by leading patients to rely less on imagination, and more on the statistical data about how other people have felt after the procedure.

2. Our Way of Thinking about Happiness, and Theories of Well-being

We tend to think that we would become (more) happy or well-off if (and only if) we got what we want (in this paper, I take "happiness" (or "happy") to be synonymous with "well-being" (or "well-off")). This idea is behind one representative account of well-being: desire-satisfaction theory. Here an "account of well-being" means the theory that tries to state what well-being essentially consists in. In other words,

such an account attempts to define well-being by stating the necessary and sufficient condition of what makes anyone happy or well-off.¹

The desire-satisfaction theory of well-being holds, basically, that well-being consists in the realization of desires (e.g. Kagan 1998, 36). Note that the object of a desire can be the absence of something, for example, the state that I am not divorced by my wife. So, the obtaining or maintenance of this state will realize or satisfy such a desire. There are different versions of the desire-satisfaction theory. For example, some take desires in question to be actual and non-derivative (i.e. non-instrumental). Some take desires in question to be informed desires, that is, the desires that would survive or emerge if the subject accurately and clearly recognize relevant facts, such as the objects and origins of her desires. I will ignore this complication below except when it matters. The essence of desire-satisfaction theory is the view that “welfare consists in getting what one wants” (Heathwood 2010, 650; Heathwood calls desire-satisfaction theory “preferentism”).

The idea that you become happy by getting what you want is relevant to other accounts of well-being, too. It is usually taken to be an intuition that even the alternatives to desire-satisfaction account had better accommodate. Suppose an account states that having a child is an essential component of well-being. On this view, though apparently some person does not (and would never) want a child, the account takes the person to be better off if she had a child. It seems apt to criticize such an account by saying “If she does not want (and would never want) to have a child, why is it better for her life?” Further, think about what counts as reward and punishment. Suppose an account of well-being entails that there is something, say, having a math exercise, that someone does not want (or even want to avoid) but it is good for her. Then, this account will render giving her a math exercise a reward for her. In the same way, if an account of well-being entails that there is something, say, wild sexual intercourse, that someone wants but it is bad for him, then it will make giving him wild sexual intercourse a punishment for him. These results seem to be unacceptable (Heathwood 2010, 647). Thus, even the alternatives to desire-satisfaction account usually try to show that what they take to be the components of well-being are wanted by anyone (at least under normal circumstances).

The idea that you become (more) happy by getting what you want is also relevant to medical and psychiatric treatment and experiment. In medical and psychiatric treatment and experiment, practitioners are generally required to acquire the patients’ informed consent on their options. This is partly because it is assumed that the alternatives the patients themselves prefer (i.e. want more) would, at least in normal cases, make them better off. Again, this assumption is closely related to the idea that you become (more) happy by getting what you want.

1 In a short survey article, Heathwood 2010 nicely clarifies what a (philosophical) account of well-being is and is not, and explains major theoretical alternatives and their pros and cons.

3. Do We Really Become Happy by Getting What We Want?

Thus, the idea that you become (more) happy by getting what you want is philosophically and practically significant. However, do we really become happy by getting what we want? Psychologist Daniel Gilbert and Timothy Wilson, among other psychologists, point out that for several reasons, we are so misguided about what we like in the future that we often fail to want what we like (e.g. Gilbert and Wilson 2000. "Miswanting: Some Problems in the Forecasting of Future Affective States."). Due to this 'miswanting,' Gilbert and Wilson argue, we often fail to become happy even if we get what we want.

Although we tend to think of unhappiness as something that happens to us when we do not get what we want, much unhappiness...has less to do with not getting what we want, and more to do with not wanting what we like." (ibid, 179)

Why do people fail to want what they would like? People usually (though not always) use imagination to form their wants. That is, their wants are formed by imagining what it will like if something turns out to be the case. For example, suppose you are in a restaurant where you can choose among varieties of food. Usually you choose what you want (most). And your want is based on your imagination of what it will be like if you eat the food in question. However, imagination has three shortcomings as a means of predicting the future (Gilbert 2006) :

- (1) Tendency to fill in and leave out without informing the subject;
- (2) Tendency to project the present onto the future; and,
- (3) Tendency to overlook the effect of rationalization and habituation.

People's desire is formed through this unreliable imagination, so even if they get what they want, they often fail to like it.

Let us consider these three shortcomings of imagination in order.

(1) Tendency to Fill in and Leave Out Without Informing the Subject (Gilbert 2006, Part 3; Griffin et al. 1990).

Imagination makes up details that the information people have does not justify (Gilbert 2006, 91). For example, Gilbert tells us, imagine pasta for your dinner. Please do so. Now you do not imagine pasta in general. You imagine a specific type of pasta with details (e.g., with a specific quantity, color, smell, warmth, sauce, noodle, meat, fish or vegetable on the top, and so on). Your wanting is influenced by these details, which the real pasta available often lacks.

Imagination also leaves out relevant features. That is, it often fails to contain various relevant features. Imagination focuses on a few salient features. This "focalism" seems to be prevalent (Gilbert and Wilson 2005, 132). For example:

- There is no difference in self-reported well-being between students in California and Midwestern universities, despite large differences in satisfaction with their respective climates. However, rating the well-being of another student, students predicted large differences across regions not only in satisfaction with the climate but also in overall well-being. Seemingly the students focus on the climate factor and underestimate the extent to which other events will influence the inhabitants' well-being (Schkade and Kahneman 1998).
- Imagination focuses on the immediate result and either fails to depict the distant consequences or depicts them unclearly, making the near future more vivid and the feelings about it felt more strongly. For instance, when football fans are asked to think about how they will feel after their favorite team wins an important game, they tend to overestimate its positive impact on their happiness. This is partly because they focus on the game and neglect to think about how many other events will influence their thoughts and feelings (Wilson et al. 2000). For another example, people prefer \$20 in 365 days over \$19 in 364 days, but \$19 today over \$20 tomorrow (Loewenstein 1987). The only difference between these two pairs is distance from the time of choice: the first pair is farther in the future than the latter pair. Presumably, the immediacy of gain renders \$19 today imagined particularly clearly.

Thus, imagination often makes up details and leave out important features. The problem is that people usually fail to realize that their imagination makes up the details or omits the relevant features, and take the imagination to be a rather accurate representation of the real future. This prompts them to form wants on the basis of imagination without reflecting on what imagination makes up and leaves out. As a result, people often fail to become happy even if they have gotten what they had wanted.

(2) Tendency to Project the Present onto the Future (Gilbert 2006, Part 4)

People often fail to imagine how different they will be from what they are now, for example, in getting teenage tattoos, quitting a job for motherhood, and so on. One source of this phenomenon is that the imagination of how they will feel is affected by how they *now* feel: that is, their imagined future feelings and moods become unjustifiably similar to the current feelings and moods. For instance, the people who have eaten recently tend to underestimate the extent of their future appetites while those who are now hungry overestimate that extent (Read et al. 1998).

For another thing, what people like depends on the viewpoint from which to make comparison, and the viewpoint changes as time and environment change. However, imagination normally fails to take this viewpoint change into account, and uses the present viewpoint to depict how they will feel in the future. For example, the research on the “endowment effect” (Thaler 1980) has shown that people tend to become attached to objects they are endowed with. This is the case even when they would not have desired the object if they had not been endowed with it. Loewenstein and Adler (1995) informed some subjects that they would be endowed with an

object and asked them to predict the price at which they would sell the object back to the experimenter once they were endowed. These subjects were then endowed with the object and given the opportunity to sell it back to the experimenter. The subjects substantially underestimated their own post-endowment selling prices. This experiment suggests that people fail to imagine how much they would like the object to remain in their possession once it were given to them.

(3) Tendency to Overlook the Effect of Rationalization and Habituation (Gilbert 2006, Part 5)

If things are seriously bad (or bad and inevitable, or bad and result from the subject's positive action), the 'psychological immune system' kicks in. The immune system makes the subject focus on the positive sides of the things, and prompts a rationalizing explanation of the subject's choice and situation. Because of this operation, after a while people come not to feel so badly. Similar courses of events are triggered when a novel or unexpected event occurs. If a student unexpectedly receives an A on a class, she will feel overjoyed initially. However, she will then search for reasons why she received the A and make senses of it. Once this is done, she will soon come to see the achievement more normal and natural and get less happiness.

However, imagination underestimates this effect of rationalization and adaptation. That is, imagination almost always fails to take this effect into account, so in some cases people tend to overestimate how long they would feel badly while in other cases they tend to overestimate how long they would feel good. For example, Gilbert et al. 1998 studied assistant professors' forecasts of how they would feel at various points in time after their tenure decisions. Assistant professors predicted that they would be much happier during the first 5 years after a positive decision. However, there was no significant difference in reported well-being between those who had and had not received tenure in the first 5 years (and thereafter). Assistant professors also predicted that they would be less happy during the first 5 years after being turned down than they (i.e., those refused) actually turned out to be. Such an experiment suggests that people fail to imagine how quickly they would be adapted to their new condition, good or bad.

4. Reconsidering the Relationship between Wanting and Well-being

Suppose that we get what we have intrinsically wanted (say, eating a doughnut, or dying without medical intervention when we suffer an incurable and terminal condition) but do not like it. Do we become happier? Do we become better off? It does not seem so. Then, if Gilbert and Wilson are right, we should reconsider the idea that we become happy by getting what we want. We often fail to become well-off even by getting what we want.

There are two possible ways of revising the idea. The first one is to say that we become happy (well-off) by getting what we *would want if our imagination were accurate*, i.e. if its defects were completely removed. The second one is to say that

we become happy (well-off) by getting what *we will like*. As before, note that what we like can be the absence of something, for instance, the state that I will not suffer from earthquake.

I prefer the second idea, because what makes the first idea plausible is merely the fact that what we would want (if our imagination were accurate) usually turns out to be what we will like; if so, one's liking is the ultimate criterion of whether something counts as a component of her well-being (or happiness).

If this is on the right track, desire-satisfaction theory should be revised as follows: a subject's well-being consists in getting what she will like, that is, in the obtaining of the states of affairs that, in and after the fact, she will like.² Desire-satisfaction theory has not clearly distinguished wanting from liking, but this difference turns out to be crucial. You get happy not necessarily by getting what you currently want (about the future), but by getting what you will like (in the future, in and after the fact). It also turns out that if you prefer some alternative account to desire-satisfaction theory, what you have to accommodate is not the idea that you become (more) happy by getting what you *want*. It is rather the idea that you become happy by getting what you *will like*.

5. Distinction between Wanting and Liking

This distinction between wanting and liking is subtle but important. Desire-Satisfaction theorists fail to recognize the distinction or its importance. Gilbert and Wilson 2000 make the distinction, but put it in a wrong way. They say at the beginning of their essay:

Like and *want* are among the first things children learn to say, and once they learn to say them, they never stop. Liking has to do with how a thing makes us feel, and wanting is, simply enough, a prediction of liking. When we say, "I like this doughnut," we are letting others know that the doughnut currently under consumption is making us feel a bit better than before. When we say, "I want a doughnut," we are making an abbreviated statement whose extended translation is something like, "Right now I'm not feeling quite as good as I might be, and I think fried dough will fix that." (Gilbert and Wilson 2000, 178)

If Gilbert and Wilson 2000 are talking about scientific concepts, then perhaps this distinction will do: it might be most useful for psychology and other human sciences to define these terms in their way. However, the context of their assertions

2 It might appear that, as with desires, likings are sometimes directed at things other than (the obtaining of) states of affairs, such as a particular person, animal, or material object. I hold, however, that these desires and likings can be understood in terms of (the obtaining of) certain states of affairs, for example, the subject's staying close to that person, her keeping that animal as a pet, or her possessing that object.

clearly indicates that they are talking about the folk concepts of wanting and liking, and their way of distinguishing them is mistaken as such. Wanting is not a (mere) prediction of future liking. Suppose you have never tried sushi. All of your friends recommend you to eat sushi, and you predict that you will like sushi if you have it. However, you might still fail to want to have sushi. You can predict that you will like something without wanting it.

Wanting is not primarily a cognitive state but rather a conative, motivational state: it is an essential feature of wants that they (have the potential to) make us move in certain directions, for example, toward dropping by a doughnut shop to buy a doughnut. Despite what Gilbert and Wilson say, wanting differs from liking not in that wanting is cognitive while liking is conative: they are both conative states. Wanting is a motivation to seek some change in the world: the occurrence of some state of affairs that is not realized, or that at least the subject is unsure whether it has been realized, say, eating sushi at lunch, continuing one's marriage, or getting one's promotion. This is why wanting is usually directed at some state of affairs realizable in the future. Liking is an attitudinal or emotional attachment to something (strictly speaking, some state of affairs) whether or not it has already materialized. While wanting is always change-directed, liking can be directed at the thing that the subject is certain exists now or existed in the past. For example, one can like the fact that Napoleon conquered Europe but she cannot want the fact to have obtained if she is sure that Napoleon conquered Europe. This is presumably because wanting disappears when the subject clearly knows that wanting is satisfied. In that sense, wanting is always change-directed, but liking is not. If you clearly know that you are now in Sapporo, you will not want to be in Sapporo now (though you might want to continue to be there for some time), but you can still like the fact that you are now in Sapporo.

Thus, what I have argued for is that we might not become more happy by making more changes we currently seek (about the future); and that well-being is rather correlated with getting more of what we will be attached to (in the future). Now you might suspect that liking or attitudinal attachment is or is related to some hedonistic state, such as enjoyment. I do think that liking is often a pleasant state, and that getting what we like when it was not guaranteed is also usually pleasant. Apparently, Gilbert (2006, Ch. 2) himself holds welfare hedonism, the view that well-being consists in pleasure and absence of pain. However, liking or getting what one likes is not necessarily pleasant. For example, you can like (experiencing) the movie *Sophie's Choice* or Picasso's picture *Guernica* though it is not pleasant but painful. It seems that, pace hedonists, experiencing such a work is still good for you. Likings, and getting what one likes, are often pleasant. This, however, does not mean that welfare hedonism is correct.³

3 In a previous paper (Suzuki 2009) I have argued that one's well-being consists in what she is gratified in or at. This account is not exactly correct unless gratification can be a non-hedonistic mental state.

6. Implications for the Practice of Informed Consent in the Contexts of Medicine and Psychiatry

Remember that patients and medical examinees are asked for their preference over medical or experimental alternatives partly because it is thought that by receiving the medical option they prefer, they will (normally) become best-off (as far as their condition allows). However, the above considerations suggest that this thought needs revising. In medicine and psychiatry, examiners and practitioners need to recognize that what patients want is not always what they will like. And what they prefer might not be better for them. Actually, studies in several medical domains have revealed systematic errors in predictions of future feelings (Loewenstein et al. 1999, 90-92). For example:

- People tend to overpredict the pain of dental treatment, and underestimate the pain of child delivery.
- People tend to overestimate the joy of finding themselves free of HIV and the misery of finding themselves HIV positive.
- People tend to underestimate the quality of life if they became chronically or terminally ill, and hence underestimate their own future fondness for heroic measures to prolong their lives under such a condition.

The Status of Informed Consent

The unreliability of patients' imagination and prediction does not necessarily mean that we should abandon the practice of informed consent. For one thing, as Gilbert notes, people like getting control of their life, and they tend to be feel less happy when their control is decreased (Gilbert 2006, 20-23; Schutz et al. 1978). Informed consent gives patients control over their lives. It is probably better for them not to lose that control (at least for the matters that they have the basic capacities to give informed consent).

Possible Recommendations

Medical practitioners and experimenters might rather try to (1) correct the shortcomings of patients' imagination before their consent. For example, to address "focalism", they might lead patients to imagine not merely about the immediate result of the procedure, but also the other, perhaps distant outcomes and the many other events that will affect how they will think and feel. But whether any of such possible correctives really work is an empirical question, so we should check it by experiments. As for "focalism" in the football example mentioned in section 3, studies have found that a similar exercise tempers people's prediction about the impact of a victory (or loss) by their favorite football team on their happiness (Wilson et al. 2000). Such an exercise might serve as a corrective in the context of medicine and psychiatry, too. However, this hypothesis needs empirical testing, and it is unclear whether the shortcomings of imagination other than "focalism" can be remedied. And I have one preliminary concern to approach (1) applied generally: cognitive overload. There might be so many things patients must take into account to

make decision based on accurate imagination, that they might not be up to the task.

Alternatively, medical practitioners and experimenters might (2) lead patients to rely less on imagination, but more on the statistical data about how people lived and felt after the procedure. That is, they might give them the properly analyzed data of how the patients who underwent similar procedures lived and felt, and inform current patients that they will probably feel in a similar way (cf. Gilbert 2006, Ch.11). This requires the unbiased collection, interpretation, and statistical analysis of the targeted data. It is not guaranteed that this approach will work, either. For example, many people have difficulty understanding and appreciating statistical data, and tend to underestimate danger for themselves, that is, take their risk to be less than average (Peterson 2006, Ch. 5). How understandably and effectively can medical practitioners and experimenters explain statistical data to patients and experimental subjects? How much can people overcome the tendency to underestimate their risk?

Experimental works are needed to decide which method (or some combination) will be better for patients' lives, and how the details should be spelled out.

7. Concluding Remarks

Referring to psychological works, this paper gives an argument that we might not become happy by getting what we want about the future: rather, our well-being is correlated with getting what we will like in the future. If this is right, desire-satisfaction account of well-being needs revising. Further, the test for its theoretical alternatives turns out to be not whether what the theory in question takes to be a component of well-being is wanted, but whether it will be liked in the future. In medicine and psychiatry, we should take into account the possibility that patients and experimental subjects systematically prefer an alternative that is not good for them. Investigating where and why such a systematic 'miswanting' occurs, and how it should be dealt with within the framework of informed consent, is and will be an important task.⁴

4 The previous versions of this paper were presented at two conferences: Real People: The Self in Mental Health and Social Care: 13th International Conference of the International Network for Philosophy and Psychiatry, June 29th, 2010, Manchester, United Kingdom; and Applied Ethics: The Fifth International Conference in Sapporo, Center for Applied Ethics and Philosophy at Hokkaido University, November 5th, 2010, Hokkaido University, Sapporo, Japan. I am grateful to those who gave me precious feedbacks on this paper on these occasions.

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Moral Realism and Moral Disagreement: An Alternative Account

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Introduction

The fact of moral disagreement is often cited as evidence against the theory of moral realism. In his paper, “How is Moral Disagreement a Problem for Realism?” David Enoch provides a broad review of such arguments from moral disagreement against moral realism. While Enoch considers ten possible arguments, I highlight just one:

1. There are possible cases of rationally irresolvable moral disagreement, where both parties are equally rational, guilty of no flaw of reasoning as such.
2. Therefore, at least in cases where such disagreement is possible, there is no objective fact of the matter.

Enoch claims that in order to respond to this argument, the moral realist must appeal to a cognitive shortcoming on the part of one or both parties, because she cannot allow a moral statement to be both true and false. However, I do not believe this to be the only available response.

While Enoch believes that the moral realist must accept the bivalence of moral statements, I disagree. In this paper I argue that although the moral realist must contend that moral statements are true or false and that their truth-value depends on certain objective facts, she need not commit herself to strict bivalence of moral statements. That is to say, in moral disagreement, it is not necessary for one group to be ‘right’ and the other ‘wrong.’ Rather, it is possible that each party is, in a sense, ‘right.’

1. The Fact of Moral Disagreement

Moral disagreement is prevalent in our society, a fact that is apparent in the field of applied ethics. The positions people hold on a wide range of issues, from abortion and stem cell research to euthanasia, are based on careful research and thoughtful arguments. Each group claims the other is wrong, but few are moved from their position.

This form of disagreement is unique in that the set of facts about the issues are generally agreed upon, and yet the moral conclusions drawn are quite different and often at serious odds with each other. However, we would be hesitant to say that either group commits a failure of reasoning. In fact, their arguments are often highly rational.

The fact of moral disagreement is often cited as evidence against the theory of moral realism, which proposes that moral statements are objective facts that are either true or false. If rational moral disagreement does exist, then it seems that one party or the other must be making a false statement. However, if these moral statements are indeed objective facts, why is disagreement so prevalent?

There are various responses to moral disagreement; I want to highlight just two. The non-cognitivist will claim that moral statements do not reject beliefs, are incapable of truth or falsity, and therefore that it doesn't make sense to talk of moral disagreement. The error theorist will contend that while moral statements reflect beliefs, these beliefs are based on the assumption that moral statements are true or false, and it is a mistake to characterize moral statements as such. According to the error theorist, we need not (indeed, cannot) resolve moral disagreement by appealing to moral statements' truth-value. Moral disagreement just arises as a result of what moral statements really are.

However, both of these claims seem to go against our intuitive sense of the meaning of moral statements. We treat moral statements as if they reflect beliefs, beliefs that can be evaluated and revised. Furthermore, we take these beliefs to be based on some sort of fact of the matter – when we engage in morally evaluative reasoning, we don't ignore relevant states of affairs. Therefore, we do treat moral statements as if they are true or false, and as if they are related to objectively discernible moral facts.

This intuitive argument responds to the non-cognitivist generally, but not to the error theorist specifically. The error theorist will contend that just because we intuitively believe moral statements to reflect moral facts doesn't make it so, and he will offer up moral disagreement as a crucial argument against the moral realist.

So, what can the moral realist say about moral disagreement? David Enoch argues that in order to account for moral disagreement, the moral realist must appeal to a cognitive shortcoming, because she cannot allow a moral statement to be both true and false. However, I don't believe this to be the only path for the moral realist to take.

While Enoch believes that the moral realist must accept the bivalence of moral statements, I disagree. In the following paper I wish to argue that although moral realism must contend that moral statements are true or false and that their truth-value depends on certain objective facts, it need not commit itself to strict bivalence of moral statements. That is to say, in moral disagreement, it is not necessary for one group to be 'right' and the other 'wrong.' Rather, it is possible that each party is, in a sense, 'right.' This is an important point, not only because it confirms our intuitive use of moral statements, but also because it points to possible courses of action in cases of moral disagreement.

2. A Form of the Argument from Disagreement

In his paper, "How is Moral Disagreement a Problem for Realism?" David Enoch discusses a possible argument from moral disagreement against moral realism (Enoch

2009). He outlines the argument as follows:

1. There are possible cases of rationally irresolvable moral disagreement, where both parties are equally rational, guilty of no flaw of reasoning as such.
2. Therefore, at least in cases where such disagreement is possible, there is no objective fact of the matter.

This argument is a variety of J.L. Mackie's argument from relativity in *Ethics: Inventing Right and Wrong*. Briefly, Mackie claims that "radical differences between first order moral judgments make it difficult to treat those judgments as apprehensions of objective truth," and that variation may therefore "indirectly support second order subjectivism" (Mackie 1997).

It is important to point out that Mackie distinguishes between first and second order moral views, where a first order view is a claim that something is a moral truth and a second order view is a claim about what makes that thing true. According to Mackie, different people and different social groups make claims that different things are moral truths (a first-order view), and that while these groups believe the truths to rest on objective facts (a second-order view), these differences actually reflect the groups' different ways of life.

Moral disagreement reveals this 'anthropological fact,' as well as the error we make in supposing moral statements to be objectively true. If moral truths are objective facts, then there shouldn't be wide-ranging disagreement. Therefore, Mackie concludes from the fact of moral disagreement that moral truths are not objective facts, although we believe them to be so.

The argument outlined by Enoch is a bit different from Mackie's. It refers to possible cases of moral disagreement, whereas Mackie seems to refer to the existence of actual cases. Furthermore, Enoch specifies that the disagreement in question is rationally irresolvable, whereas Mackie doesn't restrict the cases of disagreement he considers. In fact, Mackie's account of morals is one that is less dependent on the use of reason than on force of habit.

While I don't think these alterations change the general idea of Mackie's argument, they are important in that they both expand and restrict the type of disagreement he considers. The expansion is in the consideration of possible disagreement, and the restriction is in the specification of rationally irresolvable disagreement. This second point is the one more relevant to my argument, because it rules out the possibility that either party suffers from a fault of reason or a cognitive shortcoming. If a cognitive shortcoming were involved, that would open the door for an explanation of the disagreement in terms of a mistake about the facts or a misunderstanding about the moral principles involved. The argument must be restricted to rational disagreement in order to force the moral realist into an alternative explanation.

Enoch suggests that an example of this type of moral disagreement can be found in the conflict between Pro-Choice and Pro-Life positions on abortion. Let us say that Amy is Pro-Choice and Sarah is Pro-Life. Both Amy and Sarah are highly

intelligent, rational individuals who provide strong, evidence-based arguments for their views. Neither seems to have a cognitive shortcoming, and yet, they find themselves in fundamental opposition in the case of abortion rights.

Enoch then compares this example of moral disagreement with another type of disagreement, that between two mathematicians who, both working on the same arithmetical calculation, come up with different results. Enoch says that because arithmetical calculation admits of only one result, one of the mathematicians must be wrong, that is, one must have made a mistake. This conclusion results from our commitment to a form of realism about arithmetic, and so our account of arithmetical disagreement must be consistent with this realism. Similarly, Enoch believes that in the case of Amy and Sarah, according to the moral realist it must be necessary for either Amy or Sarah to be mistaken in their ‘moral calculations.’

However, I think that the moral realist need not account for the disagreement in this way. In these examples, Enoch assumes that the moral realist is committed to bivalence of moral statements, just as the mathematician is committed to the bivalence of arithmetic statements. I am not convinced that this is the case.

3. Assumed Bivalence of Moral Principles

To briefly reiterate Enoch’s argument:

1. There are possible cases of rationally irresolvable moral disagreement, where both parties are equally rational, guilty of no flaw of reasoning as such.
2. Therefore, at least in cases where such disagreement is possible, there is no objective fact of the matter.

Enoch believes that premise 1 commits us to a certain type of realism because it assumes that the rational resolution of a moral problem will, as in arithmetic, admit of only one result (Enoch 2009). He characterizes the argument as begging the question by assuming that there is a rationally irresolvable disagreement that a moral realist cannot account for. He concludes that the argument does not present a valid objection to moral realism because it assumes the very fact about the theory that it is trying to prove.

Based on this inconsistency in the argument, Enoch concludes that while any *apparently* rationally irresolvable moral disagreement must be capable of explanation by the moral realist, this does not in itself discount moral realism. Moral realism has a way out by arguing that any apparently rational moral disagreement is really irrational in that it entails something like a cognitive shortcoming or mistake about moral principles by either party in the disagreement.

However, I believe that rationally irresolvable moral disagreement is indeed possible. Therefore, the moral realist need not argue that such disagreement is only apparent. Furthermore, the moral realist shouldn’t rely on this explanation, because it dismisses the genuine nature with which such conflicts present themselves. If

moral realism purports to be a general moral theory, then I think it must account for our intuitive understanding of moral disagreement.

Nevertheless, Enoch's assumption reflects a greater concern about the possibility of rational moral disagreement. Many philosophers have found that if rational moral disagreement is possible within a moral theory, this indicates inconsistency of moral principles and invalidity of the theory. Since this is a claim about moral theories in general, I want to address this concern first, before I return to moral realism specifically.

Therefore, in the following two sections I provide a characterization of moral disagreement without inconsistency, by unifying moral disagreement with a similar case, moral dilemma, under the general heading of moral conflict. This will establish that rationally irresolvable moral disagreement is possible, and will support my argument that the moral realist need not depend on cognitive shortcoming to resolve the case of moral disagreement.

4. Moral Dilemma and Moral Disagreement

Moral disagreement is thought to pose a problem similar to that of moral dilemma. At times, the two are used interchangeably in arguments that seek to undermine a moral theory (Mason 1996). Both cases present the possibility that two applicable moral principles are incompatible or exclusive. If a moral theory allows for this possibility, it is thought to be inconsistent.

Moral dilemma is defined as a situation in which an agent is presented with two possible courses of action, each of which is morally required, but the execution of both of which is empirically impossible (Mason 1996). For example, Dr. Smith is treating a patient, Tom, who has terminal cancer. Tom is in a great amount of pain, and has reached the point where medicine can no longer effectively treat his pain. Tom has made it clear to Dr. Smith that he wishes to end his pain – that is, he has discussed the possibility of voluntary euthanasia. As a doctor, Dr. Smith has an obligation to ease the suffering of her patient. However, she also has an obligation to respect human life. It seems that no matter which path she takes, she is violating an ethical principle.

What is the difference between the case of moral disagreement between Amy and Sarah (discussed in section 2), and the moral dilemma faced by Dr. Smith? The most apparent distinction is the fact that moral disagreement occurs between two rational agents, while a moral dilemma arises within one rational agent. In moral disagreement, there is no confusion on either side about what ought to be done – both Amy and Sarah are firmly set in their ways. In moral dilemma, a single agent is faced with two possible courses of action.

It seems to me that this distinction is on the surface, and that moral disagreement is really an instance of moral dilemma. As Philippa Foot points out, in a moral dilemma a person need not be in an actual state of uncertainty about what to do (Foot 1983). Rather, a moral dilemma is a conflict in principle, in which one principle requires one action and another principle requires another. A person may

be set on the action required by one of the principles. While the moral dilemma will not arise as an actual psychological problem for the agent, it will still be present as a possible theoretical one.

Ruth Barcan Marcus reaches a similar conclusion, characterizing moral dilemma as a one-person case, an instance of the *n*-person case (under the assumption of shared principles), in which there are principles by which one ought to do *x* and ought to do *y*, but doing *y* requires refraining from doing *x* and vice versa (Marcus 1980). According to Marcus, moral disagreement is a two-person case in which one person decides in favor of *x* and the other decides in favor of *y*.

Since moral dilemma and moral disagreement exhibit this parallel structure, it is helpful to reframe moral disagreement in terms of Foot's definition of moral dilemma, such that moral disagreement arises when one party is firmly set in the course of action dictated by one moral principle, while the other party is beholden to the action dictated by the other.

As a general term to express the case of which both moral disagreement and moral dilemma are specific instantiations, I will use moral conflict, as introduced by Bernard Williams, and later employed by others (Williams 1965).

Moral conflict can take two forms. In the first formulation, there is a situation in which there seem to be at least two relevant moral principles, each of which points to a specific course of action, but where both actions cannot possibly be executed. In Williams' terms, I ought to do *x*, and I ought to do *y*, but I cannot do both *x* and *y*. This is the case of Dr. Smith, who finds a dilemma in her decision about euthanasia.

In the second formulation, there is a situation in which one principle points to the execution of an action, while another principle prohibits that action. Again, in Williams' terms, I ought to do *x*, but I also ought not to do *x*. This second formulation arises from the first – from the obligation to do *x* and the obligation to do *y*, and the impossibility of doing both, we can derive the obligation to do *x*, but also the obligation not to do *x* (based on the obligation to do *y*).

So, what moral conflict really breaks down to is the situation in which one ought to do *x*, and one ought to do *y*, but it is contingently impossible to do both *x* and *y*. To return to the case of Dr. Smith, in terms of moral conflict it seems that she ought to ease her patient's suffering (perform euthanasia), but she also ought to respect her patient's life (continue life-sustaining treatment). The fact that she ought to perform euthanasia implies that she ought not to continue life-sustaining treatment, and vice versa. The two paths open to her are contingently exclusive, but also seem to be morally entailed by the facts of the case.

With this new understanding of the form of moral conflict (as a situation of which moral disagreement and moral dilemma are both varieties) we can now return to the question of whether such disagreement leads to inconsistency of moral principles, or whether it is possible that both 'I ought to do *x*' and 'I ought to do *y*' are in fact moral obligations that can be derived from the same situation.

5. Rethinking Ethical Consistency

In the previous section, I argued that moral disagreement and moral dilemma are varieties of moral conflict, which takes the form:

- a. I ought to do x
- b. I ought to do y
- c. It is contingently impossible to do both x and y (I cannot do both x and y)
- d. Therefore, if I ought to do x then I ought not to do y , and if I ought to do y than I ought not to do x .

As mentioned before, the significance of this argument is often thought to be its ability to identify inconsistent moral theories, because any consistent theory should not allow the derivation of premises a and b from its moral principles. It is assumed that any theory that does so is inconsistent and in need of revision.

It seems to me that this conclusion is based on the thought that conflicting obligations imply a contradiction, and that this is unacceptable within a moral theory. I see two possible responses to this. The first is that conflicting obligations do not imply a contradiction, and the second is that contradiction is acceptable within a moral theory.

Philippa Foot, in the course of responding to a set of essays by Bernard Williams, argues for the first option. Williams' aim in these essays is to highlight an error made by the cognitivist, who he characterizes as claiming that if two obligations conflict then one obligation must be false. He thinks the cognitivist must make this claim because two conflicting obligations produce a contradiction, which cannot be accepted in a system in which moral statements are true or false. In other words, he makes the same assumption about bivalence of moral statements that Enoch makes in his consideration of moral realism. Williams finds the cognitivist to be in error, arguing instead that it is possible for two obligations to conflict and both be true.

However, Foot believes that Williams' argument actually supports the cognitivist position. While Williams assumes the cognitivist is committed to solving moral conflict 'without remainder,' that is, without remaining conflicting obligations, this is not the case. In fact, she thinks that Williams' argument can be used to help the cognitivist account for moral conflict. It is this argument that I will now consider.

Williams begins his discussion of moral conflict with the distinction between conflicts of belief and conflicts of desires (Williams 1965). He admits that conflicts between beliefs and desires are similar in that something in the world leads to the conflict. In the case of conflicting beliefs, I may believe that x and believe that y , but some feature of the world makes it impossible for both x and y to be true. Williams' example (reframed in modern terms) is that I may think that a certain man was elected president in 2008, and that that man is Muslim. If I then find out that there is not, nor has there ever been, a Muslim president, the conflicting nature of my beliefs will be apparent.

Similarly, I may desire x and desire y , but there is an obstacle in the world to my obtaining both x and y . Williams presents the example of a man who is thirsty but lazy, seated comfortably, with drinks in the other room. If his drinks were within reach, or if he wanted to stretch his legs, he would not have a conflict. It is the fact that the drinks are in the other room that creates the conflict.

In both cases, it is a fact about the world that leads to the conflict. I can hold both beliefs in the example above, and I can have both desires (rest and drink), but they are not in conflict unless I come to believe the third fact about the President's religion, or the location of drinks in my home. Therefore, belief and desire are similar in that they require a fact about the world to come into conflict.

The case of belief and desire are different in that to believe x is to believe that x is true. If x and y conflict, then I know that both of them cannot be true, and my belief in both of them is weakened. However, discovering that two desires conflict doesn't weaken my desire for either x or y . Just because I am both tired and thirsty and my drink is in the other room doesn't make me any less tired or thirsty.

Furthermore, while one belief is eliminated in the resolution of conflict (i.e. I realize that both x and y cannot be true, and so I reason in favor of x or y), it is not necessary for the un-acted upon desire to disappear just because I have decided in favor of the other. If I am both tired and thirsty, my decision to sit and rest doesn't weaken my thirst in any way.

Williams uses this comparison of conflicts of belief and conflicts of desire in his treatment of moral conflict. Moral conflict, as I have characterized earlier, is a case of conflicting obligations. Williams believes that while moral conflict is commonly viewed as of a kind with conflicting beliefs, it is more appropriate to relate it to the case of conflicting desires. The mistake, he believes, comes in the assumed elimination of the obligation that is not acted upon. Williams argues that moral conflicts are not soluble 'without remainder,' evidencing his claim with the common experience of regret, in which one wonders whether or not they should really have done what they did. For example, Dr. Smith may decide to help her patient through voluntary euthanasia. Afterwards, however, she may experience regret about her decision not to continue life-sustaining treatment.

Of course, it is not necessary that regret be present in all cases in which a decision has been made about a moral conflict. Dr. Smith may be convinced that her action was right, and may never experience regret. Nevertheless, Williams argues that regret's presence is in some cases enough not to identify moral conflict with conflicts of belief. Even though regret isn't felt in all cases, its presence in some cases is enough to show that a decision made to resolve a moral conflict doesn't necessarily involve elimination of one of the moral obligations present. Therefore, moral conflict is more like conflict of desires than conflict of beliefs.

Williams believes that this argument undermines cognitivism, based on his assumption that cognitivism requires moral conflict to be more like conflicts of belief than conflicts of desire. Along with Philippa Foot, I find Williams to be mistaken in this assumption. As I have said before, Williams assumed that cognitivism entails bivalence of moral principles, that is, that contradictory obligations require that one obligation is false. If his argument is correct, then contradictory obligations do not

behave in this way, and bivalence of moral principles is not necessary. However, I don't think he adequately shows that cognitivism requires bivalence.

Nevertheless, Williams' argument is useful in that he shows how moral conflict can be thought of without contradictory obligations. The thought that moral conflict leads to rejection of one of the moral obligations is based on the assumption that one of the moral obligations must be falsely derived. However, as Williams shows, it is reasonable to think that both obligations remain, even after a decision has been made. That is, both obligations can hold without a contradiction. Therefore, the case of moral conflict need not be resolved by appealing to a cognitive shortcoming or mistake in reasoning. One may derive 'I ought to do x' and 'I ought not to do x' without inconsistency.

Conclusion

I began this paper with the fact of moral disagreement, and one form of the argument from disagreement against moral realism. This argument sought to show that moral realism cannot account for moral disagreement without relying on a cognitive shortcoming. I found this argument to make two fallacious assumptions. First, that moral realism requires bivalence of moral principles, and second, that contradictory moral obligations reveals inconsistency in a moral theory. I have undermined these assumptions by arguing that moral disagreement is really a form of moral conflict, and that moral conflict need not imply inconsistency. Both sides of a moral disagreement may make well-founded moral statements. Of course, it is still possible that either side of a disagreement may be mistaken, but importantly, it is not necessary.

The motivation to defend moral realism against arguments originating in moral disagreement is due to the belief that moral realism is worth defending. While other moral theories argue that we are mistaken in our beliefs about moral properties, moral realism captures our intuitive sense of what it means to make a moral statement.

Furthermore, it seems to me that this argument has significant practical consequences. In applied ethical fields the task of the ethicist is often to resolve the apparent conflict. However, if it is possible for moral conflict to result from equally valid moral obligations, resolution of the conflict in terms of rejection of one obligation may not be the appropriate response. Rather, the best policy may be one that adequately reflects the legitimacy of the claims made by either side.

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Responsible Research?

Carwyn Rhys HOOPER

Introduction

The notion that people can be responsible for their own health has been discussed for over two millennia. Ancient Greek and Roman physicians argued that there was an association between “lifestyle” and health and medieval physicians were convinced that certain behaviours (e.g. sexual promiscuity) would lead to ill-health whilst other behaviours (e.g. chastity) would lead to good health (Reiser 1985). However, it was not until the dawn of the modern era that the association between behaviour and illnesses began to be properly understood. By the beginning of the 21st century, bio-medical researchers and health care professionals understood that many of the diseases affecting humankind were caused, at least in part, by people’s behaviour. The key disease-inducing behaviours are: smoking, drinking excessive amounts of alcohol, consuming recreational drugs, engaging in unprotected sexual intercourse, failing to exercise regularly and, finally, consuming too much salt, saturated fat and sugar.

Once it became clear that there was a strong empirical basis for making the claim that people are, at least partially, personally responsible for their health, physicians, policy makers and philosophers alike began making two further claims. Firstly, they argued that people who were empirically responsible for their health were also morally responsible for their health. Secondly, they argued that people who are morally responsible for their ill-health should be held to account in some way – perhaps by bearing the cost of their health-affecting behaviour.

The first physician to make these kinds of claims in the bio-medical literature was John Knowles. He identified “sloth”, “gluttony” and “promiscuity” as three of the chief causes of ill-health in the modern world (Knowles 1977). He went on to add that:

“the idea of a right to healthcare should be replaced by the idea of an individual moral obligation to preserve one’s own health – a public duty if you will...one man’s freedom in health is another man’s shackles in taxes and insurance premiums” (Ibid, p. 867)

Knowles’ short editorial generated a great deal of heated debate in the academic literature, but the initial response from policy makers was muted (Wickler 1985, Veatch 1980). In the late 1980’s, however, policy makers became much more interested in the idea of translating the concept of personal responsibility for health into policy.

This new trend started in Germany where legislators incorporated the concept of personal responsibility for health into primary health legislation in 1988 (Schmidt

2007). The new law made it clear that German nationals have “*co-responsibility*” for their health and it stated that patients should:

“lead a health-conscious lifestyle, take part in appropriately timed preventative measures [and] play an active role in treatment and rehabilitation, [in order to] avoid sickness and disability, and overcome the respective consequences.”(Ibid, p.17)

Since this time, legislators and policy makers around the developed world have become increasingly interested in trying to encourage people to be personally responsible for their health and in penalising those who fail to take such responsibility. As a consequence, there has been a wide-ranging debate about the necessary and sufficient conditions of moral responsibility for health and whether, given these conditions, anyone is ever morally responsible for their health. There has also been an equally robust debate about whether people who are morally responsible for their health should be held to account in some way. I will not rehearse and develop these arguments in this paper. Rather, my aim is to explore a novel policy solution which would enable people to be held responsible for their actions and which has major advantages over some of the other policy options that have thus far been mooted.

In brief, my suggestion is that there should be a rebalancing of research aims away from diseases which are primarily “self-inflicted” towards diseases which are primarily “non-self inflicted”. Adopting such a policy would ensure that, in the long run, fewer treatments will be available for self-inflicted diseases (and more treatments will be available for non-self inflicted diseases) than there otherwise would have been. This, in turn, will ensure that those who are morally responsible for their own ill-health are held to account.

1. Current Policy Options

A number of “cost-bearing” policy options have been mooted. The most radical solution would be to deny access to publicly funded healthcare to people who are responsible for their own ill-health. The irresponsible would have to pay for their own treatment if they could afford to do so or do without if they could not. Another less drastic option would involve reducing people’s priority for access to health care if they were deemed to be partially morally responsible for their ill-health. This policy option has been discussed extensively in the context of organ transplantations, but, *prima facie*, there is no reason why it could not be applied in many other situations too. For example, people suffering from smoking-induced lung cancer could be given lower priority than people suffering from lung cancer of unknown aetiology. Another option which has been mooted is the idea that people who engage in high risky activities could pay health taxes which would then pay for any treatment which had been caused by the behaviour in question (Cappelen, Norheim & Tungodden, 2006). These taxes would then pay for any treatment needed

as a caused by the behaviour in question. Tobacco and alcohol duties are already partly justified on this basis.

Each of these policy options has its advantages and disadvantages. The “denial of treatment” option has the distinct advantage of being easy to explain and easy to implement. However, as Elizabeth Anderson has argued, such a policy is harsh and inhuman and amounts to the “*abandonment of the negligent*” (Anderson, 1999). The other disadvantage of this approach is that it requires health care professionals to judge their patients and to act as “executioners” by denying treatment to those they deem responsible. In all likelihood, many health care professionals would refuse to comply with a policy that required them to act in this way and those that did would surely find that the trust which patients place in them would quickly evaporate.

The “lower priority” option, meanwhile, has the advantage of being less overtly inhumane than the denial of treatment approach. In principle, at least, no one will be simply abandoned to their fates; they will simply have to wait longer for their treatment. However, this seeming advantage is something of an illusion. This is because lowering people’s priority will be tantamount to outright abandonment in some cases. For example, giving someone who is haemorrhaging to death a lower priority for access to blood transfusions is likely to be fatal. Likewise, requiring a patient with bowel cancer to wait an extra few months before surgery may mean that the patient develops metastases when they otherwise would not have done so. What is more, such a policy shares with the “denial of treatment” policy the dubious honour of requiring health care professionals to judge their patients and to play a role in meeting out “punishments” by placing people lower down priority lists.

The “risk tax” option escapes from the objections of inhumanity which besets the denial of treatment and the low priority options since it ensures that everyone receives the treatment that they need. This policy also has the added advantage that health care professionals do not have to sit in judgment over patients or be the instruments of punishing their patients.

However, the “risk tax” policy is not without its problems. In the first instance, it is regressive. Commodity taxes tend to impact the poor more than the rich and if they are prohibitively high the poor may end up being prevented from making autonomous choices in relation to health-affecting behaviour because they simply will not be able to afford to take the risk. Secondly, setting the right tax rate would be very difficult. Trying to work out the costs of smoking to health services and the wider economy has created a great deal of furore and very little consensus amongst economists. Attempting to do the same for behaviours like the excessive consumption of salt, saturated fat and sugar would be nigh on impossible. This problem is exacerbated by the fact that health care has a tendency to increase over time. Thirdly, not all risky behaviours can be taxed. It is relatively easy to place a tax on a commodity like alcohol, but how can unprotected sexual intercourse or excessive sunbathing be taxed? Ignoring these “hard cases” would be one solution, but this would create inequity because people whose health-affecting behaviour could be taxed would be forced to pay for their irresponsibility whilst people whose health-affecting behaviour could not be taxed would not.

2. Cost-Bearing through Research

There are serious objections to the three main “cost-bearing” policies which have been advanced by those who claim that people who are morally responsible for their ill-health should bear the costs of their health-affecting choices. However, there is another solution which is not vulnerable to these objections. This solution aims to ensure that people pay a fair cost for their health-affecting behaviour by changing the balance of bio-medical research away from self-inflicted diseases and towards non-self inflicted diseases. To put it simply, a greater proportion of bio-medical research would be directed at diseases for which people are not morally responsible (e.g. multiple sclerosis) and away from diseases for which people are, in most cases, partly morally responsible (e.g. lung cancer). In the long run this would mean that fewer medical products would be produced to treat self inflicted diseases and more would be produced to treat non self-inflicted diseases. Such an outcome would ensure that the people who are morally responsible for their ill-health are held to account for their choices because these people will have fewer treatment options available to them than would otherwise have been the case.

As things stand, bio-medical research is carried out by a number of different agents – including academics working for public and private universities and researchers working for government health departments, charities and pharmaceutical companies. Research funding, meanwhile, is provided by a mix of charitable organisations, pharmaceutical companies, governments and individual philanthropists. Not unsurprisingly, the research aims of the various groups involved in bio-medical research (and those who fund such research) vary considerably. For example, academics are primarily concerned with increasing scientific knowledge, whilst researchers working for pharmaceutical companies are primarily aiming to create products which can create profits for their employers. What is of importance, however, is that none of the agents involved in research – nor, indeed, those who fund research – pay much heed to the idea that they should consider people’s personal responsibility for health when deciding which avenues of research to follow.

Given the number of agents who are involved in research, implementing the change I have recommended will not be easy. Nonetheless, such a change should not be impossible to achieve. In the first instance, governments could simply direct their own “in house” researchers to re-balance their research projects and they could influence those who wish to apply for government research grants – which would include many academics – by ensuring that more funding was prioritised for research into non-self inflicted diseases. Governments could also influence charitable research by providing extra tax breaks to charities who conduct research on these kinds of diseases.

These methods of applying the policy would be controversial, but they would not be hard to implement. The real difficulty would lie in trying to influence the research carried out by pharmaceutical companies. Pharmaceutical companies operate in a highly competitive commercial environment. They must respond to market conditions and, in particular, to market demand. Moreover, their primary

aim is to make profits. Given these facts it may seem reasonable for the directors of pharmaceutical companies to argue that they cannot skew their research towards non-self inflicted diseases unless this fits in well with their business model.

However, though this is a legitimate argument, governments are not powerless to affect the research aims of private enterprises like pharmaceutical companies. One reason for this is that governments are usually the major purchaser of health care. As such, governments could make it clear to the pharmaceutical industry that their purchasing decisions in the future will be based on a mix of factors which will include considerations of responsibility for health. In particular, they could make it clear that they will be more willing to purchase medical products for non-self inflicted diseases than for medical products aimed at self-inflicted diseases. In the short term this will not have much effect – because medical products often take years to develop. But, in the long run, there is little doubt that this kind of message would have a significant effect on the research that pharmaceutical companies carry out and, ultimately, the medical products that they bring to the market.

3. Advantages of Cost Bearing Through Research

As I mentioned above, there are a number of ways in which people who are responsible for their health could be held to account for their health affecting behaviour. However, the research option has a number of advantages over the other policy options.

To begin with, the research policy option is less inhumane than the “denial of treatment” and the “lower priority” approaches. If this policy option is accepted, health care professionals will not have to deny patient’s access or give them a lower priority to medication that is actually available. Patients will not be allowed to die or made to wait whilst the medication that they require literally sits on the shelf waiting to be used. Of course, it is still the case that patients with self-inflicted diseases will suffer more if the research policy is adopted than that they would otherwise have done because they won’t have access to medications that would otherwise have been devised to treat their self-inflicted diseases. However, though the physical suffering may be still exist, the psychological suffering engendered by being denied treatment or made to wait for treatment which already exists will be much greater than the psychological suffering created by those who do not have access to treatment which, counterfactually, would have existed if a different policy had been adopted.

The research policy approach also has an advantage over the “denial of treatment” and “lower priority approach” in that it does not require health care professionals to sit in judgment or “punish” their patients. Thus the research policy option should ensure that the relationship between health care professionals and patients is maintained.

This policy also has a number of advantages over the taxation system. Firstly, it is not regressive. Secondly, it will not be necessary to make hugely complex calculations relating to the costs associated with taking risks because there will be no need to set a tax rate which is equivalent to the costs of the risky behaviour. Thirdly, this

policy is not vulnerable to charges of inequity in the same way as the tax policy is. It will be recalled that because certain behaviours cannot be taxed easily the tax system must be selective in the way that it targets self-inflicted diseases. The research policy option, meanwhile, targets all self-inflicted diseases evenly since the aim is to re-balance bio-medical research away from *all* self-inflicted diseases.

4. Disadvantages of Cost Bearing through Research

Though the research policy option has major advantages over the other policies discussed above, it is not without its problems. The main issue relates to the lag effect that I briefly alluded to above. The point is that it will take time for the research policy to bear fruit. This is potentially problematic because it might engender a form of inter-generational injustice since people whose irresponsibility will affect them in the distant future will be affected by this policy, but people whose irresponsibility will affect them in the near future will not. However, in one sense, policies which take a prospective, rather than a retrospective, approach to responsibility might help to avoid, rather than create, an injustice. Taking a prospective approach enables governments to give citizens fair warning about the changes taking place. This, in turn, will enable them to make more informed decisions in relation to their risk taking activity. Taking a retrospective approach does not give people time to adapt and make informed decisions. People currently take risks on the assumption that they will receive health care should they need it. Suddenly denying people treatment on the basis of responsibility would not allow people to make fully informed decisions and would thus undermine their autonomy.

The other main problem with the research policy approach relates to the difficulty of determining what weight should be given to considerations of responsibility when deciding how far to swing the balance of research away from self-inflicted diseases. Need, cost-effectiveness, profitability and a range of other factors should play a role in determining research goals. What is more, the weight given to responsibility should vary in line with people degree of moral responsibility. After all, few people are fully morally responsible for their health-affecting behaviour and it would be inappropriate to give responsibility full weight when making these decisions. These problems are certainly real, but they are not insurmountable and given the advantages that my policy has over the other options currently on the table, my alternative policy should not be dismissed out of hand.

Conclusion

I have made a number of assumptions in this paper. I have assumed that people can be empirically and morally responsible for their health and I have assumed that people who are morally responsible for their ill-health should be forced to bear a proportion of the burden that their illness creates. Many will deny that these assumptions are valid and I accept that, if they are not, my policy suggestion ought

not to be implemented. Nonetheless, if the assumptions are sound, I suggest that the research policy outlined in this paper represents an improvement over the other methods that have been mooted as ways of ensuring that people pay a fair price for their health-affecting choices. Re-balancing bio-medical research away from self-inflicted diseases and towards non-self inflicted diseases would mean that people who are irresponsible bear a greater share of the burden of their choices. What is more, such a policy would ensure that those who are not irresponsible for their health benefit by having access to more treatments than would otherwise be the case. Much more work needs to be done to explain how this policy would operate in the real world, but I hope I have provided a framework which may be used to develop a more sophisticated policy.

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Human Enhancement and Human Nature

Takeshi SATO

1. Introduction

In this paper, I will argue against recent opinion that advocates disregarding any proposed connection between human enhancement and human nature. Human enhancement means altering our natural body by biological and scientific technology to produce some desired effect. This is often compared to “treatment,” which means recovering our normal capabilities. Nowadays, many types of enhancements have become available, for example, increasing muscle strength and cognitive capacity, cosmetic surgery and extending length of life. Though such technologies have improved our well being, they have also contributed to many ethical problems. Among them, the issue around human nature, i.e., whether human enhancement spoils our important and essential nature, is a remarkable one; one that has been argued continually since the introduction of enhancement technology. But recently some hold that human nature should be eliminated from arguments over human enhancement, because the notion of human nature is so ambiguous and old-fashioned that it is difficult to decide how we should deal with it in reference to enhancement technology.

However, others contend that we cannot ignore human nature when discussing human enhancement. In section 2 of this paper, I will consider the notion of human nature in the context of human enhancement. In section 3, the development of arguments over human nature around human enhancement and assertions of opponents of human enhancement, proponents of human enhancement and transhumanists will briefly be reviewed. Then, through examining new movements that intend to eliminate the notion of human nature from the context of human enhancement, I will try to show what kind of role human nature should play in the context of human enhancement.

2. Human Nature in the Context of Human Enhancement

What is human nature? This question has been asked continually by scholars from ancient Greece to the present day, so it is very difficult to give a definitive answer. However, there appears to be three types of formal accounts of human nature.

- (1) Physical account: Human nature is manifest in physical traits that human beings typically have. e.g. genome arrangement, phenotypic character.
- (2) Psychological account: Human nature is present in psychological capacities that human beings typically possess including reason, will, and complex emotion.

- (3) Cultural environmental account: Human nature is displayed in the behavior of life forms that are constructed by a culture or an environment that is unique to human beings where key elements include marriage and society building.

Regarding the context of enhancement, the physical account has played a central role, because the physical character of human beings is what science and technology can most directly control. For example, F. Fukuyama said: “Human nature is the sum of the behavior and characteristics that are typical of the human species, arising from the genetic rather than environmental factors” (Fukuyama 2002, 130). Or physicalists might reduce the psychological and cultural accounts into a physical account; where the foundation of our feelings is explained from the aspect of our physical composition. Though I shall not take a radical physicalistic position, I will however, regard our traits, including feelings that are expressed by our genes and composition as human nature in this paper.

In addition to this formal account, N. Daniels argued that human nature has the following three characteristics (Daniels 2009).

Populational: the notion of human nature does not apply to individuals, but to populations. The traits need to be shared by a sufficiently large number of human beings.

Dispositional: the notion of human nature allows for a range of manifestation. For example, even if being sympathetic is part of human nature, there are very sympathetic people, relatively sympathetic people and slightly sympathetic people.

Selective: the notion of human nature is selective or theory laden. Not all the traits are regarded as human nature.

These formulations seem plausible, so I will argue in this paper that human nature is based on Daniels’ formal characterization. In fact, the source of the difficulty to argue about human nature substantively is the characteristic of selectiveness. For example, Daniels said that body height is not regarded as part of human nature, but I think it is included to human nature. For instance, if I met a 100-meter-tall being, I would not think that he is a human being, but a kind of giant. So I regard height as a characteristic of human nature. This is because Daniels and I have different background theories. Hence I would not say much about the substantive contents of it.

3. Arguments over Human Nature

Then, how has human nature been argued by philosophers? In this chapter I will discuss three main issues from the viewpoint of opponents of human enhancement,

proponents of human enhancement and transhumanists¹.

3.1 The Value of Human Nature

The first issue is the value which has been attributed to human nature. Opponents of human enhancement, like Fukuyama, often hold that our human nature as a whole has some intrinsic value. Then, they say that human enhancement spoils this inherent value. Therefore, human enhancement should be prohibited.

In response, proponents of human enhancement admit that human nature has some value. Whereas, opponents of enhancement, contend that not all of human nature has intrinsic value, for example, A. Caplan holds that opponents of human enhancement must first make clear the contents of human nature, and then must decide which elements of human nature are essential and important for human beings (Caplan and Elliot 2005). According to him, individuals should be permitted to alter non-important aspects of human nature by human enhancement.

Surprisingly, transhumanists have also acknowledged the intrinsic value of human nature. However, they think that even if present day human nature has some value, transhuman nature has more value. So Bostrom, who is the founder of World Transhuman Association², says that if we have a duty to keep or promote the valuable thing, we have more of a duty to bring out transhumans by enhancement (Bostrom 2003).

Now, it seems implausible that every aspect of human nature has intrinsic value. Our lifespan is much longer than ancient people's, and body type has changed dramatically and IQ has been increased since ancient times, but it does not mean that ancient people have less value. Of course, IQ is a valuable characteristic of human nature. However, it is not an intrinsic one, but just an instrumental one to meet one's ends. So the assertion that opponents of human enhancement make is hardly persuasive. It is also too quick to suppose that transhumans have more value than ordinary human beings, because transhumans might have completely different conceptions of value from us. It is not an appropriate evaluation even if we examine the value of nature of transhumans from our conception of good. Therefore, the opinion of proponents of human enhancement seems most plausible here. Some values are essential and important, but some are not.

3.2 Human Nature as a Limitation

The second issue is about the limitations of human nature. Human beings must more or less die by the age of 130. We are egoistic, cannot fly in the air and cannot run the 100 meters in 5 seconds. What we can do is largely limited by our nature. How should we think about this?

Opponents of human enhancement often take this limitation as a "gift". They hold that we should respect our condition and accept our lot. To go beyond it and to want to control everything by scientific technology, necessarily connotes hubris and

1 Transhumanists are the most radical people who want to create posthumans or transhumans who by human enhancement technology can exceed the capacities of ordinary human beings.

2 From 2008, World Transhuman Association changed its name to "Humanity+"

even arrogance (Sandel 2002). The most important thing is that we appreciate the gift and live humbly within its limitations.

Proponents of human enhancement criticize the precepts of opponents of human enhancement proclaiming that it is our very nature to try to surpass our limitations (Naam 2005). Indeed human beings have developed medical science to prolong life, have cultivated virtues to overcome the egoism and have trained hard to perform mental and physical feats. It is seemingly inconceivable that wanting to fly in the air was deemed heretical and hubristic in the Middle Ages. According to proponents of human enhancement, science and technology are not indicative of hubris; rather, we possess a necessary confidence that spurs innovation and epitomizes human nature itself.

Then how about transhumanists? Their thinking is precisely based on dissatisfaction toward this limitation. We should be free from the constraints of our bodies. They want super biology that enables them to control their biology completely and their being, and this contrasts with the ideas of Sandel.

It is the contention of opponents of human enhancement that human beings can be gracious and respectful toward these given things. However, it is also humanistic not to be able to do so. Opponents of human enhancement often mention acceptance of “weakness” as being part of being human, but this weakness itself leads us to change the world and to overcome the obstacles (Naam 2005). Therefore, it is plausible that trying to go beyond our limitation is our nature, as proponents of human enhancement say. However, it does not mean we have the right to change everything. I will elaborate on this point in section 4.

3.3 The Norm of Naturalness

Finally, there is the issue of normativity of nature. According to L. Kass, enhancement technology is “unnatural”. We have lived our natural lifestyle for a long time and to change it may threaten our total life and value (Kass 2003). For example, marriage and childbirth should result from a natural connection between people. Reproductive technology like cloning is against this naturalness and to allow such a technology might lead to the collapse of our traditional family system, and the foundation of our stable society. We should refrain from introducing such an unnatural technological intervention to our natural bodies.

Proponents of human enhancement can, however, provide a familiar “is – ought” problem here. Nature itself is not a normative concept, but a descriptive concept. So the fact that a human being is a natural being does not mean that human beings **ought** to be natural beings. Consequently, we do not have any duty to be natural and need not to be afraid of being “unnatural”.

Furthermore, transhumanists particularly hate this naturalness because it is contingently imposed on us against our will. Our nature has many defects, is incomplete and above all unfair. According to transhumanists, we should overcome nature and control it to create a more successful society and happier lives (Bostrom & Roach 2007).

I think this issue is the most crucial in the course of arguments of human nature in the context of human enhancement, precisely because it is deeply rooted in

conceptions of normative ethics and metaethics. I will discuss this issue in greater depth in section 4.2.

4. Deadlock of the Argument

So far, I have briefly reviewed arguments over human nature in the contexts of human enhancement. But recently, some feel frustrated about this situation and hold that to argue human nature in contexts of human enhancement is meaningless. They provide the following reasons for this.

- (1) From the beginning, most technology cannot alter human nature (Daniels 2009).
- (2) Arguments about human nature always have to be polarized and to lead to a deadlock (Ferrari 2008).
- (3) We should simply focus on the consequences and conduct risk-benefit analysis rather than argue about human nature (Buchanan 2008).

Due to these reasons, the researchers think that we should eliminate the concept of human nature from the argument over human enhancement. However, should we, or could we, really discuss the ethical problem of human enhancement without any reference to human nature? I think we should not. For support for this stance, I will examine three arguments as noted above in this chapter.

4.1 Can We Modify Our Nature?

Daniels said in his challenging article “Can Anyone Really Be Talking About Ethically Modifying Human Nature?” that most technology cannot alter human nature. According to him, “We cannot modify human nature unless we act on a population level. Further, the action must affect traits we think central to that nature” (Daniels 2009, 41). He thinks that most human enhancements arguably do not meet these two conditions. Firstly, unlike eugenical intervention by a nation, a limited group of individuals studies and conducts most of the current human enhancements. However, if we do not alter our traits on a population level, this cannot not be regarded as altering human nature. Secondly, even if our traits were altered on a populational level, for those traits that were not our central features, our nature would still not be altered. For example, even if we improved our tolerance to certain illnesses by wide-scale distribution of a vaccine, we would not regard it as altering human nature.

Daniels does not mean that we could never modify human nature at all. For example, our feelings are central traits of being human, and if some drug disaster dulls our feelings or makes us extremely shy, then we could argue that our nature has been modified (*op.cit.*35-36). However, Daniels stresses that the point is whether such an enhancement causes a wide and deep modifying of our nature is realistic or not. He supposes gene manipulation is the main target of his arguments here and he holds that it is not plausible that everyone would be likely to use such a technology.

Because central traits of human beings like feelings consist of a very complex balance of many factors, the risk of trying to modify our nature outweighs the expected benefit (*op.cit* 38-41). Ordinary and reasonable people would not commit to such a dangerous technology. Daniels, therefore, concludes that it's not necessary to argue about human nature in the context of human enhancement.

This argument is persuasive. Indeed some of the human enhancements have little to do with human nature, e.g., cosmetic surgery. However, it is still not right to ignore human nature in the context of human enhancement from two reasons. At first, many of the proponents of human enhancement, especially transhumanists, actually hope to intervene between our traits at the population level, even if current enhancement technology cannot do it immediately because of the technological limitations. It is because they want to avoid the criticism that human enhancement is unfair and widens the gap between the rich and the poor. Enhancement technology like BMI³ or smart drugs gives positional advantages to its users. But it is usually too expensive, so only the rich can afford to use it. Consequently, due to their advantages they become even richer, so the gap between the rich and the poor continues to widen unduly. It is not fair that a few limited students who have access to smart drugs can enhance their cognition prior to examinations. In order to avoid such criticisms, proponents of human enhancement tend to hold that enhancement technology should be distributed to everyone. In fact, people have already argued about whether we should offer smart drugs to every student in school (Singh & Kelleher 2010).

Second, the manipulation of feelings is very risky. However, the risk associated with new technology always decreases gradually. For example, H. Greeley said about smart drugs that what is necessary now is to study the actual risks of using such drugs and how to reduce the risks (Greeley et al. 2008). Like many medicines for depression in this century, a technology that can stabilize our feelings needs to be developed in the near future⁴. It is very difficult or even impossible to intervene between our central traits safely, but the objective of proponents of human enhancement and transhumanists is actually to modify human nature. Therefore, if we seriously want to understand their assertions and criticize them, we have to consider our own nature.

4.2 Is Risk-Benefit Analysis a Sufficient Tool for Assessing Human Enhancement?

Recently some believe that risk-benefit analysis or just considering the consequences is an alternative to arguing for the influence of human nature. The concept of human nature is vague, difficult to understand and old-fashioned. Such a concept is useless to use as a gauge to decide how we should react to our new science and technology. A. Buchanan said that “we can eliminate the appeal to human nature and focus instead on the commonsensical admonition to try to avoid enhancement efforts

3 BMI = Brain Machine Interface

4 As an aside, the film that experts at NASA consider the most “realistic” is “Gattaca”. That is a story about society whose members are gene manipulated.

that may have unintended bad consequences,” (Buchanan 2009, 150). Daniels also focused on the risk of bad outcomes versus acceptable outcomes, and the American National Science Foundation and British Medical Association seem to be leaning in this direction.

This criticism is surely proper from the viewpoint of making a practical decision. Moreover, it might be necessary with pressing political issues to decide *prima facie* duty on what we should do. This seems parallel to the movement which is taken in the context of environmental ethics. Those who are cold environmental pragmatists try to resolve the deadlock caused by the conflict between preservation and conservation, anthropocentrism and non-anthropocentrism. However, there are still some problems with the arguments that try to eliminate the concept of human nature. This is because some forms of human enhancement could affect our set of values. As H. Jonas argued, what we decided could have an impact on values themselves in our age of the new powerful technology. Human nature is, in a sense, what constitutes what is worth engaging in and an end in itself for human beings. Therefore, we cannot decide what the risk is and what good there is in it for us until we find our nature. For example, although Buchanan says that we should consider adverse consequences, what exactly constitutes such consequences?

Utilitarianism, the most prominent consequentialist theory, presupposes a human nature where people always tend to want pleasure and to avoid pain. Most substantive normative ethics’ theories similarly presuppose some sort of nature. It seems implausible to assume that it is really possible to define these theories without any reference to human nature. What we are discussing is not a simple acceptability, but an **ethical** acceptability. Therefore, human nature must be included in the discussion. Furthermore, as I have already discussed, human enhancement characteristically has the potential to modify our nature. New drugs and neuroscience could change our feelings of pain and pleasure, emotions, memory and cognitive ability that would have to do with our fundamental set of values. Although the development of reproductive medicine has enabled procreation by single sex, this might radically change relationships of couples and families and finally affect people’s norms of behavior. Therefore, in the context of human enhancement, *prima facie* decisions could have a decisive impact on our way of living as a whole.

At this point we can consider the “is-ought” problem left in abeyance in section 3. This problem is related to the question of whether human nature is descriptive or normative. If human nature is only a description whereby “human beings enjoy a certain existence”, it commits a fallacy to lead the prescription that “human beings must have such and such an existence” from that description. Buchanan declares that such a position is normative essentialism and he criticizes it, because to grant an authority the status of “being natural” or “normal” has historically led to prejudice, e.g. homosexuality, marriage between races (Buchanan 2009, 145-147).

Advocates of human nature, however, do not disregard this problem. Based on the arguments of A. McIntyre and Aristotle, F. Fukuyama holds that “like virtually every serious philosopher in the Western tradition since Plato and Aristotle, Hume believed that the “ought” and the “is” were bridged by concepts like “wanting,

needing, desiring, pleasure, happiness, health” – by the goals and ends that human beings set for themselves” (Fukuyama 2002, 115)⁵. That is, what we want decides what we should do practically. If someone wants to be healthy, and if fruit makes people healthy, then he should eat it. And I think that such sets of values that people share, e.g. a desire to be healthy, construct our virtue and excellence. This virtue is not just a description of people’s liking, but is a norm and an end for someone as far as he shares the set of values. This does not mean that present human beings and their sets of values should be universally accepted or have objective importance, but that one’s nature is the initial point of all arguments and inescapably constitutes the aspect of the world for the person who lives within that set of values. In this regard, we need human nature as an initial condition. However, one might say that this nature that sets an end is not absolute even for the person who espouses that set of values. We can always redefine our desire, preference and sense of value. It is a meaningful reflection that I have negative feelings towards homosexuality, but I should change such feeling. Indeed, enhancement technology enables us to manipulate our desire and feelings more directly and intentionally. Furthermore, even entire modification of set of value could be acceptable. Buchanan holds that there are no reasons to prohibit drawing a picture on “other” campus. Our present sets of values are just a picture on a campus, but why may not we try to other campus when it seems more attractive? Uehara also says, “This interpretation only shows that modifying human nature leads to redefinition of the good that is different from the ordinary. Present human nature surely regulate our good, but it is not shown that we should continue to live on that regulation” (Uehara 2010, 86).

Conceivably, these arguments stand only when we can support the viewpoint that we can look down both sets of values, that is, our values and modified values. We cannot view our values from an absolutely neutral standpoint. For this, J. Glover said that the decision what affects the life of future people must be made according to our set of values (Glover 1984, 2005).

The idea of transcending the human perspective is impossible, perhaps unintelligible. ...Some of the values we have are plausible candidates for being part of the central core to be preserved. Perhaps, on reflection, we will decide that some of our present values do not have to be preserved. But, inevitably, any decision about that will be taken from within the framework of our values. There is no judging from a completely external perspective. (Glover 2005, 85)

Therefore what I want to emphasize here is that our self-conception is an inescapable viewpoint or framework of value judgment; something essential as a starting point to think about acceptability of human enhancement before engaging in risk-benefit assessment or considering the consequences. This does not mean that

5 I myself do not regard this as an argument against the “is-ought” rule. This is just reasoning from one prescription to another prescription, see Hare 1952. But because the outline of the arguments is the same, here I use Fukuyama’s view.

considering risk and overcoming it is useless, but rather it is necessary for deciding an actual course of actions. But even so, human nature is still a **condition** of such an assessment. As R. M. Hare noted, we need to care about both “fact” and “logic” when we want to decide what we should do. If we ignore the fact that what we are and what we want when we argue over enhancement technology that directly alters us, we can never attain a sufficient norm of actions that shows us how we should react to enhancement technology, and analysis that is not based on fact is empty.

4.3 Could Human Nature Decide Anything?

So far, I have shown that we should not avoid considering human nature when we argue human enhancement. This does not mean that human nature ultimately decides what we should do; rather, it sets the stage. However, some could still say that human nature can decide nothing? Ferrari says that the questions about human nature “would push the debate on to a fundamentally unanswerable question when formulated in general terms, and would consequently lead to an impoverishment of the reflection on emerging technologies,” (Ferrari 2009, 16-17).

Indeed, the difficulty of understanding human nature has caused the deadlock of arguments over human enhancement; however, I do not think it means **impoverishment** of arguments. According to Ferrari, arguments regarding human nature are polarized because they are used as political statements; opponents of human enhancement who advocate human nature are bio-conservatives and proponents of human enhancement who criticize human nature are techno-radicals. However, the ethical problems associated with human enhancement have already exceeded the solely political and therefore, the issue extends beyond the political problems of the U.S and U.K. Moreover, the entire world, e.g., Northern Europe and Japan have sought to provide incisive research. (Tannsjö 2009, Ida 2009, Shimazono 2009). Further to this, Kass wrote the following.

Yet despite these genuine difficulties and objections, we believe that it is important to open up this subject for public discussion. For it raises some of the weightiest questions in bioethics. It touches on the ends and goals to be served by the acquisition of biotechnical power, not just on the safety, efficacy, or morality of the means. It bears on the nature and meaning of human freedom and human flourishing. It faces squarely the alleged threat of dehumanization as well as the alleged promise of “super-humanization.” It compels attention to what it means to be a human being and to be active as a human being. (Kass 2003 chapter 1)

The problem caused by human enhancement is so important that many people are trying to solve it, because it concerns human nature or the very essence of each human being. The problem might become easy to solve when we eliminate the notion of human nature from arguments, then again it may impoverish them - in a true sense. Some way to treat human nature could be problematic, but to treat it separately does not necessarily lead to an impoverishment of arguments. Then, how about the rigidity of arguments? Surely, we need to admit that the steps are too slow;

however, it does not mean that we cannot make progress. Now, I shall try to present the course of arguments.

(1) To consider whether the enhancement technology affects traits those constitute our set of values

Firstly, we need to take up individual technology and consider what it is likely to change. If it modifies our nature, then we must consider whether that nature will affect our central features and set of values. Not all traits correspond to human nature. The average body has historically become taller and it does not seem to affect our values; therefore, it seems (at least ethically) not important to limit a technology to increasing height. Similarly, improving eyesight is not an object that may be criticized from the viewpoint of human nature. Here we need to clarify what traits are essential for us. In this regard, the traits are neither universal nor static, but relative to culture, time, the environment and situations. This is because human nature has a theory-laden character, as Daniels noted. More strongly, human nature here is dependent on our self-conception; what we are, what we want and what we want to be. This is tightly connected to our feelings and emotions⁶.

(2) To consider whether to modify such essential traits is ethically acceptable.

Any enhancement that modifies essential traits is self-defeating, because it undermines the feelings and desires that are the foundation of the motivation that drives us to improve our existence. Foreseeing this, Jonas argued the ethics of responsibility require leaving our nature intact. Therefore, the primary role of the argument from human nature is to prohibit such a self-destructive technology. For example, any modification that limits imagination should be prohibited. Any technology that enables immortality should similarly be prohibited if it spoils our sensitivity to events and life. Of course, not all changing of self is wrong. Rather, one may experience, more or less, frustration toward oneself and hence want to improve oneself. Also, if someone cannot actually change his/her character, virtue ethics and education become useless. Furthermore, a person naturally changes over time. It must be an arbitral praise of nature if we prohibit changing ourselves intentionally without a strong enough reasoning. However, it must firstly be noted that we have not positively accepted all natural changes in one's character, but just had no efficient tool to intervene in such a natural changing before developing medical technology. Rather, enhancement technology might provide a chance to control natural change, and it could be a welcome step.

Now, there are two conditions to be met for an acceptable change to take place. Firstly, any change to oneself **must** be affirmed by oneself. It implies the necessity to eliminate all of the earlier selves. However, this elimination must not be an instant decision, but instead should relate to how one has lived. In other

6 Indeed Glover shows a good example in his book *choosing children*. There he tried to define what nature is important for us by examining two conception; flourish and happiness (Glover 2005)

words, the decision must be the result of the struggle to maintain one's **integrity**⁷. One must be accountable to him/herself and to all of the past selves. Otherwise, the decision can be said to betray the person. On a larger scale, it betrays human beings who have lived on the earth from the beginning of history if proponents of human enhancement cannot account for themselves.

Secondly, a changed self must also be able to affirm itself. We are required to be responsible to objects that we create. It must never come to pass that changed persons cannot affirm their lives and feel too worthless to live. This does not mean that we have only to give them a disposition that satisfies the given situation (like an **adjustment** that Glover criticized with the example of satisfied Sisyphus (Glover 1984 ch.12)). Self-affirmation precedes self-satisfaction. Essentially, one who does not affirm him/herself does not set self-satisfaction as an end. However, it might be said that we have only to implant a disposition to affirm ourselves. Still, I believe no one autonomously prefers such an implantation. Further, this ability to find dignity in one's self freely is exactly a source of morality, and it is at the deepest and central core of human nature. To deprive someone that ability means to deprive his/her dignity and deprive his/her value.

(3) To consider consequences, risk and benefit

Through the course that is noted above, the standards of the good and bad, risk and benefit would be defined based on a firm self-conception. Then, we should consider the actual acceptability of individual human enhancement through risk-benefit analysis. This utilitarianistic consideration could lead us to a practical and meaningful conclusion that shows what we should do. However, it seems that not all of the arguments lead to a deadlock. This consideration that is based on human nature is different from a consideration without human nature in regard to having an ethical foundation and clear end. Indeed, this form of argument has already become popular in the field of human enhancement for sports.

Regarding the argument over enhancement in sports, philosophers, including opponents and proponents of enhancement, firstly focus on what the object of the enhancement technology is (e.g. muscle strength, judgment and concentration). Secondly, they consider what is and how the "spirit" of sports corresponds to human nature (e.g., to show the excellence of mind and body). Then, each enhancement is examined to determine whether it is against the spirit of sportsmanship. (e.g., whether using steroids violates the spirit of baseball or not). Finally, philosophers consider the acceptability of the technology through weighing its risk and benefit (e.g., how steroids harm athletes' health, whether the game becomes more exciting or not). Such a method for conducting discussions seems plausible and can be positively applied to other enhancement technology.

5. Conclusion

In this paper, I have argued about human nature in the context of human

7 For more arguments about integrity, see Williams 1973.

enhancement. Contrary to the recent practical movement, to argue human nature is necessary for the arguments supporting human enhancement. This does not mean that human nature itself may issue the final verdict, but human nature sets a stage for arguments; what is our benefit and what is it we risk. In this regard, we do not need to see human nature as totally fixed or universal. As history shows, it has naturally changed and even can be changed. However, even if it is not static, we must think about it when we are faced with the technology that has the potential to change it completely.

Ultimately, it is still very difficult to come to an agreement on what essential human nature for us is and what existence we possess. However, we should not hesitate to discuss human nature, because of fear of deadlock. To argue this is the very nature of normative ethics, and to give up this attempt is to give up normative ethics. Realistically, normative ethics seem to be able to confront this problem and human enhancement gives us a valuable chance to reconsider ourselves thoroughly in light of this.

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The Relationship between Neuro-Intervention of Memory and Moral Responsibility

Wanling CHOU

Introduction

Moral responsibility is a moral agent which makes a distinction between human beings and other species. Traditionally, philosophers have traced the root of moral responsibility to the free will of rational groups like Immanuel Kant. Because of it, they must take responsibility for their behaviors and decisions. This view has almost become a consensus: human beings are responsible for their own behaviors and decisions. However, due to the development of generalized neuroscience in recent years, some scientists have claimed that free will does not exist. In fact, it simply exists in the activity from a pile of brain-neuron and nerve network. This assertion comes with a powerful evidence of biological science. Some scientists infer that it only exists in “brain” not “ego” by different kinds of experimental statistics and results related to brains. Nevertheless, it is still hard to continue this type of argument. This article is not intended to get involved in this argument but to take any position between free will and brains. Based on “Memory”, if the development of brain science could interfere with the brain, how could the moral responsibility be possible? In other words, if it is possible to interfere with brain by human behaviors, how shall we explain the matter of moral responsibility we have?

1. How could Moral Responsibility be Possible?

An easier way to explain it is that people have rational characteristics. We have been asked to take responsibility for our own behaviors and decisions because of our rational capacity which can make us understand the consequences of our choices or behaviors. The attribution of responsibility led by it also directly reflects on law. Just like what Stephen J. Morse has said:

“The law’s requirement for responsibility – a general capacity for rationality – is not self-defining. It must be understood according to some contingent normative notion both of rationality and of how much capability is required.” (Morse 2006, 38)

Generally, people have two views of responsibility: the moral responsibility and the legal responsibility which is included in the former. Obviously, the spectrum of moral responsibility is broader than of the other from the rational and emotional aspects. Hume’s moral emotion is the example of the latter. On the other hand, the most famous instance of the former is Immanuel Kant’s explanation for

free will. Even though Hume claims, “Reason is, and ought only to be the slave of the passions,” he does not deny that social order needs connecting by legal responsibility. The serious rationalist like Immanuel Kant also keeps the importance of morality. Apparently, either moral responsibility or legal responsibility needs to be established on morality. Moreover, both of them have to appeal to a kind of rational reason to become universality. Because of this, Morse indicates that the responsibility required by law is a common rational capacity. It is not a theory of self-defining. All rational people possess this type of ability. It is worth noticing that this view implies it is not proper for people without or lose rational capacity to investigate the legal responsibility under certain kind of situations. As Morse says, “Virtually all legal responsibility and competence criteria depend on assessment of the agent’s rational capacities in the context in question. For example, a person is competent to contract if he is capable of understanding the nature of the bargain; a person is criminally responsible if the agent was capable of knowing the nature of his conduct or the applicable law.” (Morse 2006, 38)

Furthermore, the spectrum of moral responsibility is wider than legal one. One says that law is tiny part of morality which is true about it. Reflected on our daily life, what is inside the moral responsibility? It is to show filial obedience for parents; it is a duty to raise adolescents; it is to keep our word to friends; it is to be honest to children and the elderly; it is to take other’s things with their permissions; it is no physical punishment for students; it is to have pity for students who cannot afford their tuition; it is to help the elderly across the road, etc. We consider all these things as moral responsibility. If we disobey these, we at least will feel guilty or uncomfortable in mind. Inspect these things mentioned above carefully again, and we will find that some moral responsibility is legislative. It is provided with protections from law when it exceeds some levels. As an example, it is true to show filial piety to parents. However, one can be imposed sanction against law if he or she abandons their parents. Take keeping one’s word for instance. A person will be in charge of legal responsibility if he or she breaks their promise under the condition of having a contract. No need to say that a person taking other’s property without informing will be punished by law as stealing. All legal responsibility appeals that we have rational capacity to understand our behaviors. It is also presumed that we are the same identity. Put it another way, either moral responsibility or legal one shows that we must be responsible for what we have done and chosen. That is to say, we have the personal identity, consciousness or certain kind of continuity. These convey that we have the identity of rational morality so that we are different from other species. People with rationality are given to moral responsibility which they provide themselves with it, too. Next chapter is going to discuss what is behind the moral responsibility.

2. What is the Foundation in Moral Responsibility?

Traditionally, there are two viewpoints on the foundation of Metaphysics in moral responsibility: the reductionism and the non-reductionism. The reductionism is

divided into two parts. One is physical criterion and the other is psychological criterion. The former is to take personal identity back to physical characteristic. As long as there is continuity in physical characteristics, it can be considered as identity like body or brain continuity. The latter mainly appeals to psychological continuity emphasizing the consciousness or certain kind of spiritual continuity. That is to say, when we judge whether a person is the same one or not, he or she must own psychological continuity. The same body is not so important for the criterion. The non-reductionism is opposed to the judgment of the reductionism. They think a person can be identified as the same one, not just because he or she possesses physical or psychological continuity.

Parfit could be the representative of the non-reductionism. In fact, Parfit contradicts the viewpoints of the reductionism that the identity consists of certain physics or psychology. According to his definitions, he belongs to the non-reductionism –

“It is usually of the spiritual kind of entities. Our view is Non-Reductionist if we reject either or both of the two Reductionist claims. Many Non-Reductionists hold what I call the view that we are separately existing entities. On this view, personal identity over time does not just consist in physical and/or psychological continuity. It is a separate, further fact. A person is a separately existing entity, distinct from his brain and body, and his experiences. On the best-known version of this view, a person is a purely mental entity: a Cartesian Pure Ego, or spiritual substance.”(Parfit 1984, 210)

In Parfit’s point of view, it is not important whether an individual fits the criterion of personal identity. It is more important to ponder what we really mean when saying this is the same person. In other words, for Parfit, traditional importance is what we have talked about an identical individual. It means that he or she is proper to personal identity in certain kind of criterion. However, Parfit asserts that we should ensure this individual possesses some characteristics. As long as it matches the characteristic, it can be called the same person. Simply to say, the former claims this is the same person because he or she owns certain identity; because of having some kind of identity, the latter states it is able to be considered as the same person. These two aspects are distinct. The former focuses on “entity” to describe it, but Parfit emphasizes the “importance” of identity.

The following explications are two criteria of the reductionism: physical criterion and psychological criterion.

2.1 Personal Identity (in the View of the Reductionism)

2.1.1 Physical Criteria(Parfit 1984, 204)

- (1) Enough of Y’s brain continued to exist, and is now X’s brain, and
- (2) There does not exist a different person who also has enough of Y’s brain.
- (3) Personal identity over time just consists in the holding of facts like (2) and (3).

2.1.2 Psychological Criteria. (Parfit 1984, 208)

- (1) There is psychological continuity if and only if there are overlapping chains of strong connectedness. X today is one and the same person as Y at the same past time if and only if
- (2) X is psychologically continuous with Y,
- (3) This continuity has the right kind of cause, and
- (4) There does not exist a different person who is also psychologically continuous with Y.
- (5) Personal identity over time just consists in holding of facts like (2) to (4).

Shortly, in the reductionism, it exists in a specific brain, body and a particular system or a personal existence related to physics and spiritual events. (Parfit 1984, 210)

Nevertheless, Parfit points out if we adopt a view of the reductionism, we should believe the identity of such a event. It may be uncertain in a way of considerate describing. He takes the example of a club to explain this uncertainty – There were a number of members in a club. They regularly or irregularly gathered together and participated in some activities. However, this club had been close for a long period of time due to some reasons. One day, some of the members organized a club at the same place. Was this new club identical to the original one? Parfit views this question is meaningless. It is trivial whether it is the same club or not because it depends on their own judgments. The operation of the club is more important than that. This “uncertainty” occurs because we cannot judge whether it is the same club or not.

Parfit claims that both physical and psychological criteria are based on the discussion on “entity” of “identity”, which refers that “our identity must possess certainty.” Parfit opposes this view and emphasizes the discussion on the “importance”. He also rejects “personal identity is of great importance”. He thinks the importance is Relation R or psychological continuity. It means that with the psychological connection or continuity of the correct reason and in the explanation for “what is important”, the correct reason would be any reason. (Parfit 1984, 215-216)

2.2 Parfit’s Relation R : Psychological Continuity (in the View of the Non-Reductionism)

Parfit indicates that we are able to express psychological continuity by a way without assumption of personal identity. Besides, according to our evidence, this existing entity with continuity is not independent from person’s brain and body. Clearly, Parfit does not posit that personal identity is of great importance. Meanwhile, he mentions if we do not consider it like this anymore, it will affect our views on rational morality. (Parfit 1984, 215) Indeed, our viewpoints towards rationality and morality presume our identity. Therefore, I leave a space on Parfit’s views. In my opinions, even though the criterion of personal identity may be imperfect in a traditional way or may be not enough to explicate some specific situations, the question is not whether we can reduce moral agent to certain formation of physics or psychology. Instead, it is ponder what it can reduce to be? In the next chapter, I will

explain why the views of traditional reductionism and Parfit's Relaiton-R are still not sufficient to clarify some situations, especially the new challenge brought by the coming era of Neuroscience.

3. The Importance of Memory

Both traditional personal identity (physical criterion and psychological criterion) and Parfit's Relaiton-R need the presumption of normal operations from memory function. Even if the memory is mistaken, it is happened naturally instead of on purpose. Put into another word, memory can not be interrupted by human beings. Nevertheless, if the technology of Neuroscience can interfere with our memory, those criteria will be questioned and be insufficient to explain how our moral responsibility is connected.

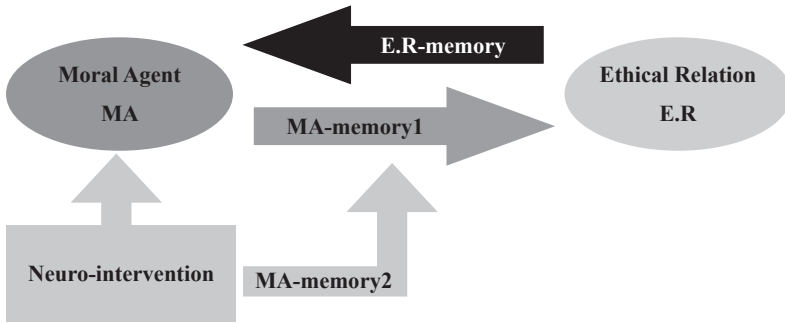
Take physical criteria for example. What does "brain" as a physical object with continuity mean? The concept behind "brain" actually infers to the "memory" function we have. In this meaning, "memory" is a sort of biological functions. If the memory function gets damaged or interrupted, the physical criteria based on it would be affected as well. The same problem is occurred to the psychological criteria. The "psychological" continuity is apparently a kind of conscious continuity. Furthermore, consciousness needs to be established under the situation of memory in order to work. In other words, it infers "memory" is a sort of function from psychology. Hence, if memory is interfered and then changes, it will affect our self-consciousness. It will become a problem whether psychological continuity can last or not. Likewise, Parfit would come across the same difficulty. No matter how important the personal identity or Relation R is, both of them get involve with psychological continuity. Thus, they cannot avoid the same criticism.

Thus, I intend to establish a new criterion which is not necessary to presume the memory function of moral agent. Though the Neuroscience may be able to interfere with or even control our memories, it will not influence our judgments on the identity of entity. Put into another word, we still can investigate personal moral responsibility under the condition of the cranial nerve interfered by memory.

I claim the criterion is based on "ethical Relation R"¹, which is two folded. It differs from Parfit's "Relation R" which simply is the psychological continuity of moral agent. The memory of entity can be manipulated or modified, but it will not influence the fact that he or she is being the same person, unless the memories of all the other people related to him or her are also manipulated or modified. This probability is extremely low. Moreover, we cannot ensure to make the distinction between those who are related to entity.

It is trivial whether MA-memory₁ is identical to MA-memory₂! It will not

1 This concept comes from Confucianism. Relevant details can be found in Cf. Professor Shui Chuen Lee' paper "A Confucian Conception of Moral Community and Approaches to Bioethical Issues", presented in the Conference on The 10th World Congress of Bioethics, organized by The International Association of Bioethics, Singapore.



influence the existence of E.R-memory even though MA-memory2 is not equal to MA-memory1. This criterion makes the importance of memory in entity distribute to other relevant people and also effectively reduce the risk caused by interference with the single memory.

Reducing the importance of memory is a vital work for the criterion of ethical relationship. Precisely to say, it is to reduce the importance of memory in moral agent. In fact, the criterion of ethical relationship still depends on memory at certain kind of level. It relies on the memory from the object in ethical relationship instead of the personal memory of entity. Take putting eggs into a basket for instance. Putting the importance of memory into single moral agent is just like putting all eggs into one basket. It seems convenient to carry or to discuss, but its risk is much higher than putting eggs separately while it crushes. Likewise, if the memory can be controlled by human behaviors, the moral risk would be higher than to distribute the importance of memory to other objects in ethical relationship. It may be not the most perfect method but it actually can provide a reasonable explanation for strong conflicts caused by interference with cranial nerve.

4. How could the Moral Responsibility be Possible after Neuro-intervention?

Try to imagine, if the moral responsibility is explicated through traditional reductionism and Parfit's Relation R, we could not reasonably investigate one's moral responsibility under the presumption that memory can be interrupted or controlled. Probably it is not that worse, but at least we are not capable of explain what is the foundation of moral responsibility under this situation. How to clarify it? The following chart indicates the level of the importance on memory.

The importance of memory	Physical Criterion	Psychological Criterion	Relation R	Ethical Relation R
High	V	V	V	
Medium				
Low				V

Traditional criteria need highly depending on memory functions, which ethical Relation R does not need it. Although Neuroscience can interfere with memory functions even manipulate it, it will not lead personal identity to a conflict. That is to say, the new criterion based on ethical Relation R under the interference of cranial nerve, it can provide a rational explanation for the attribution of moral responsibility.

What's more, I observe that the criterion of traditional identity is not able to explicate the problems in the attribution of Alzheimer and Amnesia patients' identity and their moral responsibility. It would be an explanation if ethical Relation R is the foundation of the criterion. Take Alzheimer for example. We certainly can judge a person with serious Alzheimer that he or she still has to take the criminal responsibility for killing someone even it has been done five years ago. (This case has not been solved at that time yet.) However, we have to discuss about the explanations and the investigation on his or her moral responsibility.

In order to explicate ethical Relation R, I am going to add some presumptions to the case designed by Parfit about immigration to Mars(Parfit 1984, 199-200) –

There is a kind of time machine which can take human beings to Mars to travel. First of all, this machine would copy your brain, including your memory, your consciousness, your knowledge, your skills, and so on. Next, they would pass all of them to another time machine in Mars. They will record down your DNA and reproduce another “you” with exactly the same body and transplant your memory, consciousness and other things. Therefore, or maybe after few seconds, there would be another “you” with all of your thoughts, emotion, and love to your wife in Mars.

Case 1: At this moment, your body on Earth would be destroyed in transition.

Case 2: At this moment, your body on Earth would not be destroyed, but you would die after two days due to heart failure. Luckily, you could speak to another “you” in Mars within these days.

Here comes a question. You in Mars and you on Earth are the same one?

In case1, according to psychological criteria of the reductionism, consciousness and memory are continuous. This refers to the psychological continuity. Thus, we think you in Mars and you on Earth are the same one. In case2, although the psychological continuity still lasts, we seem not to adopt that you show up both on Earth and in Mars. Therefore, Parfit views that personal identity is trivial. It is important that you on Earth and you in Mars have the same consciousness and memory, which means rational psychological continuity. You in Mars are you on Earth. Two of you will not exist at the same time and space.

We still cannot feel something wrong so far because two cases seem reasonable. Next, I will assume another morality in more difficult situation – If you were a murderer and try to run away to Mars, you know that no matter your body would be destroyed during the transition or you would be charge of death penalty after the transition. These are not vital because you believe you could rebirth in Mars.

Here comes another question. Which “you” would take the legal responsibility for being a murderer? In Parfit’s opinion, we do not ensure both you in Mars and you on Earth would take the penalty. In our cognition to responsibility, the attribution of responsibility needs to be in accordance with the personal identity. If we think the same as Parfit, the moral problems should have to be reconsidered in general. Parfit claims –

Nevertheless, under the situation where we do not have to change our views on rationality and morality, Parfit’s opinions apparently cannot answer this question, which ethical Relation R can do. Whether you were destroyed on Earth or not, you on Earth and you in Mars both were the criminal of murder due to the following reasons – (Parfit 1984, 215)

A. No matter whom “you” were, your object of ethical relationship could identify “you”. Even if you change your body, brain or personality, the connection between the object of ethical relationship and you are a deniable fact. Since you in Mars think “you” are the same on Earth, “you” in Mars should take over everything at the same time, not just your consciousness, memory, wife, thoughts, emotions and even your responsibility.

You cannot avoid law by facial surgery or running away to Mars. It does not prevent you from your responsibility and moral one.

In a common sense of rationality and morality, the criteria of ethical relationship should provide us more explanations for moral responsibility under various situations.

Conclusion

Memory and moral responsibility play vital roles in views of traditional identity and Parfit’s Relation R. A simple way of saying is that moral responsibility needs presuming certain kind of personal identity, which needs another assumption of memory functions. Therefore, if the development of neuroscience can interfere with or control with our memory, it will affect the criteria of identity and then modify it. It will influence the explanation for the possibility of our attitude towards moral responsibility. Therefore, as long as we reduce moral agent depending on the importance of memory, it can also lower the risk of interference by neuroscience. It will come with a new pattern – the criterion of ethical relationship is intended to be capable of responding the explication for neuroscience and the conflict which could happen.

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Biocentrism and Synthetic Biology

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1. Synthetic Biology and Artificial Organisms

Synthetic biology is a generic term covering a range of research programs such as bioengineering, protocell research, and synthetic genomics. Research in the field also encompasses a number of different methods and technologies such as DNA-synthesis, metabolic engineering, chemical synthesis of protocells, and computer modelling of alternative nucleobases (Deplazes 2009). While the field is still in its nascent state there is general agreement that it is an emerging area of research whose general aim is the design and construction of novel artificial biological pathways, organisms or devices, or the redesign of existing natural biological systems to serve human purposes such as the production of energy and medicine.

So far the most debated synthetic biology research has been the synthetic genomics project at the Craig J. Venter Institute. In May 2010 Craig Venter and his collaborators announced that they had managed to create a self-replicating microorganism controlled by a synthetic genome (Gibson et al 2010). Commenting on the achievement Daniel G. Gibson said, “With this approach we now have the ability to start with a DNA sequence and design organisms exactly like we want. We can get down to the very nucleotide level and make any changes we want to a genome.”¹

In the United States the publication of the result of Venter’s group made the Presidential Commission for the Study of Bioethical Issues initiate a series of hearings on the ethics of synthetic biology, and various councils and agencies in the European Union and individual European countries such as the United Kingdom, Switzerland, the Netherlands, and Denmark have started to outline the ethical agenda of synthetic biology (see e.g. Balmer and Martin 2008, van Est, R. de Vriend, H. and Walhout, B. 2007, and EHKA 2010). Also, a number of articles point out that synthetic biology gives rise to questions about dual use, risks to human health and the environment, and other ethical and societal problems associated with biotechnology (e.g. Bhutkar 2005; Miller and Selgelid 2006). However, besides questions about the risk of harmful consequences of various kinds, synthetic biology also provides an extremely interesting context for considering questions about the moral significance of life. In particular, synthetic biology makes it pertinent for us to reflect on the normative implications of our distinction between naturally evolved life forms and the artificial life forms, which synthetic biologists hope to be able to fabricate in the not too distant future.

While the moral status of synthetic organisms is considered to be one of the central themes on the ethical agenda of the field (see e.g. Bhutkar 2005; Deplazes,

1 See <http://www.nature.com/news/2010/100520/full/news.2010.253.html> accessed December 10, 2010.

A. Ganguli-Mitra, A. and Biller-Adorno, N. 2009), there has been little systematic analysis of the moral status of synthetic organisms.² In this paper I want to review the moral status of artificial organisms on the basis of some of the most important biocentrist theories. I will focus on theories, which claim that nonconscious organisms such as trees and microbes possess moral status in virtue of being alive, and consider whether they also allow us to ascribe moral status to artificial organisms.

As already pointed out, there is still no universally accepted definition of synthetic biology. In this paper I will focus on the aim at creating *new* forms of life and living entities, which do not have their origin in natural evolution. In this connection I think it is important to distinguish between artificial and synthetic life. As I shall use the terms, something is synthetic if it has been assembled or put together by an agent. What makes Venter and his team's microbe synthetic is that it (or an important part of it) is spliced together by humans with the aid of computers and other technological equipment. However, as several commentators remarked, Venter's organism was not a case of artificial life, since the synthesized genome was a copy of a naturally occurring genome. In order for Venter's team to create an artificial genome, they would have had to synthesize a genome not already existing in nature.

One may wonder when we should consider something, e.g. a genome as novel and not just a modification of an already existing one. How different does a cell have to be from a naturally occurring one in order for it to be a new form of life? I do not presently have a precise answer to this question. However, for the purposes of this paper I will take an artificial organism to be an organism with a genome that is not a descendant of an already existing genome, which has undergone modification (see Preston 2008, p. 34-35).

2. Moral Status and Nonconscious Organisms

The question about whether some type of entity has moral status or is morally considerable occurs in connection with a number of important issues in applied ethics. In her book on moral status Mary Anne Warren states that:

To have moral status is to be morally considerable, or to have moral standing. If an entity has moral status, then we may not treat it in just any way we please; we are morally obliged to give weight in our deliberations to its needs, interests, or welfare. Furthermore, we are morally obliged to do this not merely because protecting it may benefit ourselves or other persons, but because its needs have moral importance in their own right. (Warren 2000 p. 3)³

When investigating the moral status of the products of synthetic biology we

² But see e.g. Baertschi, B. (2009).

³ For an excellent and influential discussion of moral status and life see Goodpaster 1978.

should begin by recognising that the microorganisms, which synthetic biologists might be capable of creating in the laboratory in the not so distant future, will be rather simple nonconscious forms of life. In an influential and much debated paper Feinberg (1974) presents a principle, which he find can be used in order to resolve questions about the moral status of plants and other nonconscious organisms:

The Interest Principle An individual thing X can have moral status if and only if X has (or can have) interests of its own.⁴

The interests in question must be interests allowing X to be harmed or benefitted according to what's in X's own interests.

Feinberg accepts that plants and other nonconscious organisms may need things, such as sunshine and water, in order to grow and develop. But when we say that plants and other nonconscious organisms need something, we should not take this to mean that they have welfare or a good of their own towards which the satisfaction of their needs contributes. The sense in which plants need sunshine and water is the same as the sense in which a car needs gas. The car can't drive without gas; the plant can't grow without water. However, in both cases the satisfaction of needs do not serve the good of the car or plants themselves. In so far as nonconscious organisms such as plants need anything they need it in the same sense as cars and other artifacts, namely in relation to some interest an agent has taken in them: "Plants may need things in order to discharge their functions, but their functions are assigned by human interests, not their own" (Feinberg 1974, p. 54).

3. The Natural End-States of Organisms

Several advocates of biocentrism have eagerly opposed Feinberg's view. Here is Arbor (1986):

Trees, like animals and other plants, but unlike machines, have end-states that are not decided by human beings. Given the right conditions and barring interference they will in the course of natural events reach this state. There is nothing mysterious or improper about insisting that whatever helps trees achieve their natural end-state is in their interest. (Arbor 1986, p. 337)

The central claim in Arbor's argument is that there is an important difference between machines and organisms, namely that organisms have *natural end-states* that ground them having interests of their own. I suspect that the notion of a natural end-state is also taken for granted in an interesting passage where Arbor reflects on the 'art' of bonsai as a way of torturing trees:

4 Putting the principle in terms of moral status I follow Goodpaster 1978, p. 318.

(...) Bonsai requires that the trunks and limbs of a young plant be tortured into travesty of their natural form. After being constrained for several years in a deformed position by various contrivances the tree becomes permanently misshapen. (Arbor 1986, p. 336)

On the view presented by Arbor, what confers moral status on living organisms is their possession of a natural end-state or a natural form, which they strive to achieve. Any interference with this process is contrary to the interest of the organism. However, Arbor's view would seem to entail that artificial organisms, which have been designed to perform certain functions, will not possess the sort of end-state, which natural organisms are claimed to have. In case it becomes possible to construct organisms along the rational design principles that engineers use to make machines, they will be living organisms with no natural end-state. Such organisms will not possess moral status on the view advocated by Arbor.

Let me note two things about Arbor's view. First, Arbor's appeal to 'natural end-states' may be criticised for presupposing what Sober has called the Natural State Model (Sober 1980, p. 558). According to this model there is a single phenotype, which a given genotype has as its natural one. However, contemporary genetic theory doesn't operate with a distinction between those states of an organism that are natural and those, which are the result of interference. Rather than taking a particular phenotype to be the natural one for some kind of plant, one should instead think of different phenotypic results in terms of the "norm of reaction" of a genotype within different environments. Arbor's reliance on the Natural State Model is problematic because that model operates with the idea of a natural environment for a genotype to be in, and assume that this natural environment, in combination with the norm of reaction of the genotype in that environment, determines the natural phenotype for the genotype in question. But there is no natural environment for plants or other organisms to be in. There are just different norms of reaction for a genotype in a variety of different environments.⁵

Second, on Arbor's view it is possible for there to exist living beings, which do not have moral status. Arbor's criterion implies that it is the possession of a *natural* end-state that grounds moral status. A living organism such as a tree may be said to thrive and flourish with reference to its natural end state, and it has this end-state independently of human interests. As Arbor's discussion of the art of the bonsai claims to show, bonsai is a case where human interference obstructs a tree's pursuit of its natural end-state. However, a similar situation can presumably not arise in connection with an organism, which has been designed and synthesized in the lab in order for it to perform some desired function such as producing a certain substance. Just like an air conditioner is made for controlling the temperature and humidity in a room, an artificial organism may be tailor made to produce a substance, which can be used as a drug or fuel. Arbor seems to think of natural end-state in terms of a genotype reaching a certain phenotypic expression, but in the case of artificial

5 Similar remarks can be found in Lewontin's criticism of biological determinism in Lewontin 1997.

organisms it will make little sense to say that they have a natural end-state in Arbor's sense. But this means that, on Arbor's view, artificial organisms will not have interests independently of the purpose they have been assigned by agents, and hence their moral status will be similar to that of nonliving machines.

4. Organisms as Teleological Centers of Life

Taylor (1986) has also defended the biocentrist view that all living things have moral status. To be a living thing is, on Taylor's view, to have a certain teleological or goal-directed organization. Living organisms are *teleological centers of life*, which strive to preserve themselves and to realize their good in their own unique way:

To say that an organism is a teleological center of life is to say that its internal functioning as well as its external activities are goal-oriented, having the constant tendency to maintain the organism's existence through time and to enable it successfully to perform those biological operations, whereby it reproduces its kind and continually adapts to changing environmental events and conditions. It is the coherence and unity of these functions of an organism, all directed toward the realization of its good that make it one teleological center of activity. (Taylor 1986, p. 121)

The idea of a teleological center of life should not, Taylor claims, be taken as a case of anthropomorphism. A teleological center of life need not be conscious; there is no requirement that the entity is intentionally aiming at preserving its existence, or that it cares if it lives or dies. Even so, teleological centers of life have a good of their own around which their behaviour is organized. All organisms, whether conscious or not, are teleological centers of life in the sense that each is a unified, coherently ordered system of goal-oriented activities that has a constant tendency to protect and maintain the organism's existence (Taylor 1986, p. 122).

Now Taylor's idea that it is the teleological organization of living things, which distinguishes them from nonliving things, doesn't seem to provide a necessary condition for being alive. As Warren points out, there may be suicidal organisms whose behavior is directed towards their own destruction and not their survival, reproduction, or adaptation to the environment (Warren 1997, p. 29). But, perhaps more significantly, teleological organization doesn't seem to be a sufficient condition for being a living thing either. There are many examples of nonliving, human-made artifacts, whose activity are directed towards some end and involves complex feedback mechanisms.

In reply to this sort of objection Taylor argues that teleological systems fall in two distinct classes. First he acknowledges that there are machines, (such as self-monitoring space satellites, chess-playing computers, and assembly-line "robots"), which function in a self-regulating manner and can be understood as teleological systems. But, Taylor points out, the ends that these machines are programmed to accomplish

are not purposes of their own, independent of the human purposes for which they were made. (...) The ends and purposes of machines are built into them by their human creators. It is the original purposes of humans that determine the structures and hence the teleological functions of those machines. (Taylor 1986, p. 124)

It is the fact that they do not have a purpose of their own, which separates machines from living organisms. Unlike a machine, a living organism

(...) seeks its own ends in a way that is not true of any teleologically structured mechanism. It is in terms of *its* goals that we can give teleological explanations of why it does what it does. We cannot do the same for machines, since any such explanation must ultimately refer to the goals their human producers had in mind when they made the machines. (Taylor 1986, p. 124)

So, on Taylor's view, whether or not a teleologically organized system is alive depends on whether it has goals of its own.

A consequence of Taylor's view is that artificially created organisms, such as those envisioned in synthetic biology, will not qualify as living things, since their goal has been 'built into them' in the manner in which teleologically organized machines have their goals built into them. This means that, on Taylor's view, artificial organisms are not really living organisms at all because of their origin in human design and construction. Like (other) machines they have goals derived from the interests of humans, not goals of their own. This in turn entails that they have no moral status.

I find Taylor's view unconvincing. First Taylor's argument strikes me as question begging. In order to defend his view Taylor takes our ability to determine whether something is alive or not hostage to our ability to determine whether or not it has goals of its own. However, one should expect that we are able to determine whether something is alive or not before we know, whether it has goals of its own or not. Finding out that a teleologically organized entity has been created in the laboratory to help produce insulin, would not make us withdraw our judgment that it was alive.

Second, contrary to what Taylor claims, there seems to be room for specifying and explaining the goal-directed behavior of artifacts without reference to human purposes. Consider an air conditioner. If Martians came to Earth and analysed the behavior of an air conditioner, they would presumably come to the conclusion that its behavior is directed at maintaining a certain humidity and temperature in its vicinity. That is to say, they could give a teleological explanation of the behavior of the air conditioner referring to the goal of its activity. However, they could come to this understanding without any knowledge of the utility of air conditioner behavior to humans.

5. The Biological Interest View

Gary Varner has presented a sophisticated response to Feinberg's claim that nonconscious organisms do not have interests of their own. According to Varner, plants have needs in a sense in which artifacts do not, and this sense qualifies plants, but not artifacts, for direct moral consideration (Varner 1990 and 1998 chapter 3).

Varner wants to establish a notion of *biological interest* that applies to all and only living organisms. Biological interests are interests of the organism itself. The central idea is that biological interests are based on needs defined in terms of biological facts about organisms such as us. These are interests that an organism may have without ever consciously taking an interest in them. With the notion of biological interest Varner wants to add a disjunct to the standard mental state theory of welfare according to which having a desire for X is not only a sufficient, but also a necessary condition for having an interest in X. To bring out what he has in mind, Varner presents the following case:

The 19th century mariners

Nineteenth-century mariners needed ten milligrams of ascorbic acid a day to avoid scurvy. However, the mariners of the 19th century could not consciously take an interest in getting *ascorbic acid* or form a desire for ascorbic acid, since, even under reasonably idealized circumstances, there was no way for them to know about it at that time. Now if we think that the mariners can only have an interest in things they can desire, then there is no way in which we can say that they had an interest in ascorbic acid. But clearly consuming ascorbic acid was in the interest of the mariners. Hence, we have a case that shows that the mental state theory can't account for all cases in which we think it correct to say that an adult human being has an interest in something. (Varner 1998, p. 60)

If Varner is right, the case of the mariners shows that something can be in the interest of beings like ourselves, even if we never consciously take an interest in it.⁶ And if this is so, Varner argues, then there is no reason why we should not also think that plants and other nonconscious living things can have interests of their own independently of forming any desires.

Still, *pace* Feinberg, it must be shown, that the needs of nonconscious organisms are needs in a different sense than the needs ascribed to machines and other nonliving artifacts. In order to establish this claim Varner develops a notion of a biological interest, which relies on the popular etiological notion of biological function (see e.g. Wright 1973, Millikan 1989, Neander 1991):

⁶ I will assume that the case supports Varner's claim that we need to add a disjunct to the mental state theory of welfare, though this is not uncontroversial. See e.g. Carter 2000 and Rowlands 2000.

Biological Function X is a biological function of S (some organ or subsystem) in O (some organism) if and only if:

- a. X is a consequence of O's having S and
- b. O has S because achieving X was adaptive for O's ancestors.

On the basis of this account of biological function, Varner then proposes the following criterion of biological interest:

Biological Interest An organism A has a biological interest in X if and only if X would fulfill some biological function of some organ or subsystem S of A (Varner 1998, p. 68).

Thus a human organism has a biological interest in breathing due to its function of removing carbon dioxide from and deliver oxygen to the lungs and respiratory system. If smoking is detrimental to the breathing function, then it harms the human organism.

Having established the notion of biological interest, Varner appeals to it in support of the empirical claim: "Plants have needs in a sense that artifacts do not, because plants' subsystems have biological functions, but artifacts' subsystems do not" (Varner 1998, p. 68.) That is to say, organisms have needs in a sense in which artifacts do not, because all and only organisms are subject to natural selection.

Let me briefly say a little more about the notion of biological function that Varner relies on. Wright's original formulation of the etiological theory of function is meant to be generic covering all functions whether biological or artificial. According to that theory (Wright 1973, p. 161):

The function of X is Z means

- a. X is there because it does Z,
- b. Z is a consequence (or result) of X's being there.

That is to say, the function of a subsystem is "that particular consequence of its being there which explains why it is there" (Wright 1976, p. 81). In the case of the functions of artifacts, the *why is it there* question is explained with reference to *intentional* selection. A part of an artifact is placed where it is because its being there is expected to have certain consequences. Thus the gear stick in a car, one may suggest, is where it is because it is intended to enable the driver to change gear while driving. This is not so in the case of naturally evolved organisms. In the case of organisms there is no agent whose intentions we can refer to in order to answer the *why is it there* question. However, instead of thinking of the functions of the organs of natural organisms in terms of intentional selection, one may suggest a version of the etiological account, which accounts for the functions of organs in terms of natural selection. The *why is it there* question, when asked with respect to an organ in an organism, is explained with reference to its adaptive value for the ancestors of the organism in question. Varner's suggestion thus is that parts of living organisms have biological functions determined by natural selection, whereas machines, the

parts of machines, and other artifacts have their functions determined by human interests (Varner 1998, p. 69).

Varner aims to defend a version of biocentric individualism, which claims that all and only living organisms have interests (Varner 1990, p. 253). Still, Varner points out, his defence is partial'because, in a few special cases, some living organisms will not have interests on the view I advance' (Varner 1990, p. 253.). One of the cases that Varner has in mind concerns the possibility of creating artificial genomes, but Varner dismisses the case as highly futuristic:

Although it is possible that researchers will one day create a complement of DNA *ex nihilo*, all currently foreseeable DNA research either modifies one small portion of a given species' DNA or "splices" in genetic material from another organism, and in either case many biological functions are left unaffected (Varner, 1998, p. 70).

Venter's recent results may very well usher in a new era in which synthetic biologists will be able to create "a complement of DNA *ex nihilo*," so the scenario is not as futuristic as it may have seemed to Varner a little over a decade ago. Still, my objection to Varner is not just that the creation of artificial organisms has come closer with the progress of synthetic biology, and that he can't shrug off the possibility of artificial organisms as practically irrelevant. My main objection to Varner is that admitting that his view is partial does not make it less theoretically flawed. Whether or not synthetic biologists will create artificial DNA complements in the near future, the possibility of artificial organisms, which do not have an evolutionary history of natural selection, makes it doubtful whether Varner's theory gives us the right account of what ground the interests of actually existing organisms in the first place.

As Varner admits, his theory basically says that all and only organisms, which have a history of evolution by natural selection, have biological interests. As a consequence artificial nonconscious organisms will not have biological interests, despite being living beings. In turn that rules them out as candidates for moral status. But should we accept that whether an organism, natural or artificial, currently has a biological interest in X ultimately depends on whether it has ancestors, who have been exposed to natural selection? A consequence of this view is that the moral status of organisms is determined by external facts about their historical origin, and not by facts about their current internal activity, and this is a consequence that seems hard to accept. To see this consider a case in which by cosmic coincidence a perfect physical copy of the beetle called "Beetle" comes into existence. Call the copy "Beetle*." Now, on Varner's theory, Beetle* does not have biological interests and hence no moral status, but Beetle does. Why? Because Beetle has ancestors who have undergone natural selection and Beetle* doesn't. However, this seems to be a case of discrimination based on origin. It requires an argument to show why these facts about Beetle and Beetle* justify treating them differently from the moral point of view.

6. A Suggestion

Let me end my discussion of Varner by sketching a way in which I think the biological interest theory can be revised such that it can accommodate the possibility of artificial organisms. Varner explicitly defines the notion of biological interest in terms of an etiological notion of function. It is the appeal to the etiological notion of function, which entails that artificial organisms (and instantaneous ones like Beetle*) do not have biological interests.

On the etiological conception of biological function, the function of Y in O is X if performing X is an effect of Y in O, and secondly, the performance of X by Ys in O's ancestors was beneficial for their survival and reproduction. However, I suggest that we can identify the function of an organ of an organism in terms only referring to the organ's role for the continued *self*-reproduction of the currently existing organism of which it is a part.⁷

Varner takes a present heart to have the function of pumping blood because it owes its existence to the existence of ancestor hearts pumping blood for the benefit of the reproduction of ancestor organisms. However, I suggest that we take a token heart's function to be determined by its current causal contribution to the continued existence of the organism of which it is a part and hence to its own continued existence. In this way the function of an organ or subsystem is identified with its causal contribution to its own reproduction.⁸

Living organisms, whether natural or artificial, are characterised by being self-reproducing systems, i.e. they are systems, which continuously repair and recreate themselves. Having established an intraorganismal mechanism conferring functions on the parts of not only natural but also artificial organisms, we have the basis for ascribing biological interests to artificial organisms. Unlike nonliving artifacts, artificial as well as natural organisms have an interest in those things, which contribute to their self-reproduction. On this account all and only self-reproducing systems have interests of their own.

The functions debate is complex and I do not pretend to have presented a full-blown defence of a theory of functions in this paper.⁹ What I have done is to point towards a way of determining the function of parts of organisms, which I think is independently plausible and which one might appeal to in a definition of biological interest, in order to ensure that the notion also applies to artificial organisms. On the view I have sketched, all organisms, artificial as well as natural, have interests of their own in virtue of being self-reproducing systems. The main advantage that this view has in comparison with Varner's view is that it can accommodate the

7 The idea may, I think, be found in both Kant's analysis of organisms as natural purposes (Kant 1790/2000 §65), and Maturana and Varela's characterisation of organisms as autopoietic systems in Varela, F., Maturana, H., and Uribe, R. 1974.

8 This section is inspired by discussion of the functions of self-reproducing systems in McLaughlin 2001.

9 I develop the notion of function to which I appeal in more detail in another article.

possibility of artificial organisms.

7. Conclusion

One of the questions that have been raised in connection with the ethical assessment of synthetic biology research concerns the moral status of the nonconscious artificial life forms that it is expected to produce in the not too distant future. In the course of this paper I have presented one of the prominent branches of synthetic biology associated with Craig J. Venter's synthetic genomics project. Since the products of synthetic biology are likely to be simple and unconscious forms of life, I first outlined Feinberg's argument for denying nonconscious life moral status. I then reviewed three biocentrist replies to Feinberg's argument, and explored whether they would ascribe moral status to artificial organisms. As it turns out, on all three biocentrist theories artificial organisms will not have interests of their own and hence, on many views, they will not have moral status. Of the three theories, I find Varner's biological interest theory to be the most sophisticated, and I ended by suggesting a way in which it can be revised such as to accommodate the possibility of artificial organisms.

My suggestion raises (at least) two questions, which I think needs further investigation. First the idea that the function of parts of organisms is determined by the part's causal contribution to the self-reproduction of the organism and in turn its own recreation should be spelled out in more detail. In particular it seems as if there will be a time where a part doesn't yet have a biological function, since the organism hasn't yet gone through a cycle of self-reproduction.

Second it must be investigated whether the implication that *all* and possibly inanimate self-reproducing systems will have interests of their own is problematic. Feinberg and others assume the Interest Principle stating that X's having interests of its own is a necessary and sufficient condition for X's having moral status. This means that on the view I'm proposing, all self-reproducing systems will have moral status. Whether or not we should accept Feinberg's Interest Principle is doubtful, but if we do, the conclusion of my argument is that nonconscious artificial organisms have moral status in virtue of being self-reproducing systems with interests of their own.

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“Society in Science”: the DePGx Project and the Democratization of Health Policy Strategies through Public Deliberation

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1. Science, Truth and Society: the Relevance of Deliberative Consultations

With the ever rapid development of scientific and technological research in the 20th century, the power growth of scientific institutions and their specific influence have expanded incredibly due to the results they have achieved in several areas. In view of the enormous occurrence of scientific discoveries in everyday life, state allocation of public funding has consequently been devoted to the promotion of certain promising subjects. The process of control and the setting of the agenda for health policies has only rarely been established in accordance with shared priorities of public concern. Indeed too often, governments have subordinated resource allocations to “health technicians” who, in their turn, have prioritized only one narrow perspective over the complexities involved. So far, therefore, the public management of scientific research has been kept isolated from a multiperspective assessment grounded in public understanding. It is believed that the widespread prejudice preventing the involvement of public sectors of society into the decision making processes, consists in an old-fashioned idea of “scientific truth” as “correspondence” which can only provide a form of self-legitimization to science itself. The understanding according to which scientific research is capable of providing a form of truth “exempted” from competing arguments is not only a naïve view of science, but also a misplaced reconstruction of how science proceeds. Indeed, scientific explanatory accuracy of physical phenomena proceeds through an assessment of contrasting empirical counter-evidences in the light of what Popper has presented as the principle of “falsifiability”. The question being referred to here is very complex and indeed, it cannot be adequately addressed at this time. For the present purposes, it suffices to say that Popper’s central tenet for scientific statements claims that systems of statements - namely scientific theories - can be defined as scientifically relevant only if they can be falsified on the basis of empirical counter-evidences. This point helps us introduce the reasons in support of a more articulated scheme of what counts as truth in science, as well as to advance a more articulated model on why different stakeholders should be involved in the process of scientific decision-making. The question can be put as follows: as scientific truth *per se* is characterized by competing theories exhibiting a falsifiability status and gaining credibility in accordance to their explicatory force, then, different actors must be allowed to provide their say in order to contribute to the falsifiability process of truth construction. The type of argument proposed makes reference to a sort of analogy-model between scientific truth and truth in the public domain. Nevertheless, while in the former falsifiability proceeds on the basis of empirical counterevidences, in

the latter it proceeds through argumentative confrontation. In this second case, facts can only be interpreted as either supporting or counting against a certain position. What the two domains share, though, is a *polyarchical model of truth* pointing to a *structural* continuum between scientific truth and its public accountability.¹

As just referred, parallel to the process of epistemological reformulation of the paradigm of “truth” in science, is today’s process of internal revision of health policy strategies (Hassenteufel *et al*, 2010). Indeed, more and more countries are introducing forms of public inclusion through stakeholders’ involvement into health policy planning and decision making. What is happening is a structural transformation where interest representatives of health care bodies (research or clinical), are asked to take part into the same process of policy programs formulations. In addition, health care systems are facing profound changes. At the one hand so called “universal health care systems” are exposed to deep economic crisis and, thus, are introducing partial private health care elements; at the other hand, classical private health care systems are undergoing attempts at transformations pushing towards the consideration of health as a “public good” and therefore as a good to be supported by the state. What in both cases governments are aiming at is *efficiency* in the delivery and cost reduction of national state health care expenditure. Nevertheless, within normal democratic interplay, it seems not possible to introduce major changes without counterbalancing efficiency with justice and thus with citizens’ mechanisms of legitimization. If democracy can be said to be a form of government springing “from” the citizens and directed “to” the citizens, then any political step regarding the “common good”, such as in the case of health care provision, should be legitimized by public consensus. The latter, should permeate large sectors of health service administration, from National Health Ministries to Bioethical Councils, or from the public sector to private enterprise.

These preliminary points amount to the following: the search of higher efficiency and cost reductions in the delivery of health care services cannot be obtained outside a process of public consultation; but whereas periodical elections are held in order to let citizens choose major political goals in the long period, further forms of political legitimization must be sought for the protection of the “common goods”. Such goods are inalienable by the citizens, and therefore cannot enter into any form of political compromise or exchange. In order to cope with the above mentioned difficulties, along the following essay we will present the case of deliberative consultations concerning the ethical assessment of pharmacogenomic research, alias, the DePGx project. Deliberative consultations represent an instrument for the overcoming of “legitimization crises” in the field of health care service provisions. They not only make public some of the most pressing concerns springing from the same beneficiaries, but they also *rationalize* public concerns through discussion and exchange of arguments. Public deliberation, therefore, is not only aimed at *introducing* and making manifest those preoccupations arising from those same people having an -actual or potential- interest as beneficiaries to

1 On the necessity to maintain a unified notion of validity between the epistemic and practical sphere, see J. Habermas (2003).

the improvement of the health care system; public deliberations are also aimed at *excluding* from the public political agenda, all those irrelevant or irrational concerns.

First of all, one of the main advantages of introducing deliberative tools within the assessment and the management of scientific research, is that deliberative outcomes provide “the public” (citizens, stakeholders, experts, institutional representatives) with critically agreed perspectives on how to proceed in research. The advantage consists in the added value that deliberation guarantees to the rationalization of the issues involved, as well as to the decisions of public policy that should be adopted. Why does deliberation represents a vantage point in respect to alternative decision-making solutions?

The reason is that deliberative outcomes are not aimed at representing those “personal interests” of the participating parties, rather, since springing from conditions of deliberative fairness, they are oriented to the assessment of what should represent the “common good”. This can be achieved only *through* the public assessment of partial and, very often, conflicting interests, so that a common outcome is the result of numerous interest-mediations in view of a mutual benefit. If this represents the general goal of any deliberative process, then, the specific architecture of each deliberative or participatory system might vary in accordance to different parameters. For example, in recent experiments on biobanking, such as respectively CARTaGENE (B.Godard *et al.* 2007), and the British Columbia Biobank (K.C. O’Doherty, M.M. Burgess 2009) or the United Kingdom Biobank, various definitions have been proposed on the notion of “the public”, to which is attached a corresponding variable notion of “common good”. Such definitional differences are reflected in the types of parameters adopted in selecting the participants (such as their professions, age, skills and cultural-religious backgrounds) as well as the consideration of their ethical concerns.

Further, deliberative consultations, differently from socio-political experiments making use of qualitative interviews or focus groups, have as a primary function that of delivering a sound outcome aiming to be superior to partial points of view. This means that the perspective defended by deliberation does not want to be representative of the diversity of social reality, but it wishes rather to overcome partial perspectives. With this in mind, we will turn now to what are the immediate implications of a model of socially agreed practices within the domain of pharmacogenomics. Three points are particularly relevant at such regard: 1. the establishment of mechanisms of cooperation and trust between science and society 2. the increase of transparency in decision making 3. the legitimization of policy guidelines for scientific enquiry.

As far as the first point is concerned, it is crucial to stress that a coordinated and integrated approach to science and society activates institutional and interpretive mechanisms of co-dependence between scientific governing bodies, public governmental bodies, groups of interest and the citizenship. Furthermore, as far as the second point is concerned, the channeling into public discussion *fora* of alternative views, allows for an organic construction of complex critical arguments that clarify the terms of cooperation for each actor and its distinctive contribution. The critical mass resulting from the encroachment of confronting perspectives

provokes an institutional setting oriented to a progressive clarification of the reasons leading to the prioritization of a certain health research objective over another. Transparency in decision making is thus achieved on the basis of a convergence of different epistemic frameworks of understanding that force to the institutionalization of institutional and non-institutional channels of discussion with the goal of achieving “order” within potentially conflicting perspectives/interests. Finally, as far as the third point is concerned, the process of legitimization of public policies is due to a *democratic* and fully transparent process of decision making. In modern democracies, to obtain legitimate policies, means to be publicly accountable and to be able to defend those public reasons that have contributed to the formulation of specific health policies. The deliberative model we have realized, is primarily aimed at providing orientation policy guidelines for health state agencies.

How does this occur? Let us turn to the dynamics activated by the process of deliberation. The idea here is that of a limited number of people holding differentiated epistemic backgrounds and gathering under the supervision of a deliberative coordinator. Discussion is conducted on a set of predefined questions whose method of selection is based upon an in-depth consideration by the analysis of widely shared *ethical* concerns showing *public* relevance. The detection of relevant topics to discuss arises from the analysis of experts’ roundtables, consultation with stakeholders and from the evaluation of the research level achieved in pharmacogenomics. What characterizes the type of discussion conducted in deliberative polls is the search for a *unanimous agreement* on deliberative outcomes. The general orientation of the participants towards a common objective is precisely what differentiates this model of deliberation from other sorts of deliberative models or discussion groups. Whereas in the latter there is no need to be oriented towards a common agreed result, in the former, all the discussion is conducted by keeping in mind a *reasonable* outcome to be shared by each participant. At this stage, one might wonder why should there be a specific attention to deliberation as a form of ethical assessment of publicly relevant health issues. The answer to this question lies in the added value that deliberation bears in comparison to other forms of ethical assessment, as well as with the functions it plays.

First of all, deliberation exhibits an *epistemic function*, that is, it provides a privileged tool for the exchange of different reasons and the improvement of the quality of the arguments grounding certain outcomes; secondly, by raising the ethical issues involved, deliberation provides a *democratic legitimization* to pharmacogenetics (as is the example in this case). This is due to the dynamics of its same functioning, that is, to its capacity to be all-inclusive of several perspectives, as well as to be capable of providing a qualitative improvement of the complexities of the rationales involved. Finally, the democratic legitimization of scientific research through deliberation, allows for both an *internal* and an *external structuring* of research policies on the basis of the organizing activities conducted by research institutes and local and national authorities. The functions just introduced apply *generally* and *unconditionally* to deliberative activities, granting certain properties to the outcomes involved.

2. Methodology of the DePGx Project

Moving to the presentation of the deliberative experiment on the ethical assessment of pharmacogenomics, it is important to consider that the primary aim the project has met, consisted in delivering guidance and indication to public policy makers, for future investments in this field of research. As already introduced, the DePGx Project is a project funded by the Canadian Institutes of Health Research in a joint cooperation between the Department of Family Medicine of McGill University, Montreal, Canada, and the Institute of Genetic Medicine of the European Academy, Bolzano, Italy. Through the setting up of a certain number of deliberative polls, the project has achieved interesting results culminating in the proposal of a future draft of a Charter of Ethics and Pharmacogenomics as an instrument of policy self-regulation. First of all, deliberative sessions were organized into two steps and included three polls during the first phase and a final poll composed by first-stage group representatives. Each session lasted 1.5 hours. Groups were organized as including patients representatives, primary care physicians and stakeholders from genomic associations and health ministries. As far as the numbers of participants, according to the specific proposed methodology, it has been prioritized *qualitative confrontation* to *quantitative participation*. This has resulted in an “easy to manage” set of deliberative polls which has in parallel maximized qualitative outcomes. Among the patients group, four female and one male were included with an average age of 69 years. All were retired and educated. As far as the family physician session is concerned, two sessions were held on two different dates, with a total of two men and four females participants. Among them, four were family physicians and two were primary care researchers with an average age of 55 years. Finally, in the stakeholder deliberative forum, six stakeholders were evenly split between females and males with an average age of 38 years. They represented a genome policy centre, a national public health agency, an academic centre on personalized medicine and a national pharmacists association and a non-profit genome research centre.

Participants were selected on the basis of the *epistemic differences* of their knowledge. The criterion of epistemic difference has been considered as “the” crucial factor, among other traditional criteria (such as gender, age, race), for the construction of the polls. Accordingly, participants have been grouped first in view of a criterion of “variability within similarity” of their epistemic backgrounds, and then representatives of each poll have been rejoined into a final deliberative poll. Along the first phase, participants were grouped around three main polls representing respectively: general practitioners, lay-people, stakeholders (policy makers and interest groups). While in the first round, the idea was that of provoking a “critical clash” among the different epistemological narratives within the same deliberative groups themselves, in the second stage the aim has been that of provoking an inter-epistemic clash among the representatives of each group. From each deliberative poll it was expected a precise outcome, that is, it was expected a deliberative result upon which each group-participant would have finally agreed upon. The second stage of deliberation, indeed, was aimed at provoking the same “critical clash”

by increasing the level of specificity of the argument produced for or against certain specific identified issues. These issues were submitted for consideration to the participants by the moderator on the basis of the analysis of the outcomes of the first-round polls. Due to the peculiar methodological properties adopted, namely the epistemically differentiation of participants, the outcomes produced by deliberation have produced new findings and opened new roads for understanding the ethical concerns in pharmacogenomics. Indeed, it is from the disagreement of the participants that new and fair solutions have been sought both during the first and the second stage of deliberation.

The DePGx project was conceived in order to provide two frames of discussion focusing respectively 1) on basic ethical concerns raised by pharmacogenomics and 2) on the ethical implications raised by primary care pharmacogenomic interactions, as for instance a possible rethinking of informed consent forms. For the first point, participants were provided with two sets of basic issues to be assessed. The first provided a brief scenario where personalized medicine was presented as developing in view of specific population/race/territorial diseases emergencies and genetic reactions. The foreseeable consequence suggested was that those groups showing a lower genetic capacity for reaction to certain sets of medical treatments would be excluded from personalized medical treatment and pharmaceutical research. This point has been considered as raising a serious ethical threat from ethically unchecked policy for pharmacogenomic research and drug development. Indeed, an implication was the issue regarding the terms of individual interest maximization in respect to the group. This cross cutting issue virtually intersects the above-mentioned macro topic since it involves resource investments into specific diseases affecting a small number of people against the totality, as well as the interest of corporate groups, such as insurance or pharmaceutical companies coming into possession of personal data.

All considered, the issues addressed dealt with the risk-benefit assessment, their ethical implications and the actual promise of pharmacogenomic research. One of the most discussed points was whether there are enough convincing reasons to invest future research attempts into the pharmacogenomic sector, and on which specific grounds should public authorities invest into this sector. The evaluation of such points has been considered to explicate what is to be the public policy function that deliberative activities target, that is, the added advantage that a plurality of discussing actors would provide to the ethical assessment of pharmacogenomic research.

For the second area of application, the project wished to highlight possible ethical issues within the domain of informed consent. The question to be answered by participants regarded whether, in accordance to the existing state and international parameters on informed consent, personalized medicine may possibly worsen the condition of privacy or data protection. Indeed, even if health risks in taking part into genetic testing are excluded from consideration, the range and number of problems involved in such an analysis are wide and reflect all the usual security measures of anonymization of data involved into an ordinary system of privacy protection as well as sensitivity of the health information revealed. Patients were

recruited on the basis of the circulation of an electronic information notice through the network of patients associations affiliated to McGill University Family Care Department and the McGill University Hospital Centre. As far as the recruitment of family physicians was concerned, the invitation was circulated through the associations of family physicians in Montreal. Stakeholders were identified through an earlier workshop that involved interested parties for genomic research in primary care.

3. Deliberative Results

Along the first round of deliberative consultations, each deliberative group addressed specific issues running from cost-benefit analysis to racial implications, privacy issues and the proposal of a National Charter or an Act regulating pharmacogenomics. As far as the importance of a cost-benefit analysis in the assessment of pharmacogenomics is concerned, stakeholders' participants reached a general understanding and agreement on the fact that this cannot be taken as the only perspective for measuring the advantages or the disadvantages of pharmacogenomics. Furthermore, none believed that pharmacogenomics provides a complete “solution” to many of the issues with prescription medication. Pharmacogenomics has been rather perceived as a method that should be “integrated” to supplement the already existing best practice strategies to optimize patient treatment. Contrary to what might be expected, stakeholders group focused on the fact that pharmacogenomics, besides certain possible negative and discriminatory effects, can further the study and the understanding of treatment for rare diseases. It has been noticed that the tendency, as in the USA for instance, is that of creating special categories for rare diseases. A distinction has been suggested separating the relevance of rare diseases and the rarity, not fully corresponding, of genotypes. It was thought that it is rather in the latter sense that ethical issues may arise due to possible low profits that such groups would provide. A similar line of reasoning has been followed along patients' deliberations. In this case, the discussion immediately addressed the costs of pharmacogenomics research, as well as the role that the federal government should play within the entire process. Some of the proposed ideas, concerned the fact that the government should be allowed to buy at a convenient price the required drugs in order to avoid patient discrimination and pharmaceutical speculations. It has been noticed that since the health system in Canada is public, it currently runs into several difficulties due to burdensome costs. Indeed, reservations were expressed in case research on pharmacogenomics would cut into the provision of services in other relevant sectors. Also for patients, genome testing was perceived as not being “the only solution” for treating diseases, so that carefulness has been suggested in communicating the realistic advantages of this research sector. Common consensus has been expressed on the following points: at present there are not sufficient reasons and evidences for investing money on pharmacogenomics research. Nevertheless, it was believed that if no investment were made in this field, then we will never know what advantages

could be obtained. Participants all agreed that money can be invested in genomic research only upon the condition that the government is involved in regulating costs, possibly by restricting the profit margin on drugs patented by the pharmaceutical companies. Also, a general agreement was achieved on the constraining role that the government should play towards pharmaceutical companies. This consisted in not letting them manipulate genomic research and consequently the health care system with only a profit motivation. Connected to the relevance and the limits represented by the cost-benefit analysis is a second bulk of issues addressed in particular by family physicians and the stakeholders. Whereas public stakeholders noticed how pharmacogenomic research could be extremely beneficial in reducing medical costs in developing countries, the former highlighted, on the contrary, the risk of group-stratification that pharmacogenomics can give place to. A specific set of ethical preoccupations regarded family physicians' agreements on the ethical concerns raised by a scenario characterized by a lack of medical care for orphan populations and diseases. Indeed, participants established an interesting point of interconnection between population groups/racial implications and pharmacogenomics by focusing on the case of a lack of medical care as a consequence of a genetic profiling. The point of concern regarded how should family physicians behave in the case a genetic screening would tell the person is not able to respond to the currently available drugs. This was considered to have very serious ethical implications and produced conflicting feelings in the perception of pharmacogenomics. Indeed, it was considered that if, in the first instance, personalized medicine produced many positive feelings, the possibility for a physician to inform a patient of the lack of care might cause several negative feelings. One further problem taken into consideration and being extensively connected with this issue were people's expectations. What was considered as fundamentally important was the relevance of a large public information campaign in order to cope with people's expectations. This touched upon a further aspect that was also debated, that of the perceived effects of a genetic test in accordance to the result it might provide. Indeed, it has been said that it must be considered the possible effects on depression arising from not being able to provide an effective drug as a consequence of the test. Finally, a general agreement by the participants has been expressed on the fact that pharmacogenomics promises to reduce the "poisoning" and the side-effects of general drugs used nowadays, even if a concern was expressed on the timing in obtaining the profiling results as well as on the necessity of an alternative system of management between all the interested sectors (family physicians, hospital laboratories, etc.).

A third point addressed more extensively later along the discussion occurred in the final mixed session, touched upon the need or the opportunity of enacting a Non-Discriminatory Genetic Act in order to protect information from insurance companies and employers. Even if ways for obtaining personal health information through family history tools were detected, genetic information was perceived as extremely sensitive issue in need of high protection. This does not amount, though, to consider such form of information as requiring a special type of protection besides the implementation of more sophisticated systems of informed consent. As it emerged also from the deliberative outcome derived from family physicians,

it was felt that personalized medicine does not raise special issues that are not yet part of the current practices for informed consent, but that actual informed consents are so informal nowadays that they need to be reframed. While a general agreement was obtained in considering genetic information on a par with normal medical information; no general agreement was achieved on the utility of legal acts in regulating the field or in protecting information. Indeed, some participants thought that the use of an Act, rather than a non-legally binding Charter, would rather prevent future modifications by blocking the process of updating policies as scientific/genetic research improves.

Overall, general support was expressed for pharmacogenomics. Nevertheless, the worry that this information may eventually be related to genetic disease prediction was mentioned. It was hypothesized that in as far as pharmacogenomics is supposed to present itself as an extension of the family history, then, no specific ethical problem would arise. The worry, as already mentioned, was perceived more as relying in the “mechanical” procedure that all this new approach would imply as well as in the privacy of the data that should be granted and in the delay in providing answers to patients. Finally, a concern was expressed in the role that pharmaceutical companies will play within this process. A unanimous agreement has been expressed in keeping pharmaceutical companies outside the process of genetic profiling in order to guarantee as much as possible independence and privacy of data. Even if it is easy to foresee that pharmaceutical companies would offer to pay the genetic screening, which currently runs from hundreds to thousands of dollars, a general understanding was reached in considering that money for screening can be progressively taken from the cutting off of the costs of hospitalization as well as in the progressive reduction of the costs of the tests.

As already introduced, after the first round of deliberative sessions, the project rationale has considered the development of a second polling session with the representatives of all deliberative groups. This second round of deliberative consultation, has served a duplicity of functions: 1) a refinement of the ethical issues involved in the ethical assessment of pharmacogenomics and 2) the proposal of new strands of solution for the observed difficulties. Nevertheless, before moving to further topics, participants spent time in discussing the problem of patenting, either as test patenting, or as gene patenting etc. as well as the more general issue of intellectual property rights. The discussion turned then to the question of who should regulate the process of pharmacogenomic research and drugs commercialization. Some initial thought was expressed regarding the opportunity for medical physicians to obtain a stronger role in health policy, even if after discussion, agreement was obtained in giving highest representation and power to patients. It has been claimed that patients’ psycho-social insights deserve to be taken more seriously within ethical committee and governing bodies and that they should be given a higher decision-making role. With only one exception, participants finally agreed on the non-opportunity of a yet another regulatory agency, suggesting rather the necessity of reforms for the already existing ones, in accordance to the improvement of patient representation and empowerment. A participant confirmed that Genome Quebec is actually thinking of including patients representatives within its body and that

this issue is becoming more pressing. Nevertheless, perplexities were advanced on who is going to select patient representatives, since a wide range of perspectives should be taken into account. The proposal has been made of including a high range of patient participants within governing bodies with the aim of restricting the possibility of voting only to a limited number. A second suggestion focusing more on the regulatory scope, addressed the issue of providing health bodies with a more extensive powers to regulate what pharmaceutical companies can and cannot do with samples. While aware of the significance of several existing policy statements, participants agreed *unanimously* in the draft of a charter document on the ethical principles guiding pharmacogenomic research and clinical treatment. The scope of the charter was suggested to be national and to be adopted as a standard for the ethical approval of clinical and research projects.

Conclusions

From the above mentioned deliberative findings, a picture emerges where pharmacogenomic research is seen as a very promising field of investment for the reduction of costs of hospitalization, as well as for the production of more efficient drugs. Nevertheless, the promise of a paradigm shift in medical and pharmaceutical research is perceived by all involved groups as determining a wide range of ethical concerns in need of a regulatory enterprise. The proposal of a national charter on pharmacogenomic research has been thought, therefore, to be the most appropriate initial step to be taken before future investments by the government and private companies are made. In the light of such indication, it is therefore our hope that governmental bodies will take all the appropriate steps in order to facilitate the promulgation of such a regulatory tool.

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Moral Obligations of States

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Preliminaries

The starting point of the paper is the frequent ascription of moral duties to states, especially in the context of problems of global justice. It is widely assumed that industrialized or wealthy countries in particular have a moral obligation or duties of justice to shoulder (financial) burdens of poverty reduction or climate change adaptation and mitigation. But can collectives such as states actually hold moral duties? If answering this affirmatively: what does it actually mean to say that a state has moral obligations or duties of justice? In this paper I argue that states can be considered collective (institutional) agents which can hold moral duties. If a collective (for example a state) holds moral duties this entails duties for its individual members. I show how depending on their position within the collective these duties differ.

At this point, it is important to clarify my use of the term *moral duty* or *moral obligation*. In moral philosophy, there exists an extensive debate about collective moral responsibility (E.g. French 1979 & 1984, Held 1970, May 1987 & 1992, S. Miller 2001, D. Miller 2004), which also covers the problem of collective moral agency. This debate often lacks a clear distinction between retrospective responsibility and prospective responsibility. Yet the debate mainly focuses on retrospective responsibility, that is, it focuses on assigning accountability for outcomes if these have not been brought about by an individual agent, but by group agents such as organizations and corporations. In this paper, I am not concerned with the question of (retrospective) collective moral responsibility, but with the question of (prospective) collective responsibility, meaning collective moral duties,¹ or collective moral obligations.² While the former refers to a collective agent's accountability for certain outcomes of actions or omissions in the past on the basis of which blame or praise can be ascribed, and is in this sense retrospective, the latter refers to moral imperatives. On the other hand, to have a moral duty or a moral obligation means that one is morally required to act in a certain way. In contrast to responsibility, the allocation of duties is prospective in character. While the problem of collective responsibility in the retrospective sense has been examined

1 One might distinguish moral obligations or duties from forward-looking, hence prospective, moral responsibility, as for example Iris Young does (Young 2004: 379). She argues that "responsibility differs from duty in being more outcome oriented" and in allowing for (more) discretion. I agree that such a distinction can be made, yet I will not resort to it here but simply use duty and obligation in this wider sense as relating to outcomes and not only prescribing particular actions.

2 I will use the terms 'duty' and 'obligation' synonymously.

in great detail over many decades, there are few contributions so far to the field of collective moral duties (the exceptions being Cripps 2010, May 1992, Murphy 2003, Schlothfeldt 2009, Schwenkenbecher 2011, Wringe 2005, Young 2006) which is why it will concern us in this paper.

Obviously, the bigger and the more complex the problem, the greater is the demand for collective action and the more convincing is the claim that corresponding moral duties are collective in character. This applies above all to moral duties of a global dimension. Many philosophers argue that citizens of wealthier or industrialized countries have positive duties to assist citizens of poorer countries and, possibly duties to save the lives of persons who because of the economic and political situation in these countries are in danger of dying from disease, undernourishment or starvation. In this paper I simply assume that such (cosmopolitan) moral duties can be successfully established. That is, I take it for granted that we do not only have obligations towards those in our proximity, such as family members, friends, and compatriots, but also towards people living far away (though these duties may be significantly diminished in contrast to the duties towards those who are close to us). However, while some cosmopolitans, such as Peter Singer³, ascribe such moral duties (mostly) to individuals, this paper explores the possibility of ascribing these duties to collectives, in particular to states.

1. States as Holders of Collective Duties

A number of authors (among them Erskine 2001 & 2010, D. Miller 2004, Runciman 2004, Wringe 2010) have argued in favour of considering states moral agents and potential holders of moral duties, invoking different criteria for moral agency. In the following I will look at one of these accounts endorsed by Toni Erskine. I will point out one problem with her approach and suggest a possible amendment.

According to Erskine, a ‘collectivity’ is a candidate for moral agency if it has

- a) An identity that is more than the sum of the identities of its constitutive parts and, therefore, does not rely on a determinate membership;
- b) A decision-making structure;
- c) An executive function linked to the decision-making structure;
- d) An identity over time;
- e) A conception of itself as a unit.

She considers collectives possessing these characteristics ‘institutional moral agents’. (Erskine 2010, 264f). It is important to note that to Erskine the morally

3 See for example Singer (2009) *The life you can save: acting now to end world poverty*. Random House. Admittedly, Singer has also argued repeatedly for the necessity of institutional changes and does not only advocate for individual action. Yet, I think it is fair to say that he particularly emphasizes individual action and individual duties to combat the problem of world poverty.

responsible agent is the collectivity: “[...] prescriptions for action might be misdirected if they are targeted at the group’s component membership rather than at the institution itself.” (Erskine 2001, 73).

Erskine’s ascription of (a particular kind of) moral agency to the above characterized kind of institutional agents is convincing. If a collective can act as a group – including forming collective goals (that are the goals of their action as a collective, not of individual actions) and acting according to these goals – it should be considered capable of collective action. If it furthermore possesses procedures or mechanisms of moral reflection and the ability to act upon the results of such moral reasoning, it can be considered (a particular kind of) moral agent. The kind of moral agency collective agents have may well differ from the kind of moral agency we ascribed to individual human persons. In particular ‘moral emotions’ – such as shame, guilt, and empathy – are missing in collective agents. However, the (limited) moral agency collective agents can hold suffices to (at least) ascribe moral duties to them.

Even though I agree with Erskine’s argument by and large, there are two problematic points. First, I hold that a collective can have some form of moral agency and thus moral duties even if it does not meet all the conditions Erskine lists. Second, it remains unclear what it means to say that a collective is *itself* holding a moral duty as opposed to its members. As to the first problem, it can be argued that groups without the above listed characteristics that Erskine defends can be collective agents and have moral obligations. This criticism is not actually decisive for the issue of states as holders of moral duties⁴, which is why I will not pursue it here.

The second suggested improvement brings us closer to the very heart of the question what it means for a state – or a collective in general – to be a moral agent. Erskine’s account does not clarify what it means to say that the collective duties are duties of the collective itself rather than a duty of its members. This claim generates a somewhat artificial distinction between a collective and its members. If a collective’s duties were entirely distinct from those of its members this would create a gap in moral accountability and in moral motivation. If a collective could hold moral duties in a way that results in no moral duties for its individual members, this would leave us with no one to hold accountable and with no agent who could feel morally motivated to put things right. I agree with Erskine that the collective duty should attach to the collective, and not its members. But I argue that such collective duties necessarily entail corresponding moral duties for its members. The collective, it appears, can only hold moral duties because it is capable of collective action, i.e. more than just aggregate actions, *and* because it consists of individual members who hold corresponding individual (contributory) duties.

It is important to note that what is being said here about collective moral duties may not be valid for (retrospective) collective moral responsibility. If retrospectively establishing responsibility and accountability for a particular outcome that has been brought about by collective action, it may well be that the responsibility attaches

4 It could, however, have interesting implications for the question whether or not the international community or groups of states can hold moral duties.

to the collective itself and does not entail partial (retrospective) responsibility for its members. This is, however, a different problem and will not be discussed here. At this point I will instead turn to one of the issues Erskine does not cover, namely the link between duty-holding collectives and the individuals who constitute the collective.

2. Differing contributory duties

As previously indicated, moral duties or duties of justice ascribed to states are not independent of moral duties of the individuals represented by these institutions or the individuals constituting this state or its institutions, i.e. its citizens, officials, public servants, etc. And finally, it is individuals who must bring about the outcome that the duty refers to, and it is individual agents who must be blamed if that outcome is not achieved. Moral duties held by a collective – for example a state – entail moral duties for individuals that are part of that collective, both occupants of institutional roles (such as politicians) and persons with no institutional role. I call these entailed duties contributory duties. Role occupants have been assigned particular (professional) duties to discharge those collective moral duties. Professional duties entail contributory moral duties, but the latter may extend beyond the former. Also, individuals with no institutional role may well hold contributory duties with regard to a collective duty of their state. I suggest three criteria for determining the magnitude of an individual agent's or sub-group's contributory duty to a collective duty: *capacity*, *moral correlation*, and *commitments of oneself and other agents*:

Capacity: The first criterion that influences how much an agent within a collective must contribute to the collective duty is the agent's capacity. The capacity can depend on how much power or influence over the outcome the agent has. But it also depends simply on the agent's abilities. The more power or influence an individual agent has or the more she is capable of discharging a duty due to her particular abilities, the larger her contributory duty. This criterion clearly establishes stronger contributory duties for those members of a collective who hold an institutional role. This does not mean that those individuals who are decision makers or functionaries in corporate or institutional structures have to draw on their own financial resources to discharge a moral duty of compensation, for example. But it is they who have to trigger institutional responses to the duty and who have to ensure that these responses satisfy the respective moral demands.⁵

5 Iris Marion Young in her 2006 article "Responsibility and global justice: a social connection model" lists "power" as one of the factors along which individuals should decide over the magnitude of their duties. The problem with how this factor is framed in Young's approach is that on the one hand it appears to serve to determine which agents political campaigners should focus on in order to bring about changes, but on the other hand it has been introduced as determining how an agent should decide for herself about possible engagement in combating injustices. However, in the context of this section, it is only useful to understand it in this second sense.

Moral correlation: The second criterion that influences the magnitude of individual contributory duties is what I call the ‘moral correlation’ of the agent to the problem that the collective duty aims to address. ‘Moral correlation’ covers both moral (retrospective) negative and positive responsibility⁶ for the problem. Accordingly, individuals (or sub-collectives) that have moral responsibility for the occurrence of the problem have to contribute more to solving the overall problem than others, other things being equal. The criterion of moral correlation may cover other forms of moral links between the agent and the problem which gave rise to the collective duty such as associative ties between two agents or groups.

Commitments of oneself and other agents: How much an agent or sub-group has to contribute depends on how much the other agents contribute and how much the agent has publicly committed herself to contribute. If I have made it clear to other members of the collective that I will take on a particular contributory task in the context of discharging a collective duty, I have a stronger obligation to do so than if I had not announced this, because I make others believe that they need not undertake this contributory task. It is also now more likely not to be undertaken at all, should I not do it.⁷ Furthermore, knowing that some members of the collective are not going to contribute their share to the overall outcome may well influence the magnitude of my individual contributory duty. I then may have to take on a larger burden, that is, more than what would be my fair share if everyone else complied with their contributory duty⁸ (within reasonable limits, of course, up to the extent that complies with capability and costliness constraints). However, the individual or sub-group that has contributed more than their fair share then has justified claims of compensation against the other members of the collective. This right to posterior redress, however, leaves the moral imperative to take on more than one’s share in case of non-compliance of others untouched. That is the fact that taking on more than my fair share is unjust and gives me the right to demand some kind of compensation from fellow group members, is not a reason that justifies me refusing assistance on the basis that others do not contribute their part.

Two of these determinants of the magnitude of contributory duties – *capacity* and *commitment* – indicate that those who are in a position of power within a state, usually politicians, above all the government, but also other influential figures of public life, have the strongest duties to contribute to discharging the moral duty of the state. Hence individuals who fail to discharge their contributory duties in an obvious way – for example politicians who ignore the problem of climate change or even deny it – are morally liable to punishment as individuals. But the second

6 Positive responsibility for a harm here means to have contributed to a harm by an action while negative responsibility for a harm means to have failed to prevent a harm when one could and should have prevented it.

7 This is particularly the case for institutional agents, i.e. persons with institutional duties covering collective moral duties or contributory duties. Again, a very similar idea is expressed in Bob Goodin’s notion of special duties. (Goodin 1988)

8 This means I contradict the famous claim made by Liam Murphy that “Demands on an agent under partial compliance should not exceed what they would be (all other aspects of her situation remaining the same) under full compliance from now on.” Murphy 2003, 75.

criterion – *moral correlation* – suggests that persons with limited power and with no explicit (professional) commitment, who are in some way responsible or benefit from the problem the duty addresses, have contributory duties as well.

3. Summary and Outlook

In this paper I have shown that states can be considered moral agents in the global sphere and can hold moral obligations. To say that a state has a moral duty ultimately means that its members, politicians, public servants and ‘ordinary’ citizens have duties to contribute to achieving the collective end the collective duty entails. The magnitude of a group member’s contributory duties depends on the individual agent’s capacity to influence the collective outcome, his or her moral correlation to the problem that generated the moral duty, and the commitments he or she and the other contributing individual agents have made.⁹

However, there remain a number of open questions which cannot be addressed here. The first concerns the external conditions that have to be in place for an agent to be ascribed moral duties. As Erskine in her 2001 “States and Quasi-States” article rightly pointed out, some states are so restricted in their actions, that is, they lack (independent) agency to an extent that they cannot be considered moral agents and hence cannot have moral duties.

Furthermore, just like with any other moral agent, states have limited capacities to comply with moral demands. They need to weigh competing demands against each other and decide which obligation they spend their energy on. It will presumably always be a matter of debate whether or not a particular state has done enough to discharge a certain duty.

Another matter is to what extent duties of global dimension attach to various states, if not a group of states. Most scholars argue that in fact the international community is not an agent in the relevant sense for attributing moral responsibility or moral duties to it (among them Erskine & Runciman). Yet, it would be another project to look into whether such views are justified and what the conditions could be for the international community to qualify as a moral agent.

9 Another concern is that of competing duties and how to establish which one to give priority. I cannot go into detail on the question here, but in the context of collective obligations it is worth mentioning a suggestion made by Iris Marion Young. In her 2006 article “Responsibility and global justice: a social connection model”, she convincingly establishes collective ability as one of four factors for determining which moral obligation to give priority in the face of a multitude of competing moral demands. Young argues that “the relative ease with which people can organize collective action to address an injustice can be a useful decision principle.” What she suggests is hence an efficiency criterion which helps the agent decide between competing duties. I agree with Young that in a situation of limited resources the agent should support the aim that he can most efficiently support, other things being equal.

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Honor in the Military and the Possible Implication for the Traditional Separation of Jus Ad Bellum and Jus In Bello

Jacob BLAIR

1. Introduction

Traditional just war theory maintains that the two types of rules that govern justice in times of war, jus ad bellum (justice of war) and jus in bello (justice in war), are logically independent of one another. Call this the independence thesis. According to this thesis, a war that satisfies the ad bellum rules does not guarantee that the in bello rules will be satisfied; and a war that violates the ad bellum rules does not guarantee that the in bello rules will be violated. A controversial implication of this is that it's possible for soldiers to undergo acts that are instrumental in bringing about victory in an unjust war and yet do nothing morally wrong. Some authors – call them purists – claim that this cannot be correct. Participating in an unjust war is by itself morally wrong. Yitzhak Benbaji has given what is to my mind the strongest defense of the independence thesis. In this paper I critically examine Benbaji's argument and conclude that it is not persuasive. My argument against Benbaji incorporates the concept of honor in the military. I seek to show, in part, that if the recent literature is correct concerning both the nature of honor and the importance of instilling it in soldiers, then Benbaji hasn't given the purist a compelling reason to give up her view.

In the first part of the paper I discuss some of the recent literature (where there is a fair amount of consensus) on the concept of honor and the importance of instilling it in soldiers. I then discuss in more detail the independence thesis and the main arguments against it. Next I discuss Benbaji's Argument from the Moral Division of Labor and argue that it fails to make its case, especially if we are to think of soldiers as honorable men and women.

2. Honor in the Military

Recently, a number of authors have endorsed a return to instilling honor in soldiers as a means of motivating them to act rightly on the battlefield. Paul Robinson, for example, has given insight into the nature of honor. Most conceptions of honor have both an internal and external aspect. Internal honor or integrity is acting in accordance with one's beliefs about what's right because to do otherwise will undermine one's own sense of self worth. External honor is the praise one receives from others – in particular one's honor group – as a result of one's virtuous conduct. An honor group is basically a group that holds certain virtues in high esteem

and thus praises those who exhibit those virtues and denigrate those who don't. According to Robinson, most people have more than one honor group but there's typically one that dominates. A person will be loyal to that dominant group and be motivated to exhibit the virtues it emphasizes (Robinson 2007).

For Robinson, integrity and the utilization of honor groups can spur soldiers to exhibit other important military virtues. For example, it's thought that soldiers with integrity will show restraint towards enemy civilians and prisoners, even when no one is looking, or even in the midst of peer pressure not to. The utilization of honor groups can motivate soldiers to display courage and heroism on the battlefield. Exhibiting physical courage brings praise from the members of the honor group, which typically consists of fellow comrades. Likewise to be deemed cowardly is to be looked down upon. The same can be said for internal honor. A soldier can be motivated to exhibit courage for doing otherwise can bring a loss of self-respect (Robinson 2007).

But Robinson points out how the typical soldier's honor group only deems the "somewhat old fashioned" virtues of strength, courage, and loyalty to comrades as the most important to be exhibited. While this has the effect of motivating soldiers to stand and fight, it can also encourage them to either turn a blind eye to or participate in wrongdoing. Soldiers, for example, out of fear of disappointing their comrades or appearing weak in front of them, may be prone to engage in harmful actions towards enemy civilians or prisoners (e.g. massacres or torture). The idea is seemingly that the typical soldier's honor group is such that it undermines the implementation and exhibition of integrity in soldiers. While many soldiers may have a belief that it's wrong to harm innocents, when they are faced with a conflict between harming innocents on the one hand and being loyal to their comrades on the other, they cave under the peer pressure (it's too strong) to be loyal (Robinson 2007).

In order to counter-act this, Robinson recommends that more effort be made to teach soldiers that they are part of a larger honor group that includes civilian society. Doing this will help more soldiers be more motivated to exhibit the virtues expected of them by civilian society, like restraint against innocents. Likewise, soldiers should be explicitly taught that along with courage, loyalty and the like, a 'respect for human life' should be held as a primary virtue to be exhibited. If soldiers are taught that an essential feature of being a good soldier is to have a respect for human dignity, then presumably the number of incidents where soldiers are pressured to harm innocents will be reduced. And in those situations where they are faced with a conflict between being loyal to comrades and not harming innocents, more soldiers will choose the latter. For when soldiers are made to see that the right thing for them to do qua soldiers is to respect human life, they'll be more prone to show restraint in the midst of peer pressure not to, that peer pressure being not so great (Robinson 2007).

Peter Olsthoorn has recently discussed the importance of instilling moral courage in soldiers. For Olsthoorn, the concept of moral courage is similar to Robinson's concept of integrity. Olsthoorn endorses the following definition of moral courage: "the capacity to overcome the fear of shame and humiliation in order to admit one's mistakes, to confess a wrong, to reject evil conformity, to denounce

injustice, and to defy immoral or imprudent orders” (Miller 2000, 254). Simply put, for Olsthoorn, moral courage is standing up for your beliefs in what’s right even when one’s reputation and status is put in harms way (Olsthoorn 2007).

Like Robinson, Olsthoorn sees the possession of moral courage as a necessity to keep soldiers from harming innocents in war. Likewise, moral courage is “important to the military because it needs people who will blow the whistle if necessary, but also because it needs...soldiers who are willing to correct a colleague when they think him wrong, or even report him if necessary” (Olsthoorn 2007, 275).

Similar to what we saw with Robinson, Olsthoorn thinks many soldiers lack moral courage primarily because of the method most militaries use to instill physical courage, which is social cohesion. Social cohesion is basically the conditioning of soldiers to view one another as members of a tight knit family, and as such soldiers are to protect and to be loyal to one another. (Robinson would presumably define social cohesion as something like the process by which militaries form honor groups for their soldiers). The problem is that there’s clear evidence that social cohesion breeds peer pressure to engage in wrongdoing or cover-up the wrongdoing of fellow soldiers. The idea is seemingly that social cohesion breeds peer pressure that is so strong that many soldiers will fail to act on their moral convictions concerning the wrongness of harming innocents. In light of this, Olsthoorn calls for less emphasis to be placed on social cohesion, especially since the evidence is less than conclusive that social cohesion is a primary impetus for physical courage. Soldiers need to be taught that they can dissent from the opinions of their peers (their opinion are not what is of utmost importance); this can pave the way for an increase in moral courage on the battlefield in that the degree of peer pressure one faces will be reduced (Olsthoorn, 2007).

Larry May’s recent discussion of honor also bears some affinities to Robinson’s conception of internal honor (i.e. integrity). For May, instilling honor in soldiers “is the chief way that soldiers are motivated to restrain themselves according to the rules of war” (May 2007, 30). A soldier’s honor, for May, is an “...enhanced scrupulousness to moral prohibitions...” (May 2007, 31). And a soldier who acts from a sense of honor acts from an “enhanced desire to do what is right...” (May 2007, 31). Furthermore, for May, a soldier’s honor also consists in acting humanely, which means he exhibits on the battlefield the virtues of mercy and compassion. Importantly, according to May, a soldier’s sense of self-worth is dependent on his honor. So if he doesn’t act humanely and thereby violates the rules of war, self-respect will give way to shame. Again, this desire to keep one’s sense of self-worth intact is a primary motivation to adhere to the rules of war (May 2007).

Those engaged in war, according to May, experience great stress, tremendous concern for their own and others safety, and even hatred towards the enemy. When you couple this with the fact that soldiers are trained to kill people, something must keep soldiers from going too far on the battlefield. Conditioning soldiers to think and act in terms of honor is what is going to prevent them from harming innocent people (e.g. POWs, enemy soldiers who have surrendered) when the “emotions and violence” of war erupts (May 2007, 11). When soldiers are so prevented, they are enabled to see themselves as more than mere killers (May 2007).

3. The Independence Thesis and the Argument against It

I will return to the notion of honor in the military and how it factors into a rebuttal of Benbaji's defense of the independence thesis. For now I describe this thesis in a bit more detail as well as why it's thought by some to be incorrect. Proponents of the independence thesis claim that *ad bellum* rules apply only to military and political officials while *in bello* rules apply only to soldiers. Furthermore, both just and unjust soldiers can equally satisfy the *in bello* rules, which are commonly thought to be: (1) a soldier is morally permitted to employ military force (e.g. directly harm enemy soldiers) provided that the military force is both necessary and proportionate, (2) harmless civilians are immune from direct attack, (3) a soldier has immunity from attack upon surrender, and (4) a soldier is not to be harmed if captured as a POW.

[Just soldiers or combatants carry out a just war, one that has a just cause and is both necessary and proportionate. Unjust soldiers carry out an unjust war, one that fails to be necessary, proportionate or have a just cause].

Perhaps the most controversial aspect of the independence thesis is its implication that it's possible for soldiers to permissibly undergo acts that are instrumental in bringing about victory in an unjust war. Fighting in an unjust war (e.g. killing just soldiers) is not sufficient to make the acts of the unjust combatant morally impermissible (McMahan, 2006).

Purists, again, deny the independence thesis. If a soldier fights in an unjust war, then that by itself makes it so he is doing something wrong. For, by killing just soldiers he is killing innocent persons, those that have done nothing to lose their rights. The just soldier is merely defending his homeland or in some cases defending those who have their basic human rights threatened. Thus the just soldier is analogous to either a victim using force to fend off his aggressor or to someone defending a victim from a third-party. In the domestic realm, we normally think that a person engaged in self or other defense is permitted to use force, but the attacker is not. Furthermore, since it's impermissible to kill innocents in order to bring about a just state of affairs, how can it be permissible to kill innocents in order to realize an unjust state of affairs? Even if an unjust soldier is not harming just soldiers, his participation in the war is instrumental in bringing about an unjust state of affairs and thus *prima facie* wrong (McMahan 2006).

If it is immoral for a soldier to participate in an unjust war, then contrary to what many people hold, soldiers are obligated to refuse to obey orders to participate in a war they know (or justifiably believe) is unjust. What seemingly follows from this is the obligation of soldiers to do what they can to decipher the morality of the war they are ordered to fight (when they are agnostic about or doubt the justice of the war) with an eye of not participating if they cannot arrive at a justified belief that the war is just (Benbaji 2009). What is more, in order to lessen the soldier's burden of complying with the demands of morality, militaries should lessen the severity of punishment for conscientious refusal, though the punishment for such refusal should be kept significant in order to deter malingerers (McMahan 2006).

4. Argument from the Moral Division of Labor

Benbaji's Argument from the Moral Division of Labor is a response to the above purist line of thought. Benbaji claims that morality is divisional so that when we engage in moral deliberation, we're not always required to consider all of the morally relevant considerations for or against an action. We are sometimes permitted to lack knowledge concerning the unjust effects of our actions. For example, according to Rawls, we all have a political obligation to work towards a just tax regime. However, when it comes to our individual choices in the market place, we are not obligated to consider how our actions will affect social justice. We are permitted to acquire wealth and possessions even if that results in others unjustly having considerably less than we do. If we know that our acquisitive behavior is unfair to others, we can ignore that fact. If we wonder or have never considered whether our personal behavior is fair to others, we are permitted to either stop wondering or not investigate the matter. The best way to realize social justice is not to pursue it at the personal level but rather at the political (Benbaji 2009).

Even if our actions consist in killing innocent people, morality doesn't always require that we consider this fact. The executioner, for example, is entitled to put a convicted prisoner to death without investigating the facts concerning his innocence. Even if the executioner knows the prisoner is innocent, he is entitled to ignore this fact and carry out his duty to execute. Why is this? The convention which governs the society's coercive aspect only obligates the courts to determine the innocence of prisoners and hence to concern themselves with the morality of killing the prisoner. The convention is fair and beneficial to all of society, and thus nearly universally consented to. Presumably, permitting the executioner to ignore matters of guilt and innocence and leaving such matters to the courts is what is best for society as a whole for such a moral division of labor is what best ensures that the guilty will be punished while the innocent are not. The executioner, who has tacitly consented to the convention, is entitled to disregard any belief he has regarding the justness of the execution. Likewise, the prisoner has also tacitly accepted the convention. Thus his claim is against the state, and not the executioner, that he not be wrongly put to the death (Benbaji 2009).

Similarly, for Benbaji, there is convention or contract that governs warfare. It's an implicit pre-war contract that all decent societies enter into (or would enter into). The contract basically consists in the set of *in bello* and *ad bellum* rules plus the fact that the two sets are logically independent of each other. For Benbaji, this contract is (ex ante) fair and beneficial for all the states that enter into it and thus nearly universally consented to. Why? The contract is what best ensures that when war does break out violence will be kept to a minimum; and, it is what best maintains the obedience of soldiers which is essential if a state is to militarily defend its just claims. To take one example, say a pilot fighting in a just war is ordered to bomb a camp containing enemy soldiers, yet he is unsure of the justice of his country's cause. If we stipulate that unjust soldiers are not permitted to harm just soldiers, the pilot will likely disobey his orders thus stifling his country's just war efforts. Thus

we need to maintain that unjust soldiers are permitted to directly harm just soldiers (Benbaji 2009).

Soldiers (both just and unjust) as well as civilians who find themselves in the midst of war have tacitly consented to this war convention or contract. The war convention, of course, only obligates military and political leaders to concern themselves with the justice of a particular war. Soldiers are to only concern themselves with their orders in conjunction with the *in bello* rules, which entitles them to not entertain thoughts concerning the morality of the war they're asked to fight. This moral division of labor is consistent with the fact that morality takes into account our cognitive limitations. It's asking too much of soldiers to consider *ad bellum* matters, these should be left to military and government superiors, who have the necessary time, capacity, and access to information to make informed decisions (Benbaji 2009).

By consenting to the convention, just soldiers and citizens waive their right not to be directly and collaterally harmed by unjust soldiers. And because ordinary citizens have also consented (they authorize states to act on their behalf), unjust soldiers don't violate their rights by bringing about an unjust state of affairs. If, for example, a nation has its political sovereignty violated, it's the leadership, not the soldiers of the aggressive nation that wrongs those citizens. Thus while it would be heroic for a soldier to refuse to participate in an unjust war, he's permitted to do his part to carry one out (Benbaji 2009).

5. Responding to the Argument from the Moral Division of Labor

What's not clear to me is why states and hence soldiers and citizens wouldn't consent to a war convention that purists think should be adopted. Such a convention, it seems, would be at the least, just as fair and beneficial for all those that enter into it. The purist could justify the rules that stipulate that POWs and soldiers who have surrendered are not to be harmed. These soldiers are not doing anything that makes them forfeit their right to life; they have regained their right to life. Furthermore, and importantly, the instilling of honor in soldiers is what can motivate them to follow these rules.

Such a convention of course would stipulate that unjust soldiers are not permitted to employ military force i.e. harm just soldiers, though in some circumstances unjust soldiers may be excused for doing so. It would also entail that soldiers are required to do what was in their power to investigate the morality of the war they're asked to fight with an eye to refuse participation unless the war reasonably looked to be just. But I fail to see why this would be a problem. The just mentioned requirement on soldiers is seemingly not excessively high-minded. The purist admits that political and military leaders are the primary determiners of whether a war has a just cause, is necessary and proportionate, etc. But this does not mean that soldiers can't (or shouldn't) do what they can to attend to *ad bellum* matters and settle in their own mind the morality of the war in question. What the purist requires soldiers to attend to is not beyond their ability. For example, as

Jeff McMahan points out, soldiers can determine with relative ease whether the country they've been asked to fight has or hasn't invaded another country. If it hasn't, then the war in question could very well lack a just cause. Soldiers are also able to determine whether opposing soldiers live in the territory where the fighting is occurring; and whether the opposing soldiers find shelter and support from the territory's civilian population. The war could be unjust if these conditions obtain (McMahan 2006).

For the purist, while soldiers have a strong institutional obligation to carry out orders, this obligation is not absolute. It seems that the obligation to not kill and maim the innocent overrides any institutional commitment one may have (McMahan 2006). Thus the executioner (if we make the controversial assumption that killing is a just form of punishment) as well should refuse to kill someone he knows is innocent. If he doesn't have such knowledge, he should do what is in his power to determine for himself the innocence or guilt of the prisoner. If the justice system within which he operates is on the whole reliable, the pronouncement of guilt from the court minus obvious signs that the prisoner is innocent is probably sufficient to determine for himself the guilt of the prisoner. With soldiers though, it's not clear that a pronouncement of a just war from higher up the chain of command carries a lot of weight. Experience shows us that military and political officials – even democratically elected ones – on the whole aren't trustworthy when it comes to adhering to *ad bellum* rules (McMahan 2006).

Most people think that if the adoption of a purist war convention causes more soldiers to investigate *ad bellum* matters, a genuinely just war will still be recognized as such and fought. There's no evidence to suggest that a culture of 'investigation and refusal' amongst soldiers will undermine the worthy goals of a military; again, just wars will still be fought (McMahan 2006). Sure there may be a few just soldiers that doubt the justice of their cause and fail to carry out their mission; but a few such soldiers can't significantly undermine the effectiveness of the military to which they belong. There will probably be more soldiers refusing to fight unjust wars; but this is of course a good thing. Furthermore, I suggest that even if a culture of questioning and refusal were to cause less just wars to be fought (and fought effectively), this may not be a bad thing given the horror of war. Better to have less just and unjust wars than the current rate of wars being fought.

Benbaji admits that the traditional "war convention promotes injustice, since it permits (and thus legitimizes) killing innocent people for no good reason" (Benbaji 2009, 16). Furthermore, Benbaji admits that as more soldiers refuse to fight in unjust wars (as would likely take place if a purist war convention were adopted), the number of unjust wars would likely be decreased especially as conscientious refusal becomes more entrenched and accepted. Benbaji insists, however, that morality is not so stringent that it would require soldiers to refuse participation in unjust wars. Creating such a big social change, one where the number of unjust wars is reduced, is not the duty of ordinary people like soldiers (Benbaji 2009).

In response, it is plausible to suppose that ordinary people are not obligated (though it would be heroic of them) to struggle to bring about radical social change. But the claim of the purist is not merely that soldiers are required to do their part

to bring about big social change. By not doing their part to bring about big social change, unjust soldiers are killing and maiming innocent people for the purpose of bringing about an unjust state of affairs. Surely all ordinary people are required to refrain from doing this.

In addition, let's return to the issue of honor discussed at the outset. If the arguments of Robinson, May, and Olsthoorn are plausible, then it's not clear that soldiers are the kind of people that are ordinary. The honorable soldier is zealous to do what is right, knowing that his self-respect will be lost if he doesn't. Doing what is right, in large part, consists in respecting human persons and human dignity. Since unjust wars result in human suffering and injustice, the honorable soldier is not the kind of person that can ignore the fact that his war is unjust; nor is he the type of person that can, if he doubts the justice of his war, defer to the judgment of his superiors, given their general unreliability. Furthermore, honor as described above (especially integrity) by its nature cannot be said to be relevant in one area of life but not relevant in another area; thus it cannot be compartmentalized to only in bello matters.

Likewise, the honorable soldier, who has been trained to value a bit less the opinions of his colleagues and value more the opinions of civilian society, is capable of dissenting from his fellow soldiers as well as superiors (c.f. the honorable soldier who refuses orders to partake in a massacre). Thus there's no reason to think that it's asking too much of soldiers to refuse orders to carry out an unjust war on account that the pressure to fit in is too great.

Citizens seemingly have an obligation to do what's in their power to ensure their country doesn't fight unjust wars (Benbaji, 2009). If we take seriously Robinson's suggestion that a soldier's honor group is to be expanded to include civilian society, then citizens can, at least in part, discharge this obligation by both encouraging soldiers to attend to ad bellum matters and pressuring the military to lessen the burden soldiers have to face for conscientious refusal.

The honorable soldier, as described by May, is supposed to be morally a 'cut above' the average person, this is what enables him to respect innocent human life in the midst of various and great pressures not to. But the very things that enable a soldier to act rightly on the battlefield are the very things that make him especially equipped and eager to refuse orders to carry out an unjust war. I thus fail to see why soldiers wouldn't be required by morality to so refuse. But even if we insist that it would good of soldiers to refuse participation in an unjust war, though not required of them, it seems that we should have higher expectations of soldiers. That is, we should expect more soldiers, and they should expect themselves, because of their honor, to go above and beyond the call of duty and refuse participation in an unjust war.

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Race-Based Welfare and Multiracialism

James GARRISON

Introduction

The topic of reparation for a nation's past sins provokes many ethical quandaries, especially when it comes to mixed backgrounds. Racist regimes, e.g. the United States and South Africa, and wars have produced children whose backgrounds complicate compensation. The question is simple – how should race-based welfare programs address those whose lineage ties them both to the oppressors and the oppressed?

In the course of developing race-based welfare systems, legislation must classify the perpetrators and victims. Problems naturally arise, since race is flimsy and lacks a stable ontological basis – a fact with which people with mixed-race grapple constantly. Here the work of Charles Mills is particularly helpful, especially his analytic approach to the necessarily faulty epistemic grounds of hierarchical classification.

I argue that, while the imprecision of racial classification poses genuine problems, this should not stifle attempts at race-based welfare. Instead, race-based welfare schemas should be as broad as possible so that the idea of racial purity does not harm the mixed-race population in what would be a well intentioned, though seriously flawed, attempt at correction. Though the partial possession of “superior” heritage often allows mixed-race people to occupy a “better” position than those subjugated and of “pure” blood, the mixed population tends to suffer other, more intangible problems. While the dominant race may brutally insist on separatism and superiority, they do not often demand that those of the contingently inferior race not exist. After all, as Hegel (1999) suggests, annihilation does not benefit the master like the slave's recognition and servitude (185-9). Mixed-race people upset this dynamic and thus the logic of racial hierarchy seeks, often quite violently, to foreclose attempts at establishing a genuinely viable mixed-race identity.

Considering both the foreclosure of mixed-race identity and the practical problems of measuring and classifying one's race, race-based welfare programs should instead be generous in giving mixed-race persons the benefit of the doubt and give due compensation. Moreover, this compensation should not be prorated based on halves, quarters, or eighths of racial identity, since this would only replicate the pain caused by the past dynamic and undermine the laudable pursuit of race-based welfare and reconciliation. Where race-based welfare schemas are material and quantitative, compensation should be similar across the board. However, this presents the danger of minimizing the significantly different plights for the aggrieved parties, domination for the “pure” and erasure for the mixed.

To go beyond material compensation, the dominant, the inferior, and those in between all must recognize the kinship shared by all and turn to the thorny issue of

family. The family-nation link is thoroughgoing, and heterogeneous nations can only move forward when heterogeneous family connections, including those covered up in repressive regimes and/or times of war, cease to be a source of shame. Failure to do so consigns mixed-race people to a shadow existence.

Unequal access to resources and wealth is tragic and must be addressed by race-based welfare schemas, but this is only a symptom of the cause – oppositional hierarchy. Race-based welfare programs have an opportunity, by opening a dialogue on mixed-race identity, to address not just racial grievances on the surface, but their origins as well. This essay examines the issue on terms with which I am personally familiar, namely those of black/white multiracialism in America, with the goal of developing a schema with a more general scope.

1. Racial Identity

However, before delving into multiracial identity and the ethical dimensions of compensatory policies, it is necessary to clarify what exactly is meant here by racial identity more generally. It is no small question to ask what racial identity is, since race is something that society talks about in multiple senses. Race is talked about as something that people receive genetically, and as something identified by society through the body's given features and their indication of ancestry. Race is something that people describe in terms of mannerisms and everyday actions. This is why we have terms like “Oreo” for people that are black on the outside, but who supposedly act according to the white soul inside. Similarly, culture is itself a matter of race; talking about “white” culture or a “black” culture refers to an aesthetic sense shared and perpetuated by people with common ethnic origins. The conflicts and paradoxes that arise from these multiple aspects of racial identity are naturally quite confusing. Therefore, the question of what racial identity exactly is requires an analytic, if not taxonomical, approach.

Charles Mills (1998), in his book *Blackness Visible*, attempts to get a handle on the manifold nature of race where he gives an ontological gloss to the question in his essay “What Are You *Really*?” (41). He believes that analysis of how this question could even be formulated, and what it would mean when asked, can show what “is real” concerning race.

Mills (1998) writes that his social metaphysics is designed to “refer to the struts and girders of social reality in a fashion analogous to the way ‘metaphysics’ simpliciter refers to the deep structure of reality as a whole” (44). He does not claim that race exhausts the possibilities of social ontology, or that it is a preeminent concern above, say, gender and class (Mills 1998, 44). Rather, he believes that race intersects with these other arenas and, at the same time, “[correlates] strongly with civic standing, culture, citizenship, privilege or subordination, and even designations of personhood” (Mills 1998, 44-45). It is fairly evident in many societies, including America's, that race is tied to systems of hierarchy that keep the same sorts of people in power. Therefore, Mills (1998) investigates how “an ideal vertical racial system would then have rules to regulate its internal structure and guarantee as far as

possible its reproduction” (43). For whites to continue to enjoy the benefits of being white, they must act to ensure that white ideals continue to dominate American society. As a result, Mills (1998) believes that race is constructed politically as the “establishing and maintaining of privilege” (48).

Within Mills’ idea that legitimizing a particular racial identity comes about through de-legitimizing its other as a shadow being, we can find strong links to the Hegelian idea that conflict and eventual victory “proves” the Master’s necessity vis-à-vis the slave’s contingency. Mills’ spin on this Hegelian conceit is that the idea of race boils down to the Master’s need to legitimize privilege. If everybody thought race was some arbitrary smoke and mirrors affair, people would reject its legitimacy. Race must thus appear to be a natural given that people must pay heed to because it is a fact of the world, and not just as a contingent happening.

This reality must be enforced because, as Mills states, “there are no ‘natural racial divisions between human groups but rather a continuous spectrum of varying morphological traits” (1998, 47). From this premise, he then reasons, “that the lines of demarcation, the categorical boundaries, are drawn here rather than there is a social decision and one that creates the (social) reality in question” (Mills 1998, 47-48).

Mills thinks that the legitimization of the structure of race works through idealizations that are pragmatic because they serve as political instruments by which privilege is established and maintained (1998, 48). Since he views these racial ideals as being politically engendered, he is of the mind that “race is a contingently deep reality that structures our particular social universe, having a social objectivity and causal significance that arise out of our particular history” (Mills 1998, 48). The issue then becomes identifying these racial ideals. After that, we can then look at how those ideals have banished multiracialism from America’s collective racial consciousness into the realm of the unthinkable.

2. Racial Ideals

Mills’ analysis is designed to explain race in a way that takes racial transgressors like passers, multiracial people, white-acting blacks, and black-acting whites into account. He believes that looking at such problem cases can sharpen the fuzziness of lay concepts to discover “what ‘race’ really inheres in” (50). Mills holds that there are seven criteria which determine race and which can be described through investigating racial transgression. These are bodily appearance; ancestry; self-awareness of ancestry; public awareness of ancestry; culture; experience; and self-identification (Mills 1998, 51-54). In each of these arenas there is a standard for whiteness, blackness, etc. which must be met in order to confirm racial “reality.” For Mills, a racial transgression takes place when a racial identity brings these criteria into a conflict; this conflict points to the contingency of racial schemas and threatens the idea that race has a firm ontological basis.

A racial ideal such as blackness or whiteness comes into play in each of Mills’ criteria. Problem cases arise when people reflect racial ideals that conflict across

the categories of racial identity. Multiracialism is therefore a very big problem because the many varied skin-possibilities, which run from passing-for-white to tan to dark-as-a-“real”-black, can clash with the either-or possibilities for self-knowledge of ancestry. These highly variable categories can furthermore contradict one’s culture and experience, especially within one’s family, where a multiracial family might participate in the culture or experience of one or many races. It gets even more problematic when the possibilities of self-identification are considered for multiracial people. There are many multiracial people who would call themselves black, or white, or tan, all the above, or even none of the above. With all these categories being highly fluid in the case of people with multiracial genetic ancestry, multiracial people, because they are irregularities which go against the persisting order, run counter to the idea set forth by Mills that race is a “establishing and maintaining of privilege” (1998, 48).

3. Unthinkable Multiracialism

Systems of racial privilege in America, South Africa, and elsewhere have a long history of excluding multiracialism in order to legitimize the preeminence of white society, in arenas as varied as labor and sexuality. Through applying Mills’ idea of what race “really” is to Judith Butler’s approach to identity formation and the need for identity to constantly legitimate its reality, I believe that we can get a handle on why specifically multiracialism has been foreclosed from America’s public dialogue on race.

No less than racial identity and racial legitimacy are at stake with the threat of multiracialism, for they are based on the idea that the races are in fact divided. Multiracialism is thus something that must be banished from the minds of society, if that society is to maintain its system of racial separateness (and hierarchy). Yet, in the act of being made unthinkable, multiracialism cannot help but be preserved as something that has to be avoided, that has to appear as an uncrossable boundary.

This is indeed very similar to Butler’s work, because she shows how the amassed gender melancholy of society manifests in the incessant, anxious, and inconsumable desire to overcome a lost domain of queer desire. In short, Butler demonstrates how heterosexual identity, in order to define itself as heterosexual, consumes itself with a desire to regulate its desire away from what’s queer. This preserves the queer as an object of scorn, never truly lost. As a result, queer desire exists for heterosexual society as something in limbo, in ontological shadows (Bell 1999, 170), for it is not “real” love like straight love is. Likewise, Butler sees that multiracial love is similarly foreclosed and made into something unthinkable, leading to a formative melancholia where a founding loss constitutes one’s social being (Bell 1999, 169-170).

Butler gives us a clue how loss might apply to multiracialism when she says melancholy is accrued through reactions to “not just to death, but to other orders of loss, including ‘slights and disappointments,’” which thus make “the melancholic [compare] him- or herself invidiously with such social ideals” (Butler 1997, 185).

I think that we can apply this idea to Butler's notion of a founding double loss as a "never loved, never lost." If we pick up her language of slights and disappointments in terms of her appropriation of "attachment" as a psychoanalytic way to think of desire, then we can make progress by asking what common society denies as valid racial possibilities. Hence, a more rigorous and less dramatically formulated way to understand Butler's idea of "never loved, never lost" (Butler 1997, 140) would be more like "never attached, never lost." The key issue is the foreclosure of otherwise non-contradictory forms of identity because the prevailing and contingent moral structure deems them invalid. Race-based welfare programs should not focus on financial loss and physical mistreatment alone, for the type of loss identified by Butler is something that multiracial people feel quite keenly as it constrains all social interaction. To address this loss such programs must uncover the legacy of multiracialism that historically sedimented racial concepts have obscured.

Mills' approach to race helps out with understanding what racial legitimacy and supremacy might be, especially in light of Butler's ideas of identity by exclusion and melancholy. It is still necessary to fill in the specific history of that exclusion in the context of unthinkability of multiracialism in America. Only by examining that unthinkability's extent, as forged in history, is it possible to begin with the question of how much this unthinkability connects to Butler's idea of melancholy.

4. Purity and the Historical Exclusion of Mixed-Race

Naomi Zack's *Race and Mixed-Race* offers some insights into the history of mixed-race. She argues, like Mills, that the idea that mixed-race really can exist has been made unthinkable for the purpose of maintaining a status quo of a society of distinct races. This unthinkability is ingrained in our laws and everyday experience. Everyday experience includes everything from awkward multiracial family reunions, to simple walks in the park shared between interracial lovers, to a parent and child appearing too different to be thought of as related. Therefore, while it is true that multiracial desire has been legally foreclosed because "at one time or another before 1967, thirty-eight states had laws against marriage between blacks and whites" (Zack 1993, 77); there is a second history of excluding multiracialism at work in everyday racial experience, beyond the legal sphere. Zack recounts both histories ably.

In Zack's view, the history of multiracialism's exclusion from mainstream American racial thought stretches back to the almost contemporaneous beginning of colonization and African slavery in America. Then, as now, multiracialism threatened the stability of race-based subjugation. Only then, the stakes were much higher; subjugation did not just mean subjection of the body to the norms of a "better" and more legitimate race, but the outright state-sanctioned domination of the body. African slaves were left to the disposal of their European masters who made use of their bodies for labor and for sex. Slaves functioned in two roles in society that, at times, came into conflict with each other. Slaves were the backbone of American economy in everything from farming to the shipping trade in America's pre-national epoch, even though their own backs were being broken by the labor demanded of

them. At the time, slaves were sexual playthings with which their masters could fulfill their baser desires. These two roles that slaves played eventually became problematic though, as more and more children with skin visibly lighter than their slave mothers started appearing. Sanctioning the existence of these children in a way that affirmed both their African and European heritages would have endangered the whole economic superstructure of slavery, which was rooted in the principle that it was okay for betters to enslave their natural inferiors, which is to say for whites to enslave blacks. Would these children still be fit for slavery as blacks if they had white blood in them? Would they be “essentially” an exploitable people? With the birth of children whose skin was evidence of some white paternity it became necessary to identify, both in casual and legal settings, who was black, who was white, who was born a slave, and who was born a potential slave-owner.

This insistence on binary classification set up the conditions for the persisting unthinkability of multiracialism in America, and thus led to loss and melancholy. In early colonial times, the need to protect everyone who had a vested interest in slavery and to conceal the sexual avarice of white male slaveholders, led to the legal determination that children conceived by white males’ sexual misuse of black women were black (Zack 1993, 79). To empowered slave owners this had the benefit of making their sexual desire for their slaves economically advantageous, since any children from white-male/black-female sex would be black, and therefore “free” slaves (only in the monetary sense, of course). On the other hand, mixed-race marriage between white women and black men became, in many states, either illegal or the path to indentured servitude for mother and/or child (Zack 1993, 79). Thus, defining a Negro became necessary. In Virginia’s law this meant having one black grandparent. However, in time these definitions would be rewritten in many local historical contexts to what now looms as the monolithic one-drop rule, which simply holds that any (known) black blood means that a person is black. Surveying the scene in 1850 before the Civil War, Zack says:

In the upper South, free mulattoes were associated with their lower-class white colonial forebears, and they tended to be marginal both economically and legally. Throughout the rest of the United States, mulattoes had the same disadvantages as in the upper South because they were grouped with blacks as a whole. Rarely though did these mulattoes have suffrage anywhere. (Zack 1993, 81)

However, multiracial people, or mulattoes in the vernacular of the time, enjoyed relative prosperity in places like South Carolina, Georgia, and Louisiana because of historical contingencies like late entry into legalized slavery and the influence of Napoleonic Law on racial norms in the Louisiana Purchase. Yet, these enclaves of recognition were not to last; Zack believes this is tied to the fact that “tolerance toward mulattoes in the antebellum South was eroded by three forces: King Cotton, the defeat of the South in the Civil War, and white southern racism, which amalgamated after reconstruction” (Zack 1993, 81). In her view, because the importation of slaves from Africa was made illegal in 1808, the growth in mulatto

population outpaced that of black slaves by nearly fifty percent by 1850 (Zack 1993, 82), and was brought on by the need to keep up with the demands of cotton's reign over America's economy (Zack 1993, 81). Zack suggests that this made the threat of multiracialism to slavery more urgent because "as slavery became increasingly 'whiter,' the one-drop rule became more important as a justification for the existence of many slaves with light skin. (It was assumed that a white person could not be a slave.)" (Zack 1993, 82). This led to situations like that in Louisiana where "in 1857 it became illegal for mulatto slave children to be emancipated" (Zack 1993, 82). Such situations effectively codified in law the belief that free mulattoes contravene the laws of nature and the basic principle that blacks are, and always shall be, slaves.

After the Civil War, which brought an end to institutional slavery and its sanctioned sexual servitude, multiracialism took on a new dimension. Zack notes that "miscegenation between blacks and whites fell off sharply after the Civil War, although miscegenation between mulattoes and other blacks led to a doubling of the mulatto population between 1860 and 1890 and to an increase of 81 percent in that population between 1890 and 1910" (1993, 82). In her view, "these racial mixtures reflected the increasing tendency of mulattoes to identify with blacks as a whole, rather than to see themselves as a separate group" (Zack 1993, 82). For her this is why "mulattoes as well as whites accepted the one-drop rule by 1920. In 1920 the last census count was taken of mulattoes – thereafter there was not even that merely formal legal recognition of individuals of mixed black and white race" (Zack 1993, 82). This led to Virginia's legislature "[deferring] to public opinion in 1930 and defining a Negro as anyone with any Negro ancestry at all" (Zack 1993, 82). Many other, predominantly southern states had similar statutes around this time. This meant that, in the eyes of the law, people with multiracial ancestry were, for all practical purposes, simply black. However, the unthinkability of multiracialism in America is hardly exhausted by America's legal tendency toward the one-drop rule. Agreeing with this, Zack writes that "when there were fractional definition of who was a Negro in promulgated laws, it was usually for the purpose of regulating which couples could marry. But even with these laws in place, in attitude and custom American society adhered to the one-drop rule" (Zack 1993, 84).

While the situation has improved in recent times, the traditional one-drop rule continues to live on. In fact, it was only in 2000 that the census reintroduced multiracial classification. Even then, the most visible symbol of multiracial identity in America, President Barack Obama, still only checked one box, black, on his 2010 census (Saulny 2011).

5. Race-Based Welfare

If it is admitted for the purposes of argument that some manner of race-based welfare should be given to historically aggrieved groups, here American blacks, then the question of scope will immediately arise. No matter what kind of prohibitions or taboos exist, children will be born whose ancestry traces back to both sides; and their place within the racial hierarchy will be questionable at best, even if they

are lucky enough to among those born into loving, multi-racial families, and not scenes of institutionalized sexual violence. Whether in the U.S., South Africa, or other countries in which entrenched racial hierarchy have taken hold, these issues naturally arise when it comes time to make amends.

Without reference to any particular nation's history, it is fair to say generally that while such hierarchies may create injustice, pain, and despair for those on the lower end, that a separate pain exists for multiracial people who lose the possibility of legitimate ancestral connection. Multiracial people, who often but not always, are by default identified with the lower-status racial class, are not only vulnerable to all-too-familiar forms of mistreatment and disenfranchisement, but to a deeper injury, that of never being certain of one's self, that of never feeling like a sense of *real* belonging with one's socially assigned group.

While it might be difficult to develop a paradigm for repaying multiracial people who move "up" the racial hierarchy ladder, as in the case of the Dutch Indonesians cited by Mills, the injustices committed against those who move "down" the ladder call for multiracial people to receive race-based welfare just like those who are *really* of the oppressed group. It may be objected that such an approach would do no more than replicate past ills by not differentiating between multiracial people and those of "pure" racially-subordinated blood. However, there's a certain poetic justice to the approach, since systems that would move multiracial people down the hierarchy would logically call for something like the one-drop rule at the heart of black/white classification in the United States. Hence, it makes sense to adopt an approach that is as widely inclusive as possible for determining who receives race-based welfare. If one drop was enough to damn my ancestors and me, then that same single drop of black blood should be enough to qualify for redemption.

However, the objection still remains that this flattens the different plights of blacks and multiracial people. This is, in a certain sense, an insurmountable objection, for as Mills' analysis of race makes clear there are epistemic considerations to race. Because of the in-the-shadows nature of multiracialism in American history, there's a lot that we can never know about race. It's rather obvious that most putatively black Americans are several shades lighter than their West African ancestors, and though nobody likes to talk about it much, slavery produced "black" families who, only by historical fluke, are not considered multiracial. As the multiracial ancestry of most erstwhile black Americans is itself unknowable and lost to history, it makes little sense to gripe that a broad application of race-based welfare would minimize the difference between multiracial people and true blacks, since true blackness is a fiction.

Given this situation, where racial hierarchy must, by its very nature, cover over multiracial identity, it makes sense to legislate race-based welfare projects from behind a Rawlsian veil of ignorance. If we take it as given that *some* form of race-based welfare ought to exist, and that we lack the information to make particular distinctions in the target group apart from them being in some manner black, then its perfectly rational to craft the law without reference to how and in what degree one's blackness would qualify for benefits.

Conclusion

Hence, race-based welfare programs that include multiracial people are preferable to those that would be more exclusive. However, repayment in kind does not by itself represent a thoroughgoing solution. If a race-based welfare schema were intended to be a remedy it would make sense for it not to treat just the symptomatic social unrest that bedevils countries with checkered racial pasts, but the cause as well. However, here the metaphor with healing bodily infections breaks down, for the diseases which cause health problems do not have some further conceptual cause beyond the physical. While the cause of current problems may be traced to slavery, in the case of America, or to Apartheid, in the case of South Africa, these institutions are themselves the results of historically ingrained hierarchical schemas. If race-based welfare programs are to be a remedy, they must not simply respond to root historical ills, but they must address the concepts that served as grounds for the injustice.

This will only happen with a conceptual revolution in how race-based welfare programs are considered. Oftentimes race-based welfare is thought of as a vehicle for transferring wealth and power from the enfranchised to the subjugated, from white to black, in repayment of past wrongs. However, this view is misleading for it insists that there *really* is black and that there *really* is white and nary the twain have or shall meet. Aside from the multiracial people born in today's more "normal" circumstances and the increasing legitimacy of this era's multiracial people in public life, culminating in the election of the first "black" president of the United States, there is the regrettable past of miscegenation that still looms over the present. Most "blacks" are not pure blacks, having some ancestor who was born to a white father and subsequently disavowed as just another slave.

This being so, race-based welfare projects must not be seen as the transfer of wealth from white to black, as though these are solid and pure things, but as something like a belated form of child support with repayment for spiritual distress. It is all well and good for race-based welfare programs to be broad in their scope, reaching both "pure" blacks and multiracial people, since the flimsy nature of race would make the kind of classification necessary for more restrictive models infeasible. However, until race-based welfare programs cease to be cast as the movement of wealth from one isolated group to another, the conceptual cause, racial hierarchy, will still remain and doubtlessly cause new maladies and injustices.

Americans need reminding from time to time that our situation is not that of the rest of the world. The history of race is complicated wherever one goes. Discussions of race-based welfare need to be responsive to the historical nuances which frame particular issues differently throughout the world. Nonetheless, a general inference can be made that race-based welfare programs should not shy away from the paradoxes that multiracial people introduce to the issue. Such programs must be broad in targeting multiracial people, as their suffering of injustice is seldom, if ever, proportional to the amount of "inferior" blood in their veins. However, in being broad, race-based welfare programs run the risk of again consigning multiracial people to the shadows by simply classifying them with the subject group. This being

the case, supporters of race-based welfare programs around the world should aim to change the rhetoric of race. They should not give into the idea that race-based welfare simply transfers wealth from group A to group B, as this concedes defeat to the idea that the races are in fact separate and stifles recognition of the deep, yet often obscure, kinship that connects all parties contingently separated by “race.”

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How to Evaluate Justice Using Nussbaum's Capabilities List?

Lydia de TIENDA PALOP

1. Introduction: The Capabilities Approach

The Capabilities Approach, evolved by the economist Amartya Sen (Sen 1999) and the philosopher Martha Nussbaum (Nussbaum 1992, 2002b, 2002a, 2003, 2006), was born in the early 80's as an alternative theoretical framework to evaluate human development and quality of life, rather than those focused on GNP growth or income access solely.

In this sense the capabilities approach emerges as a theoretical proposal which tackles human development issues from a different perspective to those theories based on GDP per capita, economic growth or commodities. These theories basically understand development in economical terms. Therefore, reports addressing measurement and evaluation issues in development matters focus primarily on quantitative factors, in particular the GDP per capita or the GNP index are examples of measurement indicators based on quantitative dimensions. The novelty of the capabilities approach is mainly the fact that it redefines what should be understood by "development", in the wake of Denis Goulet's works (Goulet 1999), incorporating the really "human" dimension.

Thereby the Capabilities Approach (CA) emphasizes that economic growth or economic income per capita are not the ends but the means of development. The CA points as the human development goal the promotion of those valuable things a human being is able to do and be. Thus the human development concept is conceived in terms of well-being and quality of life instead of focusing on quantitative issues as incomes or commodities solely. Therefore the notion of development shifts from a quantitative perspective to a qualitative point of view.

Concepts such as "functioning" and "capability" become key notions within the CA and public policies are meant to provide an adequate social base for people to live the life they have reason to value. Thus development is understood as "the enhancement of certain human functionings and the expansion of human capabilities to so function" (Crocker 1992, 58).

Thereby the CA proposal becomes not only an alternative economic theory to assess development but also incorporates the ethical dimension in its very structure, which enables the CA to embody a theory of justice.

The specific objective of the proposal which I believe is at the base of both versions – Sen's and Nussbaum's – of the CA is to build the public social space which can ensure that people can live the lives they value.

Both approaches point out the same goal, but can be understood as the opposite sides of the coin. Both proposals have as a benchmark the effectiveness of the fact of living, not only as a mere "keep on breathing", but as *living well*: and in that

context, that living well should be understood as well-being. This is a broad notion that includes both the perspective of welfare and the dimension of normative, which turns the view to the idea of good. This category of well-being implies two questions which should be solved: a) What do we mean when we say “being”, as related to the idea of functioning? and b) Which idea of good is required to be added to the “being” to become a “well-being”?

In order to begin this inquiry with attention always placed on the practical realm, it would be necessary to scrutinize the empirical questions both Sen and Nussbaum tackle. The empirical question faced by Sen is just, when it analyses Maitreyee’s rhetorical question (Sen 1999, 13), “the capability to live really long (without being cut off at one’s prime) and to have a good life while alive” (Sen 1999).

On the other hand, Nussbaum deploys her list of capabilities taking up the empirical benchmark question “What is Vasanti actually able of doing and being?” (Nussbaum 2002 a, 112).

Both questions can be articulated with the purpose of outlining the primary question *how we should live?* in order to achieve a good life. Answering this claim implies both tackling Sen’s concern –what in the end means living well– and Nussbaum’s, which aims to provide the content of the meaning of “living well”: what is the flourishing of human life according to some notion of human functioning? (Nussbaum 1998, 313). Although this way of articulating both approaches could raise criticism, it could also be quite promising for implementation issues, therefore it seems worthy to scrutinize this fashion a bit further.

The question *how we should live?* (Nussbaum 1990, 50) is raised by Nussbaum in many of her works, but it raises suspicions among the defenders of Sen’s approach. This is likely due to the perfectionist element her thesis includes, which may come into conflict with the idea of freedom, which is at the basis of Sen’s theory.

In Sen’s theory, the main aim of political institutions, in order to accomplish the goal of achieving well-being, should be to promote the “opportunities of the people to achieve the lives they have reasons to value”. It is in this sense that Sen’s proposal is seen as a theory which emphasizes freedom as the main objective of human development and therefore the effectiveness of people’s choices as the goal to achieve. Well-being, in this sense, is directly related to the possibility of pursuing and designing one’s own life, according to the things that are valuable for each person. Hence Sen’s thesis is deeply committed to the notions of “pluralism” and “incompleteness” and does not provide an exhaustive account of well-being, because it may challenge the main purpose of extending freedoms effectively.

On the other hand, Nussbaum does provide such an account of human functioning and argues that it is an indispensable requirement for meeting claims of justice (Nussbaum 2003, 36). It could be argued that this issue entails seeing both approaches as opposites and even rivals; but we can pose the question differently.

It is at the core of Sen’s proposal that the aim of human development is not only to promote liberty as such, but also embodied liberty. This dimension implies a structural constituent of effectiveness, which directly addresses the commitment of public powers to create real opportunities, which enable people to pursue what they

value. Hence it claims to design a real space in which such a goal can be achieved successfully. The question now shifts to "What kind of space should this be?"

The subsequent answer contains a circular argument: "the one that effectively provides the best conditions to achieve this goal successfully". Therefore it seems necessary to raise a slightly different question to proceed in this inquiry. The best way to figure out the primary question we are seeking is precisely to turn the view to the very objective pursued, which is not naked freedom as such but *what is valued*. Freedom is the tool for reaching "what is valuable", and therefore has an instrumental role in pursuing a worthy life. On the other hand, it is a goal itself, therefore it is constitutive, but in the sense that freedom is something that is valuable. Even if freedom is the most valuable thing we can value, it is an objective because we value freedom. Hence the former question, in order to design the space in which what is needed to extend freedoms, is precisely that "which conforms the sphere of the value?". The point is quite subtle, because when Sen is arguing that freedom in the "capabilities set" should be understood regarding "the alternative functioning vector a person can choose from" (Sen 1999, 75), indeed it is basically that the set of the combinations of the functioning vectors reflects an account of all the things a *human is capable of being and doing*. And this idea according to an idea of good leads us directly to the notion of flourishing.

As we can see, in pursuing the extension of freedoms in the practical realm, we should face the question *What is valuable?* In creating the framework in which the approach can be implemented, we should identify all the possible spheres of value, but for taking up this inquiry we need an account of the functioning of the human being. And this is the task Nussbaum does evolve, having as bedrock the category of flourishing and the list of capabilities as its functional features (Nussbaum 1992, 2002a).

2. Nussbaum's List of Capabilities

Nussbaum does not elicit her list of capabilities from a metaphysical conception of the human nature, rather her inquiry seeks within shared human experience an internalist foundationalism, which scrutinizes what is intrinsically valuable and worthy in our lives.

The subtle insight of Nussbaum in drawing up the list of capabilities is proceeding in the same way as Aristotle's method does, although explicitly adding up the value constituent. The result is the list of capabilities, shaped as "valuable things and doings", instead of a list of virtues. This list is furthermore based on a particular conception of the human being as capable and needy, hence the list includes limits and expectations (Nussbaum 1992, 216).

In this sense, the list, which embodies the principles of a theory of justice "vague and thick", proceeds in two steps (Nussbaum 1992, 215):

- 1) First, taking into account which are the elements that allow us to see a human being as such. Nussbaum elaborates the ten features of the human

figure, which she finds shared by human beings in any time and place.

- 2) Secondly, she incorporates a new evaluative element. This second component, which is guided by the notion of flourishing, is the one that frames the spheres of value, the list of capabilities, according to the account stated in the first phase of elicitation. It is at this level where the different options can be pursued.

When Nussbaum sketches Aristotle's method by which the philosopher introduces his list of virtues in the *Nicomachean Ethics* (Nussbaum and Sen 1993, 244), she points out that "What he does, in each case, is to isolate a sphere of human experience that figures in more or less any human life, and in which more or less any human being will have to make *some* choices rather than others, and act in *some* way rather than some other" (Nussbaum 1990, 55; Nussbaum and Sen 1993, 255).

Her objective is to place the list as the core of the principles of justice each government should guarantee. The constituents of the list are ten categories shaped as ten central capabilities, which each nation should secure to all citizens at a threshold level at least. The list has shifted during her last works slightly, but the version the author holds at present is (Nussbaum 2006):

- 1) Life. Being able to live to the end of a human life of normal length and not dying prematurely, or before one's life is so reduced as to be not worth living.
- 2) Bodily Health. Being able to have good health, including reproductive health, to be adequately nourished; to have adequate shelter.
- 3) Bodily Integrity. Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
- 4) Sense, Imagination and Thought. Being able to use the senses, to imagine, think and reason –and to do these things in a "truly human" way. Being able to use imagination and thought in connection with experiencing and producing works and events of one's own choice, religious, literary, musical and so forth. Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to have pleasurable experiences and to avoid non-beneficial pain.
- 5) Emotions. Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude and justified anger. Not having one's emotional development blighted by fear and anxiety. Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.
- 6) Practical Reason. Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. This entails protection for the liberty of conscience and religious observance.
- 7) Affiliation. This capability is twofold:

- a) Being able to live with and towards others, to recognize and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another. Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.
- b) Having the social bases of self-respect and non humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of non-discrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.
- 8) Other Species. Being able to live with concern for and in relation to animals, plants and the world of nature.
- 9) Play. Being able to laugh, to play, to enjoy recreational activities.
- 10) Control over one's environment. This capability is twofold:
 - a) Political. Being able to participate effectively in political choices that govern one's life; having the right of political participation, protections of free speech and association.
 - b) Material. Being able to hold property (both law and movable goods) and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.

3. The List of Capabilities as a Theoretical Framework to Evaluate Public Policies

Now that the core of the theoretical proposal of Nussbaum's capabilities approach has been briefly introduced, I would like to propose the list of the ten capabilities as a theoretical framework. Within this framework it may be possible and valuable to assess public policies carried out by governments of different countries, in order to figure out if these public policies meet matters of justice and provide an adequate social base for a minimum decent level of quality of life successfully.

The aim of this paper is to provide a methodology which can assess the capabilities together, in order to bring to light possible failures in justice within development public policies.

Recently, new proposals on measuring and creating indicators to assess development based on the capabilities approach have been taken up. These new indicators have broadened their informational base considerably, but they are not as comprehensive as the one I propose, and therefore they do not cover the whole of human diversity. The goal of human development as understood by the CA is considerably complex and broad. Therefore, an indicator is needed which measures other dimensions which constitute a truly and worthy human life such as emotional health, leisure, relations with other species and so forth.

Thereby I propose a new indicator, developed using Alkire-Foster's methodol-

ogy, which differs from the Human Poverty Index (HPI) or Human Development Index (HDI). These indicators have been used by the United Nations Development Programme (UNDP) in their Human Development reports (HDRs) since 1990, to assess human development in terms of Sen's capabilities approach. The first Human Development Report was launched by Mahbub ul Haq in 1990 with the explicit purpose to shift the focus of development economics from national income accounting to people centered policies (ul Haq 1995). These reports, launched by Sen and ul Haq, have significantly influenced policies carried out by important international bodies such as the World Bank or the International Monetary Fund (Gasper 2002, 435).

HDRs, with the aim of deciding which capabilities should be considered as most important and meaningful and therefore taken into account explicitly, have used two criteria: a) first, they must be universally valued by people across the world and b) second, they must be basic, which means their lack would foreclose many other capabilities (Fukuda-Parr 2003, 306). The novelty of these reports is that they are built on the perception of the centrality of "human capital" instead of focusing on economic growth solely. In this sense people are not the means but the principal end of development (Gasper 2002, 442).

The HDI is a composite index that measures average achievements in three basic dimensions of human development, aggregating the country level functioning attainments of three attributes: a decent living standard measured by GDP per capita, a long and healthy life measured by life expectancy at birth, and knowledge measured by the educational attainment rate (adult literacy rate and combined primary, secondary and tertiary gross enrolment rates) (Chakravarty 2005, 276).

The new indicator I propose, as far as it incorporates the ten categories of Nussbaum's capabilities list, as constituent dimensions, would be understood as an indicator to assess the functioning of public institutions according to public policies they develop. Hence it is an indicator which evaluates whether institutional policies meet matters of justice successfully.

Sabina Alkire (Alkire 2002) has developed in her late works a methodology to build an indicator which integrates the complexity and diversity required by the capabilities approach to measure multidimensional poverty. I hold that this methodology can be applied to measure Nussbaum's capabilities list in order to figure out failures in basic capabilities, which would inform on failures in social justice matters instead of failures in poverty matters solely.

Nussbaum's list is both heterogeneous and all inclusive. Hence it goes beyond the very notion of poverty, because the list does introduce constituents such as the dimensions concerning bodily integrity, emotions or leisure that cannot be regarded as matters of poverty itself.

Then what are we assessing when we measure Nussbaum's list of capabilities?

The list of capabilities is conceived as the core of a partial theory of justice. Its goal is to embody the substantive principles of justice each nation should guarantee, therefore the aim of measuring capabilities points out the purpose of assessing the "justice" of any society.

In this sense we can argue that it is possible to find a society with a low poverty

rate, but failing in the other constituents of the list that are indispensable for a good functioning of the human being. If such a society possesses a high criminal rate, probably the public institutions do not succeed in guaranteeing bodily integrity to the citizenry. In the same way, if the society has a very high level of employment, but people have little time for leisure activities, probably the public policies regulating job timetables are not the best ones and this could have meaningful consequences in the sphere of emotional well-being. In this way even if the rate of schooling and literacy of a society in particular are quite good, but the same society shows a high level of environmental neglect or animal abuse, we can argue that the content of the policies in education are failing.

Therefore, assessing and obtaining different overall indicators related to Nussbaum's list of capabilities can be interpreted not only as an excellent indicators of the quality of life, but as a meaningful tool of the social justice of a society. This is because it relates to matters concerning human functioning and therefore can inform about the success or failure of public policies and bring to light some of the mistakes at the base.

Other authors such as Chakravarty or Atkinson (Chakravarty 2005, 277) have accomplished similar tasks as Alkire's in building poverty indicators since the HDR introduced the Human Poverty Index (HPI) in 1997. The HPI which is a composite index focused on measuring poverty, multidimensionally understood, as the lack of capabilities in multiple dimensions. It therefore measures deprivations suffered by people in different valuable spheres of their lives. "While the HDI measures average achievement, the HPI aims to measure poverty as a failure in capabilities in multiple dimensions, in contrast to the conventional headcount measure focused on low incomes. By focusing attention on the most deprived people in a country, the HPI highlights the presence of poverty in a country rather than the average national achievement" (Chakravarty 2005, 277). Hence Nussbaum's approach seems very convenient to assess failures in matters of justice, as far as she introduces in her theory the concept of threshold. This is a key notion which enables Alkire's methodology to be applied and builds the indicator we are seeking.

4. Alkire-Foster's Methodology: Building a "Justice Indicator"

As we have mentioned before, Alkire has recently been developing a methodology, which enables CA to be operationalized for practical purposes, integrating the special features such a methodology should incorporate (Comin et al. 2007, 185). The main objective of Alkire's work concerns poverty issues, and hence her new methodology, the so-called Alkire-Foster Measure, assesses and elicits poverty indicators within the Capabilities Approach in a very accurate way. This can provide a practical base to develop and assess projects related to Quality Living Standard and Multidimensional Poverty.

The Alkire-Foster methodology is basically meant to assess poverty, understood in its multidimensional structure, as the CA has conceptualized it. The novelty of this methodology is the specific nature of the 'counting' based method to identify

the poor; and that it proposes ‘adjusted FGT’ measures, which are deeply sensible to reflecting the breadth, depth and severity of multidimensional poverty (Alkire and Foster 2007; Alkire 2009b, 2).

Compared to other methodologies of measurement, Alkire-Foster’s method entails some qualities which make it an excellent tool to implement the capabilities approach in order to guide public policies. Those properties can be summarized as follows: a) It is a method which provides a flexible way to identify who is poor, because it contemplates the possibility of adding different variables such as ethnicity, age, area and so on; b) It includes *decomposability*, which allows the measure to be broken down into its individual dimensions, so it can be easily used to identify multidimensional deprivations in different regions or groups, and which in turn implies that it is a very convenient tool in guiding and providing support data to policymakers; c) It is highly adaptable to different purposes, and therefore can be used to achieve different goals regarding the specific objective sought; d) It increases sensitivity to local and group variations which permits the incorporation of the specific context into the measurement and therefore deal with the element of plurality; e) In this sense the method allows the use of ordinal, cardinal and categorical data (Alkire 2009 a, 78-79).

The methodology is presented in twelve steps, which can be summarized briefly as follows (Alkire 2009 a, 80-83):

1. *Choose Unit of Analysis.* It is possible to notice how the method incorporates heterogeneity from the very beginning, insofar as it can be applied either to individuals or households or to communities, schools, firms or any other basic unit.
2. *Choose Dimensions:* These dimensions are meant to be the framework, within which the data are collected and to which the valuable spheres for human living are related. Alkire mentions as means of eliciting these dimensions either alone or in combination: a) ongoing deliberative participatory exercises, mostly based on surveys; b) a list, which has already achieved a degree of public legitimacy such as DHR or MDG’s; c) implicit or explicit assumptions, with theoretical, psychological or philosophical background; d) conventions; e) empirical evidence extracted from different sources such as consumer preferences or living habits.
3. *Choose Indicators:* This process should be guided by two principles: *accuracy* and *parsimony*, which mean that there should be as many indicators as necessary in order to analyze and guide policies properly; although they should be carefully selected, avoiding superfluous ones, to guarantee effectiveness and transparency in achieving the goals.
4. *Set Poverty Lines.* This is the first *cut-off* this method establishes, and it is meant to set a threshold of deprivation for each dimension.
5. *Application of Poverty Lines.* In this step the empirical data are applied to the *cut-off* of all indicators in each dimension.
6. *Count the Number of Deprivations for Each Person.* A weighted sum is calculated among the indicators.

7. *Set the second cut-off, k.* Related to the dimensions.
8. *Apply the second cut-off.* This step is addressed to extract a set of poor persons and eliminate non-poor, to make the results operative.
9. *Calculate the headcount, H.* This number is obtained by dividing the number of poor people, after applying the second *cut-off* by the total number of people.
10. *Calculate the Average Poverty Gap, A.* This number reflects the average number of deprivations a poor person suffers.
11. *Calculate the Adjusted Headcount, M_0 .* H is multiplied by A and the result reflects the breadth of deprivation.
12. *Decomposed by Group and Break Down by Dimension, A_j .* It enables M_0 to break down and to analyze separately the specific contribution of each dimension and group.

Alkire's methodology appears very appropriate to use for operationalizing Nussbaum's theory and therefore is an excellent tool for guiding policymaking.

Alkire-Foster's method could be regarded as very convenient for this purpose as it combines all the features needed in order to achieve this goal. In this sense, some modifications should be made in order to adjust the method to this aim, such as extending the dimensions considered to the ten features and the choice of indicators in particular. On the other hand, the measures H , A , M_0 , A_j , which were obtained in steps 9, 10, 11 and 12 of Alkire's method would provide meaningful data regarding not only poverty matters, but also the well-being of a society, which is directly related to social justice matters and therefore concerns the developing of public policies and institutional practices.

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Pragmatism, Participation and Powersliding: On the Reciprocal Relationship between Environmental Ethics Thinking and Practice

Leslie MABON

1. Introduction

This paper argues that environmental values thinking – in particular environmental pragmatism – can play a vital role in engaging those perhaps hostile to ideas of environmentalism. I also contest, however, that paying attention to the world views of those skeptical of environmental thought can inform theoretical discussions on environmental values in a way that increases their practical applicability. By doing this, I hope to build on the thoughts of Midgley (1989), Norton (1995) and Rawles et al (2006) and consider a form of applied environmental ethics that sees a reciprocal relationship between theory and practice.

These issues are reflected on in practice via consideration of rally driving in Scotland. Rally driving as a recreational pursuit has come under increasing regulatory pressure with regard to environmental issues, however there is also a perception among participants that their activities are viewed as objectionable by an amorphous ‘green lobby’. Empirical research was carried out with rally competitors and those they may come into conflict with, under the aim of understanding what ‘environmental issues’ and ‘environmental responsibility’ may mean to those involved with or opposed to motorised recreation.

My position here arises from the environmental pragmatism literature, in particular the work of Andrew Light, Anthony Weston and Bryan Norton. The study begins with the acceptance that different stakeholders hold probably incommensurable views of the world (Weston, 1985), but that agreement over practice may be possible whilst deliberation over principle continues (Norton, 1991). Following the arguments of Midgley (1989) and Rawles (1995) the paper also considers what the outcomes of this case study say for the practical contribution environmental values thinking can make. I pay particular attention to how Rolston’s (2007) call to develop an ethics of respect for nature may play out in practice among those perhaps less amenable to environmentalist ideas.

Two broad outcomes from this research are discussed. First is the contribution to environmental practice here from the environmental pragmatism literature. I will show that the ideas and principles of environmental pragmatism played a key role in understanding why some participants were hostile to ideas of environmentalism, helped agreements over practice to be reached in spite of remaining ethical debates, and reminded me as a researcher not to overlook real and tangible progress by being caught up in broader theoretical debates. Second is the contribution to environmental values thinking from this case study. The complexity of ecological identities at play,

heterogeneity of views of nature and role of place values in imagining sustainable futures are all flagged up as areas environmental values thinking needs to continue to pay attention to if an ethics of respect similar to Rolston's (2007) call is to be developed.

2. Theoretical Context

This paper – and the research it arises from – tries to speak to debates in the environmental philosophy literature over the social contribution of the field. I use the arguments of Bryan Norton (1995) on practical philosophy as a starting point, in particular Norton's belief that real-world dilemmas should be worked through practically as far as possible, only introducing philosophy as and when necessary and keeping practical implications to the fore. That is, real-world examples are not 'test cases' for ideas from philosophy, rather theoretical principles are generated from practice. To this, however, I would also add Rawles' et al.'s (2006: p. 130) argument that applied philosophy can be understood as "an engagement with the challenge posed to philosophical ideas by particular situations", and Mary Midgley's (1989: p. 241) view that "[i]n finding and formulating the rules that underlie sense [...] we are bound to be doing philosophy whether we realise it or not". In other words, perhaps the contributions practical case studies can make to environmental philosophy are just as important as, if not more important than, the contributions environmental philosophy ideas can make to 'real-world' dilemmas.

What applied environmental ethics might mean for my case study, then, is not merely the use of ideas from environmental ethics to help reach workable outcomes for practical situations. Rather, I take applied environmental ethics to refer to a more reciprocal process where these practical dilemmas can help to refine and focus environmental ethics thinking just as much as environmental ethics thinking can offer suggestions for attaining tangible outcomes. I believe environmental pragmatism is a useful base for thinking through these links between philosophy and practical action. Weston (1985) explains that environmental pragmatism accepts that different people are likely to hold probably irreconcilable views of the ideal world, with Light (1996) portraying environmental pragmatism as an ongoing and dynamic dialogue that acknowledges one framework alone may not be appropriate for the preservation and protection of the environment at all times. This is particularly useful in a case such as motorised recreation where some of the stakeholders may be hostile to ideas of environmentalism due to preconceived ideas about who environmentalists are and the ideas for which they stand. It is perhaps important not to alienate interest groups such as motorised recreationists from the outset by dismissing their views offhand as 'wrong' – indeed, as Norton (1995) points out, real-world cases often do not require the resolution of problems of philosophical principle, and several philosophies can converge on an all-out effort to protect biological diversity. A study such as this can additionally build on the environmental pragmatism and environmental ethics literature by considering how values and environmental debates play out with a group of 'difficult' stakeholders and thinking

through how Rolston's (2007) call for an ethics of respect may play out among groups more cynical, skeptical or outright hostile towards environmentalist ideas.

Nevertheless, one may well ask why it is even worth devoting time and attention to those participating in a practice that is so fundamentally destructive to the environment as motor sport. Indeed, 'surely the easiest thing would just be for everyone to stop rally driving' is a question I am frequently asked when discussing my research. Given my grounding in environmental pragmatism and my focus on practical outcomes, however, I am with Sheller (2004) in believing that due to the emotional and embodied aspects of car culture, cars will not be given up easily even in spite of ethical criticisms. It is because of this that I believe it is important to try to understand what certain people value driving at speed in natural environments, so that more sustainable futures can be imagined that fulfill some of these values whilst removing more environmentally damaging elements.

As Varner et al (1996: p. 279) put it, "[t]o see agencies or individuals as thinking differently about ethics is to see more possibilities for cooperation than where the agencies or individuals are perceived as immoral or amoral and simply not to be trusted". In other words, by thinking about motorised recreationists as maybe having 'different' ideas about what is an appropriate way to act towards nature rather than dismissing their views and values offhand as 'wrong', it may be possible to identify areas of common ground on which practical action can proceed while deliberation over broader ethical questions continues. I am not trying to claim that this makes the practices of motorised recreationists ethically justifiable, only that by thinking through what is valued in this kind of mobility rather than dismissing it from the outset, potential areas of consensus may come to the fore. This perhaps relates to Curry's (2006) view that alliances are thin on the ground and should be formed wherever possible.

In any case, it could be argued that an ethics of respect towards the natural environment also entails a certain degree of respect for the world views and values of the different groups of humans that dwell in the natural environment. Minteer and Manning (1999) are of the opinion that for authentic democratic communication/discussion about environmental philosophy in professional philosophy *and* public discourse, we need to be respectful of others' moral accents. In the case of environmental ethics, they argue this means respecting everyone regardless of whether they have a biocentric, anthropocentric or other ethic. In other words, maybe part of this ethic of respect is a responsibility to respect those that have more anthropocentric world views. Again, I am not suggesting that this can justify environmentally destructive practices in the name of anthropocentrism, just that there is perhaps a need, as a starting point, to tentatively respect that some stakeholders may hold more anthropocentric world views and not to see these views and values as necessarily inferior or unsuitable. The role of environmental philosophy here, then, might be to help increase understanding between stakeholders by providing appropriate fora for deliberation between groups and illuminating how these different groups come to hold different world views. This can also give environmental ethics thinkers an illustration of what can be achieved in practice with regards to protecting the environment, even whilst deliberation over broader

questions of environmental value continue.

Although the ideas of environmental pragmatism I am drawn towards tend to focus on practical factors, I hope to illustrate that deeper consideration of the values underpinning stakeholders' practices can bolster consensus over practice and lead to more sustainable and effective outcomes. I agree with McShane (2007) that whilst adopting good environmental practice should be a priority, there is room within or alongside this for thinking about how we feel about the world we live in. It is because of this that I am following the concept of 'ecological identity' worked through by Clayton and Opatow (2003). Clayton and Opatow claim ecological identity reflects the intersection between identity and the environment, arguing that if we can understand the psychological mechanisms that make people passionate about the environment, we can understand processes for fostering protective environmental policies and behaviour. This to me provides a clear link between broader ideas of environmental value and people's practical actions. Furthermore, Light's (2000) argument that ecological identities are best understood in relation to any number of other identities a human may hold fits in well to a case study such as this where most people participate in motor sport recreationally and have other professional and private identities.

3. Brief Overview of Research

The case study of rally driving in Scotland developed as a result of my own interest in motorised recreation and the question of how people could continue to participate in this form of recreation so fundamentally destructive to the environment in spite of ethical criticisms. At this point I wish to make a careful distinction between motorised recreation generally and motor *sport* more specifically. In a UK context at least, motor sport – under which all rally driving falls - is governed by the Motor Sports Association (MSA). Events running under the jurisdiction of the MSA, under which all rally driving falls, must meet a range of requirements regarding safety equipment, noise restrictions, public liability insurance and consultation with other land users. In short, rally driving in the UK is without exception a controlled and regulated activity that cannot be carried out by individuals alone whenever and wherever they please. This does not automatically make rally driving 'less bad' for the environment than other forms of motorised recreation, but it is important to register that motorised sport in the UK is heterogeneous and that some forms are highly regulated.

Motor sport in the UK has faced increasing regulatory pressure in recent years to reduce its environmental impacts. This pressure has largely come from the MSA, who have for example limited noise levels, encouraged the use of alternative fuels and mandated the carrying of kits to clean up fluid spillages (Motor Sports Association, 2011). In addition to this regulatory push for increased environmental responsibility within motor sport is the perception of increasing opposition from an amorphous 'green lobby' and a feeling that motor sport is unfairly singled out as a source of environmental damage (for example see Saward, 2010). Practitioners of

motor sport view the carbon emitted by their vehicles, noise pollution from their cars and restrictions on others' mobilities imposed during their events through road closures as 'threats' that may prevent motor sport taking place in the future (see Collins, 2009).

To consider these issues a three-fold research design was deployed. Firstly, an ethnographic approach drawing on field notes and video recording was used to try to get under the initial embodied experience of being in a forest or countryside environment under conditions of mobility. In-car video recordings were acquired of rally crews driving through stages, and similar recordings were made of spectating at rally events. Further observation was carried out with participants of other forms of mobile recreation that may take place in forests, including walking, field archery, mountain biking, dog sledding and deer stalking. Secondly, in-depth interviews were conducted with twenty-one stakeholders from a range of motor sport and non-motor sport backgrounds, again with the purpose of understanding areas of conflict and consensus but allowing the participants to reflect on their practice away from the immediate pressures of the field. Finally, two small-scale participatory projects were carried out, one with a rally championship and one with a rally event. The aim of both of these projects was for the rally organisers to take action to increase awareness of environmental issues and mitigate their impacts on the environment, and the projects were in both cases instigated by the rally organisers themselves. My role was to facilitate discussion, and as well as noting the formal deliberations within the groups, informal conversations during events were also noted.

By following some of the principles of environmental pragmatism, a number of small but significant changes to practice were achieved. For the rally championship, this included the offsetting of carbon emissions (however debatable this is) through an organisation that promoted clear links to the mitigation of environmental impacts and also social environmental justice, an increase in awareness through promotional material at events and articles on a website, and the opportunity to discuss environmental issues in a calm and supportive setting. For the single event, this took the form of increased engagement with the public through the establishment of a pre-event public relations day with support from local police, a public forum, and the routing of the event away from other members of the public who may object. Whilst a number of debates over principle continue with rally practitioners, not least the ongoing skepticism of environmental science and the challenge of changing practice in ways that range beyond offsetting emissions and increasing awareness, agreement over practice and deliberation over principle was to a certain extent possible.

4. How Ideas from Environmental Ethics Help in Practice

Following Norton (1995) I did not want my study to become a 'test case' for the ideas from environmental ethics literature. Rather, I kept the practical implications of the work in mind and looked for places where the concepts and suggestions from the environmental philosophy literature could help to work past practical dilemmas. Firstly, approaching the study with a way of thinking rooted in environmental

pragmatism helped me as a facilitator to get a handle on the deliberations at the earliest, most challenging stages, when I faced the strongest criticism from the motor sport participants. Whilst I was anxious to avoid wading into the communities I was researching with my own pre-conceived ideas about how they would perceive environmental responsibility (and how they would perceive me as someone with an interest in both motor sport *and* environmental issues!), I had to remain aware of the possibility that some may be apathetic if not outright hostile to critical reflection on their practices. After Curry (2006) I kept in mind that alliances should be formed wherever common ground is possible, and following Norton (1995) I was looking for the possibility of agreement in practice, debate over principle.

As it happened, I did face some hostility towards environmental issues, particularly at the initial stage of the participatory project with the rally championship. When a committee member raised the possibility of paying to offset or rectify some of the environmental damage caused by competing cars, an influential figure declared:

if we're going to be giving money to something, I'd personally prefer it went to a fund for marshals or something like that.

Similarly, during an interview with Robert (all participant names referred to in this paper are pseudonyms), an organiser of rallies for historic cars who had introduced carbon offsetting schemes to his events, promoted fuel efficiency over outright speed and worked to form an alliance with a national park to minimize disruption, he reasoned that:

we give [money] to, you know, to either, you know, buy lightbulbs or plant trees or something but it's that kind of idea, anything at all that kind of yeah, because its this is the new orthodoxy and you know we've got to go along with it.

From these discussions, it would have been easy to become disheartened with the hostility and skepticism of environmental issues. What I had found was, however, data in itself that could provide useful insights into *why* those involved with rally driving may be skeptical of environmental responsibility. For instance, the preference for giving money to volunteer marshals perhaps illustrates an anthropocentric world view in that care for other humans and their needs is prioritised over care for the natural environment and its needs – hardly an earth-shattering revelation, but one that could nonetheless prove important if I was not to alienate those I was working with. It was also akin to Massey's (2004) geographies of responsibility in that those that were cared for were socially proximate, that is, other humans, and suggested that care for natural environments in which motor sports took place would perhaps be easier if there was social proximity to those spaces or some kind of value attached to them.

The apparently throwaway remarks “buy lightbulbs or plant trees or something” and “we've got to go along with it”, meanwhile, suggest a sketchy

awareness of what is actually meant by ‘environmental issues’ and an equally vague understanding of what might be done in practice to mitigate humans’ effects on their natural surroundings. A way of increasing awareness of what the groups I was working with could reasonably and practically do therefore seemed necessary if tangible outcomes were to be reached. At the same time, however, I was keen to pursue deliberation over broader issues of environmental value, so that any environmental outcomes achieved did not become ends in themselves without critical reflection on the process involved.

Secondly, the body of environmental pragmatism literature helped me to move the projects forward and work towards consensus in practice with other stakeholders along with deliberation over principle. As I was anxious not to impose my own views on what the participants ‘ought’ to be doing, I allowed them to lead the discussions on environmental responsibility and to make the vast majority of decisions about what they should do. The championship co-ordinator took the lead and selected a small carbon offset charity, with a focus on job creation in less economically developed countries through the production of renewable energy, as a repository for money collected to ‘offset’ the emissions of competing cars. Whilst I pay heed to Hale and Grundy’s (2009) concerns about the challenges to ideas of respect raised by technologies that allow environmental damage to be undone by someone other than the perpetrator, the discussions with the carbon offsetting charity presented another situation where the tools of environmental ethics could help to think round seemingly intractable conflicts. I was intrigued as to how a charity with strong interests in both climate change and social justice would view an attempt at association from those Tompkins (2007: p. vii) describes as “people who wantonly disfigure landscapes in the pursuit of thoughtless, gas-guzzling ‘fun’.” There was, after all, the possibility that those that motor sport communities might try to cooperate with in an attempt to reduce their environmental impact would view their practices as outright objectionable. The view of charity volunteer Brenda was not as strong as this:

it’s not ideal. I think to say it’s a problem is, is too negative [...] you could look at it that it’s particularly important to get people that are involved in motor sports to, not see the error of their ways, that’s, that’s being too erm, that’s not being unbiased, but to see that er just to make them have clarity on what they’re doing, let’s put it like that. And if they know that they can mitigate er some of the pollution then I think it’s all, you know, strength to their elbows.

This response exemplifies the idea of agreement in practice and deliberation over principle that Weston (1985), Light (1996) and others aim for. On one hand, the potential for mitigating pollution and greater understanding of environmental issues illustrate areas of practical action that can be agreed on without either those participating in motor sport or some that may be opposed to it compromising their ethical principles. At the same time, however, “it’s not ideal” and “make them have clarity on what they’re doing” illustrates the importance of ongoing dialogue, for

it suggests that broader disagreement over principle continues even after concrete outcomes have been agreed upon – an excellent demonstration of Norton’s (1991) belief that agreement over practice can come before agreement or full deliberation over principle.

In keeping with this focus on practical outcomes, I am with Thomson (2003) in believing it is important not to overlook real progress as a result of focusing too much on the philosophical or ethical aspects of environmental actions. This does not mean I completely ignore the wider ideas behind why people are doing what they are doing, but I try to be careful to retain some level of focus on what is being practically achieved. An interchange during the participatory work suggested the wider value of the kind of work I was involved in:

Bill: How can it be global warming when someone told me the other day we’re getting snow in September? How can there be more snow if there’s global warming?

Chris: That’s weather, Bill, not climate change. They’re different things apparently. Just because it’s snowing doesn’t mean the polar bears aren’t going to die.

Jim: Yep, that’s why they call it climate change now instead of global warming.

An interaction such as this is perhaps not an ideal example of Midgley’s (1989) target of publics able to actively engage with debates and be critical of ‘expert’ knowledge, but it does show a certain awareness of current environmental affairs and critical engagement with ‘expert’ knowledges. Bill questions how a heavier than usual snowfall can dovetail with increasing global temperatures, and Chris corrects him by elaborating how (albeit in a somewhat mocking tone) extreme weather events can still occur under increasing temperatures. Jim then adds his observation of a shift in language from ‘global warming’ to ‘climate change’, the implication seeming to be that this is a political move to ensure climate change and its associated funding remains in the public consciousness. There is a danger that these uncertainties can be turned around and used as a justification for continuing current unsustainable practices, but the stakeholders involved in this small-scale participation were at the very least beginning to question environmental issues and engage with the science and politics behind them in a way they may not have done before. Participants who might not otherwise have engaged with debates on environmental issues were not only considering these issues and building on each other’s knowledges, but also returning to subsequent meetings prepared to talk about things they had seen or read in the media.

As to how this ties into the thoughts of Norton, Rawles and others on practical philosophy and applied environmental ethics, I believe the ideas of environmental ethics did help here to make real and tangible progress. Rather than coming in from the outset with models grounded in environmental ethics of how to act towards and think about the environment, the tools of environmental pragmatism were used to help me as a researcher and facilitator understand why participants felt

the way they did about environmental issues and the environment more generally. Allowing participants to discuss environmental issues and deliberate over what they themselves saw as appropriate ways to reduce their environmental impacts in turn fostered a better understanding for both researcher and participants over what practical steps could be taken whilst deliberation over broader issues continued. In short, applying the tools and ideas of environmental pragmatism as and when necessary seemed to help in engaging with and understanding an otherwise hostile and skeptical group of stakeholders.

5. Challenges from ‘the Field’ to Ideas in Environmental Ethics

To Norton’s ideas I would also add Rawles et al’s (2006) view on applied philosophy, understood as an engagement with the challenge posed to philosophical ideas by particular situations. What challenges, then, does the data from my study pose to some of the ideas in environmental ethics? The first challenge is the complexity of ecological identity formation and expression. This was evident at a number of points, notably when farmer and former champion rally driver Bill gave his view on environmental regulation in motor sport:

I don’t know, they tell us one thing one day and then another the next about the environment. I mean, on the farm we’ve got hay bales, and first of all they were telling us to take the plastic off we were using to wrap them, now the EU are telling us to put the plastic back on again, some different environmental directive.

Outside of the rallying context, mountain biker and mountain bike trail designer Steve similarly spoke through different identities when explaining why he did not enjoy riding trails close to where he lived and worked:

It’s very hard to switch off from seeing all the problems. So I don’t enjoy particularly, I’ve done riding in all my own trails, because all I see is the work that’s awaiting me to get planned.

In both of these examples, the participants cannot view the environment in a recreational context (in Bill’s case, rally driving, in Steve’s case, riding a mountain bike) away from their professional identities (for Bill, managing a large farm, for Steve, designing mountain bike trails). Their view of the environment, and of environmental issues, comes as a result of experiences and conjectures they bring from both their private and personal lives – and, as Steve illustrates by referring to riding and designing in the same sentence, these different voices can switch at short notice or even occur simultaneously. Related to this is the issue of identities changing over time, as seen in motor sport television programme producer Greig’s account:

I did a little bit of stage rally driving but I couldn't afford it so I became a co-driver [...] I co-drove for my brother [...] and I was filming him at the time because that was my hobby [...] I bought professional equipment, I formed a company **** in 1981, May 1981 I registered it and by that time I was running a garage business.

Here, the nature of Greig's personal and professional involvement shifts over time, progressing from driving to navigating to filming for pleasure, with garage management and the establishment of a filming company going on professionally. The ways in which Greig engages with the environment whilst being involved in rallying change over time, going from being in direct control of the vehicle to giving directions to the driver through to viewing the landscape and the cars within it from behind the camera viewfinder. As identities change, the type of embodied experience and thus the nature of values that may be shaped also has the potential to change.

The accounts of Bill, Greig and Steve are useful to bear in mind as they show how the environment can be perceived by a number of identities working together. This ties in well with Light's (2000) suggestion that ecological identities can perhaps work most effectively when twinned with other identities. As to how this fits into environmental pragmatism literature, it suggests that people consider the natural environment through a number of identities at any one time, perhaps more complex than Sagoff's (1988) distinction between considering the environment in the private sphere as a citizen or in the public sphere as a consumer. If practical change and deliberation over values is to be attained, then, it is key to think about the different identities stakeholders may be speaking through, how these different identities work together and how this may shape their reasoning towards particular values or actions.

The second challenge is the importance of sensitivity to stakeholders' world views when thinking how outcomes of agreement on practice and deliberation over principle may be reached, in particular the multisensual nature of environmental problems and environmental claims-making. Consider sled dog racers Mike and Karen:

K: I don't know if it was the four-wheel drives or whatever but it was chewed up [...]

M: [...] on what they reinstated it with last time, is just, you could not run the dogs over it, it was way, way too rough.

K: Certainly not on a rig, that sort of, like that, because you just can't, you don't have the control.

This is in contrast to motor sports rule maker Tom's perception of environmental issues:

the most obvious environmental impact of motor sport is noise [...] we have a system of officials who are trained and licensed to monitor noise and so on, so that's been going on for a long time. And there's been a

greater awareness and about fifteen years ago, erm, in the British Touring Car Championship, they made a requirement that catalytic converters had to be fitted.

For Mike and Karen, damage to the surrounding environment is sensed largely through touch, in particular the ‘roughness’ of the hastily repaired forest road after an off-road rally several weekends previous. This roughness is not sensed by the riders themselves, rather it is something that is ‘felt’ by their dogs and also by the reduction of control on their riding rig. In other words, claims to environmental damage from within the sled dogging world view arise out of the effect of physical damage to the terrain on the team’s dogs and the impact it has on the control of their vehicles. On the other hand, Tom’s description privileges noise as a cause for concern regarding motor sport and the environment. Tom’s explanation also foregrounds the role of measurement and calculability in the motor sport world view, in that noise is seen as something that can be monitored and controlled at an appropriate level of decibels (Motor Sports Association, 2011), whereas emissions can similarly be reduced to an appropriate level through the installation of a catalytic converter.

This is important for literature on environmental values and the reaching of workable outcomes because there is the continued need to pay attention to the different ways in which various stakeholders view the natural environment if they are to be drawn into environmental debates – including motor sports stakeholders whose world views are based heavily on numbers and calculation. In light of Spash’s (2009) concern about the dominance of monetary valuations among so-called ‘new environmental pragmatists’, I am not trying to claim that numerical or monetary valuations of nature have to be foregrounded in order to engage such stakeholders in environmental deliberation processes - only that if practical outcomes are to be achieved, it may be necessary to think how agreements can be reached that satisfy the short-term need for calculability of some stakeholders without compromising the ethical standpoints of others. In short, I am following Shockley’s (2009) suggestion that insofar as there is a common problem to be resolved, those who hold diverse viewpoints should be compelled to come to a solution with which they can all live.

The third and final challenge is the potential for place values, in particular O’Neill, Holland and Light’s (2008) idea of narrative trajectory of place, as a way of working round wildly divergent world views and imagining sustainable futures for smaller-scale environmental issues. This follows on from Norton and Hannon’s (1998) belief in the role of place values in environmental ethics, but what is of interest here is the value participants in motor sport invest in place in spite of early critiques of the placelessness of automobility (for example Augé, 1995 – however, more recently people such as Peter Merriman (2006) have started to think about the places of automobility). During the in-depth interview and participant observation phases of the fieldwork, I encountered numerous references to the places that were valued by Scotland’s rally driving communities. A strong example of this is provided by international co-driver Martin:

I think one of the most exciting stages is Drummond Hill, because it's, it's a complex stage, it's a very, very complex stage with some very, very hairy moments and big drops [...] [my driver] hadn't been round that stage before. So we just came up to it, took off, and of course it just dropped straight down, it's bloody hell! So I'll never forget that moment when [gives name of famous driver] said that or words to that effect and er it were really was, it really felt sensational.

For Martin and many others like him, what makes the place of Drummond Hill valuable is a combination of the topographical qualities of place and the memories shared with other people in that place. The challenge to the rally crew posed by the rapid changes in elevation and the danger of steep drops off the side of the road is twinned with a narrative of relationships with people in place extending over time. These narratives may take the form of more personal emotional experiences – such as the surprise of Martin's teammate on encountering a steep drop – or grander narratives of heroic deeds by famous drivers. This story of place over time follows closely O'Neill, Holland and Light's (2008) idea of a narrative trajectory of place, where debates over the future management of places can be resolved by asking the question of what the most appropriate narrative trajectory for that place might be in light of what has gone before. For rally driving, this might involve thinking about the places rally communities value driving in the most, why these places are valued and what might need to be changed in order to allow these rich narratives to be continued. Thinking about narratives and values in this way is an attractive means of reaching outcomes for smaller-scale, more localized environmental conflicts.

At the same time, however, it is also vital to remain open to the possibility that the 'best' narrative trajectory may be one where rally driving stops in particular places. Path designer Keith gave an example of this from a conflict between off-road motorcycle riders and a local community in the west of Scotland, where a pattern of use of community forests by young motorcycle riders had emerged. The situation was resolved by the construction of a purpose-built riding centre nearby that contained all the topographical features – jumps, corners, high-speed straights – valued by the motorcycle riders, thereby eliminating the need for the riders to enter the community forest. It may well be the case, then, that for narrative trajectories of rally driving to continue more sustainably in some locations, the appropriate narrative trajectory is for rally driving to stop in other places. O'Neill, Holland and Light's 'narrative trajectory' concept can help to illuminate how a particular activity – in this case rally driving – has come to be established in an area and understand why that place is valued by a particular group of stakeholders. As long as this is done under the acceptance that the most appropriate narrative trajectory may be for some activities to stop in some places, this is perhaps an attractive way of allowing diverse practices to continue at a local level without compromise to the values of other stakeholders.

To return to Rawles et al's (2006) view of applied environmental philosophy, then, what challenges has this study posed to the ideas of environmental philosophy? The first is the complexity of ecological identity work. That is, stakeholders may

come to value the environment through a range of identities that can work in tandem or even in seemingly contradictory ways, giving rise to the challenge of paying close attention to the other identities participants may hold that can shape their ecological identities. The second challenge is the heterogeneity of ways through which environmental damage may be sensed and claims to environmental damage made. In other words, different actors may sense environmental damage differently, so the challenge is perhaps to provide means for these divergent ways of sensing damage to be deliberated. The third challenge is to explore the potential for place values to engage otherwise apathetic or hostile groups. O'Neill, Holland and Light's (2008) narrative trajectory of place has been put forward as a means of imagining more sustainable futures at a local scale for natural environments where divergent uses may exist. In order to ensure the continued applicability of environmental ethics to very pressing real-world issues, therefore, it is perhaps important for the discipline to continue to engage with questions of ecological identity work, the role of the senses in environmental values and the significance of place values at the local scale and beyond.

6. Conclusion

I have argued that environmental ethics thinking and environmentally responsible practice should enjoy a close and reciprocal relationship if Rolston's (2007) challenge of an ethics of respect is to emerge. Following on from Norton (1995) and Rawles et al (2006), I have suggested that applied environmental ethics can perhaps best be thought of as an ethics that not only 'helps' in real-world dilemmas, but is also negotiated and refined according to practical experiences in order to ensure its continued relevance. The literature on environmental pragmatism in particular has been discussed as a way of beginning to engage with stakeholders who may be less amenable to ideas of environmental responsibility. In particular, the ideas of Weston (1985), Norton (1995) and Light (1996) were used to guide a practical investigation into the fostering of ideas of environmental thinking among participants in motorised recreation.

It has been illustrated here that environmental pragmatism ideas helped to understand some of the skepticism towards environmentalism among the stakeholders I was working with, thus allowing agreement over practice to emerge. It is important to note, however, that broader issues of humans' relationships to nature were not set aside as a result of this – indeed, discussion over these ethical points continued and helped to shape some of the practical agreements. Nonetheless, following Norton (1995) the practical implications of the research remained at the fore, with the ideas of environmental philosophy being drawn in only when necessary.

I have also argued that engagement with those perhaps hostile to environmentalism can help to increase the practical applicability of environmental values work. For instance, this case study highlighted the complexity of ecological identity formation and expression as something environmental values thinking

needs to continue to pay attention to, in particular the complex ways in which humans reason round their behaviours towards the environment. The different ways through which environmental damage may be sensed has been discussed, raising the challenge of providing appropriate fora for these often very different claims to environmental damage to be deliberated. Finally, rich narrative accounts of the places in which rallying takes place illustrate that motorised recreation does not happen within a decontextualised vacuum, and thus that O'Neill, Holland and Light's (2008) idea of narrative trajectory of place may be used as a way of imagining more sustainable futures for the places stakeholders value. The concept of conflicting narrative trajectories of place can also help to illuminate the ways in which motor sport may cause significant damage at a localized level, and thus work beyond the commonly-held argument by practitioners of motor sport that in terms of global environmental emissions, the impacts of motorised recreation are negligible. That is, regardless of how significant the environmental impacts of motor sport are on a global scale, using narrative to make clear how greatly motor sport can jar with the experiences and values of other users of localized environments can make the environmental impacts of motorised recreation at smaller scales explicit.

It has not been my aim here to defend motor sport. Rather, I have tried to get under why people continue to take part in an activity that is fundamentally destructive towards the environment, considering what it is they value about the natural environment in this kind of interaction and thinking how these values may be fulfilled whilst removing some of the more environmentally damaging aspects. I am a little concerned, however, that some of the arguments I make could be turned around and used as a defence or justification for the uncritical continuation of an activity such as this. Having said that, as was illustrated in the interaction between Bill, Chris and Jim in the participatory project, if this means that a group of people who otherwise would not consider environmental issues are engaging with academic work, critically evaluating arguments on their own terms and attempting to understand *why* others see their practices as so objectionable, then I would argue this is at the very least a step in the right direction.

If Rolston's (2007) idea of an ethics of respect for nature is to emerge, perhaps it needs to encompass those not so amenable to environmental thinking as well – as landscape architect Simon so neatly put it in one of my research interviews, “not just the easy ones, but the difficult ones too”. Environmental values thinking has a key role to play in understanding why people explain and justify certain behaviours towards the environment, but at the same time paying attention to how people consider the environment in their daily lives can perhaps help to ensure the continued relevance of environmental values work to very pressing real-world issues.

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An Oriental Perspective on the Ethical Issue of Physician-Assisted Suicide from Taiwanese Point of View

Su-Chen LEE

Introduction

It is un-deniable that we have stepped into a time of “delayed aging”[Battin1998, 115], due to the advancement of technology and medical care. For example, the Taiwanese average life span was prolonged from 55 years in 1951 to 79 years in 2009. Furthermore, at present time, people die mainly from degenerative diseases, cancer and stroke. The chronic diseases and the improved medical care had prolonged the overall life span. However, the pattern of dying, thereby, had been changed, and sudden death had been largely prevented, which had made the time of being disable unavoidably increased.

On encountering the time of being disabled, for those terminally ill patients, the palliative care would usually be the first choice when any attempt to prolong the life time had failed to work. The current development of palliative care has improved the life quality and pain control, which have worked well in most of the patients. However, there are still some patients who could not benefit greatly from the palliative care, and wish to get some help from the physicians to accelerate the coming of death, in order to relive the continuing pain. This can be offered by “euthanasia” or “physician assisted suicide (PAS)”. It is to be considered that for those terminally ill patients, apart from palliative care, could any other medical care be at choice? Also, would the request to put forward the dying time, for example the choice of euthanasia or PAS, be accepted?

Philosopher Heidegger said: “Being is towards its death”. On encountering the change of dying and disease pattern, it is important to deal with the problems derived from this. At the moment, apart from a small number of countries (i.e. Netherlands, Belgium), most of the western countries are still reluctant to legislate euthanasia and PAS. In Taiwan, the issue of PAS has not yet been raised formally. However, this does not mean that the terminally ill patients do not have the request for PAS. The Taiwanese culture put emphasis on family ethics, which, from the Confucian point of view, means “benevolence”. However, from the western culture, the emphasis was put on the patients’ autonomy, which means people have control over their own fait. Therefore, in this time of changing, ending life early would be an important ethical issue in the near future.

1. Autonomy and PAS

For people who support PAS, the ethics of PAS base mainly on the patients' autonomy. It was regarded that one has a right to decided whatever happens to his/her life, and at the same time, has the right to decide the important decision about his/her life, for example, how to die. If a terminally ill patient came to a physician to seek advice of assisted suicide, with free will and a rationale attitude, in this case the physician should offer this kind of care. The arguments covered by autonomy include:

1.1 The Right to Die

It needs to be respected that what the patient requests is a right to die. PAS could be offered to help patients terminating the unfortunate experience, and to avoid the continuing pain. R. Dworkin advocated that it is cruel if the patient can not request the physician to offer a faster and less painful way of dying. He supported the fact that the patients' autonomy needs to be respected. Since it is medical legally accepted nowadays that a patient who has a clear conscious is allowed to refuse eating or undertaking treatment, it should also be accepted that requesting PAS is not making the physician a "murderer", but making him/her a role of helping patients to avoid pain and plan their death. (Dworkin 1994, p.184)

T.E.Quill regarded PAS a medical procedure which shows sympathy and respects patients' autonomy. When a patient requested to speed up the time of death, it might not only be owing to the unbearable pain, but other wider facts. The factors might include some medical side effects, unable to tolerate themselves being completely relying on other, losing their meaning of life, and losing their own dignity. In this case, even with a good quality palliative care, the patient is still suffering from persistent pain, which makes him/her even more painful if life has to be continued. Under this condition, the patient has a right to request the physician to assist suicide, and the physician should promote and protect the patient's autonomy. (Quill 2003, p. 252-257)

F.M. Kamm advocated that the right to one's life should include a right to avoid the harm. Therefore if one decided do die, he/she simply decided to give up a right to live. Under certain circumstances, PAS is beneficial to the patients. Kamm says: "If only unfortunate and pain were left in one's life with nothing good, ending life would do more good then extending life, in order to avoid living under the worst condition". (Kamm1997, p.188) It should be ethically accepted in the situation where a patient is requesting an earlier termination of his/her life, which is more beneficial. Furthermore, if the patient agrees with the concept of "death is a lesser evil and pain relief is a greater good", PAS would not only be ethical, but also be a medical responsibility for the physicians, in order to relieve pain.

M. P. Battin indicated that PAS is not only a right for one to die, but also a natural, fundamental right. This kind of right as based in the moral obligation, which, for some patients, means that a physician is responsible for helping them to commit suicide. This does not apply to every patient, but only to the patient

whose condition is so severely impaired (i.e. terminally ill patient), in order to help protecting the patient's dignity. (Battin1995, p.135-136)

1.2 Free and Autonomous Request

The respect of patient's autonomy was to respect the patient's free will. A patient's request should be under his/her free will, without being pressured or forced. With PAS, patients have to take the medication themselves, and the physicians only offer the medication. Therefore the patient has to express clearly whether or not he/she wants to continue his/her life. Peter Singer thinks that it is wrong to say "one can not take away his/her own life", since the new ethical idea is to respect one's free will to live or to die. He indicated that if a terminally ill patient makes a request with free will and sufficient information, the right of requesting a PAS should be respected. (Singer 1995, p.196) Singer emphasized that a request to die must be under the patient's free will, which should be continuously, not a sudden idea. Also, the patient has to be fully informed with sufficient information, which covers any possibility from the moment to the future. The decision making, can be thereby regarded as an autonomous request. For those terminally ill patients, the fear of unbearable pain could outweigh the fear of death, and the decisions which the patient makes to his/her life should therefore be respected.

Beauchamp also thinks that PAS is moral because it is to go with the patient's autonomous request. The aim is to reduce the patient's pain, instead of to simply terminate one's life. According to this, if a physician refuse a patient's request for PAS, and offers treatment or palliative care, the patient would regard this kind of treatment a burden or harmful, which ignores his/her autonomous request. Likewise, Beauchamp thinks that a request of PAS can only be allowed under certain conditions: (1) a condition is extremely burdensome, and the burden outweighs any benefits, (2) pain management cannot be made adequate, (3) only a physician is capable of bringing relief, and (4) the patient makes an informed request. (Beauchamp 2000, p.38-39) All the conditions above, the last one is most important.

1.3 Rationale Choice

The argument supporting the patient's autonomy has put emphasis on the fact that one should take control over his/her own fate, instead of letting others to do so. Therefore the request of PAS must come out from a rationale individual, who can think independently and is able to judge things. Singer, for example, thinks that only "a person" has a right to his/her life. The concept of a person, is a being with awareness of his own existence over time, and the capacity to have wants and plan for the future, can think independently and judge the things. (Singer 1995, p.180) In other words, only a rationale patient can make a request for PAS, and has the right to ask the physician's help for this. Obviously PAS does not apply for a persistent vegetative state or others without conscious.

Kamm suggested that PAS applies only to a rationale individual, who can make judgment to life, and can evaluate how to act for a certain purpose, and can thereby be assisted by the physician to take the lethal medication. "In fact it is under the condition that someone volunteers to terminate his/her life with rationale attitude,

can we kill someone, and make sure that the action is rationale, in order to help the specific life to achieve its best value". (Kamm 2003, p.189). In other words, the request for PAS emphasizes on "a person's" rationale choice. When a terminally ill patient requests a PAS, he/she should be able to think, and to some extent to be able to expect the possible consequences. It is only with this careful thinking about life can be called a rationale suicide.

2. Arguments Opposing PAS

The arguments opposing PAS emphasize on the inherent value of life. It was proposed that life is sacred, and it is wrong to kill. It is also wrong for a physician to kill, since he/she is terminating an innocent life. The arguments regarding the inherent value of life include:

2.1 No Such Thing as a Right to Die

Doctor Kass argued that a terminally ill patient have not chosen "a right to die". It is against nature even some patient are under the condition where they are weak, dependent and losing their dignity, and therefore request PAS. First, it violates everybody's self-evident truth, which is to self-preservation. Second, it violates a person's primitive free natural right, which is that a real freedom right should be the freedom that can't be blamed or allowed. (Kass 1993, p. 192-93) John Locke and Thomas Hobbes think that all the human right base on the nature. A natural right should be un-blamable or an acceptable freedom. A desire to self preserve is the power for human to continue our life, which is to avoid being threaten or dead. This free natural right should not be blamed. According to the Christian rule (Thomas Aquinas), human's life was given by the God, which is sacred, and it is only God who can decide the time of death, not human. Therefore committing a suicide is to destroy one, to disobey the God's will, and should be blamed. Similarly, it is wrong to kill. A physician who helps patient to commit suicide is also to kill, which can be regarded as a crime. This action is harmful to the doctor-patient relationship. In short, there is not such thing as a right to die, and life should be taken care of until the natural end of life.

2.2 Irrational Choice

Those oppose PAS advocate that this is an irrational choice. PAS is a irrational choice. Kant argued a rational being can't commit suicide. A person that commits suicide oneself does this as a means, not as an end.

"the man who contemplates suicide will ask 'Can my action be compatible with the Idea of humanity as an end in itself?' If he does away with himself in order to escape from a painful situation, he is making use of a person merely as a mean to maintain a tolerable state of affairs till the end of his life."(Kant 1964, p.96-97)

In other words, Kant thinks that suicide is an irrational choice. Under a difficult situation, if a person terminate his/her life by PAS, this person is only using him/herself as a mean, not as an end, which means not regarding him/herself a person with dignity.

Furthermore, the other reason to support PAS as an irrational choice is that this action works against the physicians' Hippocratic Oath. According to Pellegrino (1996): "The essence of this oath is to make the doctors promise to do no harm, and make them do benefit and protect their patients' confidence, and thereby guiding the doctors to become moral". (Pellegrino 1996, p.258) Therefore opponents regard that PAS is essentially wrong, since this action stands against the doctor's oath, which makes their patients lose their confidence on them. Doctor Kass indicated that PAS should not be done even if it is requested by the patients, since PAS works against "healing", and the doctor's profession was transferred into a profession of doing euthanasia.

Dr. Hendin the psychics indicated that terminally ill patients normally also suffer from mental illness, such as hopeless, depression, which can be medically treated. Those who die from suicide, especially elderly patients, kill themselves under irrational condition. Therefore, offering proper treatment can change these patients' request of assisted suicide. (Hendin 2008, p.128) This is to say that Dr. Hendin thinks that when patients request PAS, they are very likely to be under a depression condition, which make the request of suicide an irrational ask, in this case, offering PAS would not be the best choice.

2.3 The Risk of Slippery Slope

Other opponents to PAS are worrying about potential for abuse. Doctor Hendin points out that especially in old man and patients of depression; they often felt that their family member would prefer that they were gone. So they might choose to die rather than to be a burden of the family and the society. They may regard suicide as a kind of self-sacrifice. (Hendin 1995, p. 368) Callahan also indicated that some patients who request PAS under morally accepted condition are also likely to be forced or instigated to do so. In fact, it could be very easy for the family members or the doctor to induce the patient making a choice of PAS. From the doctor's aspect, all he/she has to do is to increase the dosage or the extend drug delivery time, and the patient can easily commit suicide with sufficient drugs. (Callahan 1996, p. 578) Callahan put a doubt on the patient's actual need for PAS. If it is impossible to understand what the patient's actual need mentally, there would be no rationale and objective standards to make judgment for the patients, apart from themselves.

3. The Confucian View for PAS

From the Confucian point of view, the ethical issue for PAS can be argued in four aspects:

3.1 Benevolence

From the Confucian point of view, it is not the value of life, or a person's autonomy, do the arguments of the morality of PAS base on. It is based on the benevolence, which means a mind of pity when watching people suffering. At the terminal stage of illness, no one should suffer greatly from the pain of the disease, and no one would like to watch people suffering painfully from the illness. The "benevolence" was proposed by Mencius, who advocated that everyone has a heart of benevolence, which is the beginning of Virtue. With the benevolence, people show their good will and kindness, to feel other people's pain. According to Mencius, benevolence is an inherent character from human nature. For example, as we see a child will fall to the well, the heart of pity pops up naturally, it is a strong motivating power to action. It does not come out for a purpose, such as making friends or earning reputation, not even for the child's noise of fear, but simply due to the inherent moral sense.

This benevolence is similar to the "arguments from mercy" proposed by the western scholars. The arguments advocate that no one should bear with the pain of terminal illness. Since people have mercy on the painful animals, and would rather kill them with euthanasia, this concept should also apply to human being. In the case which the patient is suffering regardless whatever method the doctors try, the best way to relive the pain would be a death. From the Confucian point of view, this heart of pity is to be called benevolence. Mencius: "People who do not have benevolence can not be regard as a human." It is to say that as a doctor, who is also a human with benevolence, helping the patient to die in order to relive the continuing pain should be a kind of Virtue, since benevolence is a beginning of Virtue. "Virtue" is the essential idea of Confucian. The application of Virtue was decided by oneself. Whenever one desires the Virtue, one's heart would become virtuous. According to professor Lee Shui Chuen(李瑞全) "Virtue is the foundation which makes people feel and think the same, and make people do moral things". (Jue 2005, p. 373) In other words, both a heart of mercy and benevolence are the presentation of Virtue, which make people judge things morally. With those terminally ill patients who suffer from extreme pain, according to Confucian, the benevolence would make us think and feel the same with those patients, and respect their need and decision for PAS.

3.2 The Family Relationship and Personal Choice

In terms of the decision for life, instead of the western's individualism which emphasize on people's autonomy, the Chinese culture put emphasis on the family relationship. In Taiwan, for example, according to Professor Lee: "The family relationship is still a strong concept, which effect significantly on the medical decision. The family members are normally involved, and therefore the overall decision would be made by the whole family. The medical staff should respect their choice and offer sufficient information and consultation."(Jue 2005, p. 417)

This is to say that the family relationship plays a great role. In Taiwan, the illness of one person is a family affair. If one family member is in hospital, most of the family members would be staying around. The family members are substantially involved in the decision making of medical care due to the strong attachment with

the family. In this case, on making a life and death decision, a person's autonomy is sometimes not the main consideration, and the family members' opinions may play a more important role.

Professor Liu's research in China (2007) indicated that 65.1% of people needs the family's company during illness; In terms of doctor-patient relationship, 73% of people regard the family has more effect than the patient; In terms of the decision making for medial care, only 23.1% of patients make decision on their own. (Liu 2007, p.152-161) Huang studies the relationship between the terminally ill patients and their family, and found that only 17.9% of patients sign the living will on their own, and other 82.1% of patients let their family members to sign. (Fang 2009, p.19)

3.3 Multi-Religious Culture and Christian Culture

Different religious background would develop different view for life. The western culture has always been affected deeply by the traditional Christian culture, which advocated that life is sacred and can not be violated. Therefore those arguments under this religious background were mostly opposite to the legislation of PAS. According to Battin: "For the opponents, PAS violates the bible which says: you can not kill, because this disobeys the God's will, and also disobeys the natural rule" (Battin 1995, p. 119) To the contrary, Taiwanese culture is a multi-religious culture. The religion is mostly polytheism, and 80% of the religion is folk religion. They co-exist with Confucian, and there is only 5% Christian and Catholics.

Under this kind of multi-religious culture background, people have different value of life. With the Confucian, it is important to practice Virtue. The Confucius thinks that a virtuous person would not violate the Virtue for preserving life. Instead, one may sacrifice the life in order to practice Virtue, which is to die properly. This applies well on the terminally ill patients, which request to die properly in order to relieve the pain, and to complete the meaning of life. For Buddhism and Dow, to live and to die were regard as an experience of one's life. The Buddhism has an idea of transmigration, the Dow has an idea of gods and ghosts, and the Taiwanese traditional folk religion has the idea that life is terminated on one side and started from the other side. With this different value for life, death is not necessarily a bad thing. Therefore the request for PAS is not necessarily against nature. To help someone to die and thereby avoid the pain should be regarded as to help the life to end in a good way.

3.4 Medical Centre and Family Doctor System

In terms of medical system, in western countries, patients normally go to their family doctor (general practitioner, GP) first, and are then transferred to the medical centre for the advance medical care if necessary. With this system, patients build up a close relationship with their own doctor. In Taiwan, there was an attempt to follow the idea of family doctor, but most of the people think that "bigger hospital has better doctors". Furthermore, some remote areas do not have proper local medical care. For all these facts, the family doctor medical system is not performed properly, and patients do not have close relationship with the doctors.

Take the example of Holland, where the euthanasia was legislated. One of

the most important conditions before the doctor decided to perform euthanasia is that “the patient has to have long term medical relationship with the doctor who is going to perform this act.” The example of Dr. Quill and his patient Diane has an 8 years doctor-patient relationship, and the doctor understood clearly what the patient wanted. Therefore in this case a PAS was accepted. A contrary would be Dr. Kevorkian and his patient Adkins. Since Dr. Kevorkian was not Adkins’ family doctor, their doctor-patient relationship was unfamiliar and new, which made the practice of PAS extremely debatable. In Taiwan, if the family doctor system can not be popularized, a PAS requested by the patient should be strictly limited.

Conclusion

With a different culture between the western and eastern world, the ethical issue regarding PAS is different, especially regarding the value of life. The Confucian is based on Virtue, and the heart of benevolence makes the doctors feels the same with the patients, and regard helping the patient their own responsibility. In this case PAS is to help, not to kill. If the assistant for suicide does not violate the patient’s free will, the doctor would not violate the essence of Virtue, and according to this, PAS should be accepted.

Also, the Confucian culture respects the family relationship more than the personal choice. Although the family decision may sometimes impede the personal autonomy, the involvement of family members offers a second opinion for consultation when the patient is making decisions. In Taiwan, when it comes to a situation considering PAS, the doctor needs to communicate with not only the patient him/herself, but also a team of family members, especially those who are closely related to the patient. It is important to understand whether the idea of the patient is the same with the whole family, since the medical care related closely with the whole family.

From the view of Taiwanese multi-religious culture, life, illness and death circulate as a cause and effect relationship. It is different from the western Christian culture, which advocates that life is given by the God, and can not be violated. The Confucian culture advocates that human life comes from the parents, which should be taken care and managed well by one self. In this case, people would not wish to die with struggle and pain, and would wish to die properly. With this concept, the request for PAS is not objected greatly.

However, the family doctor medical system is not established properly, and a close doctor-patient relationship requires improvement. It is clear that without a close doctor-patient relationship, the problems concerning the abuse of PAS would be unavoidable, also the patient’s request for PAS and its validity would be questioned. It would be essentially difficult under this environment to ask the doctor to respect the patient’s request.

In conclusion, PAS is sensible and should be considered part of palliative and hospice care, since it would help terminally ill patients, instead of kill. However, in Taiwan, we need a closer physician-patient relationship to justify PAS, and should

not be encouraged otherwise.

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Reaching and Engaging Employees through Business Ethics Training : A Study of Two Organizations to Enumerate Various Practices and Innovations in Business Ethics Training

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Introduction

This paper reports the findings of a study on ‘Business Ethics Training Methodologies’ at two Indian Companies with the objective of understanding:

- Communication methods of Business Ethics through formal training procedures.
- Innovative Practices adopted by organizations for training in Ethics.

The two organisations selected for a focused study – Tata Group and MindTree Consultants are well known and respected for their ethical Business culture and practices not just by customers, employees and other stake holders, but have been formally recognized by the Industry. Additionally, they met the following criteria:

- Employee strength > 500
- International operations in at least 3 countries
- Company > 10 years old
- Growth and stability since inception

In order to explore the prevalent expectations and needs in the area of Business Ethics in India, a preliminary qualitative survey was carried out of 500 employees from different organisations, who voluntarily participated. Though, the sample size was not a true representation of the Industrial base of India, the findings have some key implications for current awareness and implementation of Business Ethics in the Industry and offers directions for future research.

In India, although the benefits of following ethical practices in conducting business is widely accepted by the society, it remains more of a ‘cliché’ often due to pressures of competition and performance, limited resources, corruption, survival challenges (especially for small businesses), conflicts of values, unyielding aspirations and peer group conformance.

According to (*Angeles 1966, 1*), ‘business ethics is the code of morals or body of principles which governs the conduct of the businessman in his relationship with the government, the public, his customers, and competitors.’ Consequentialist and Non-Consequentialist theories have been defined for guiding business practices, however, every company has to define and internalize its own Teachable Point of View, to guide acceptable ethical behavior amongst its employees. ‘Reaching a “right” or “just” conclusion when faced with moral problems can be a bewildering and vexing proposition. But businesspeople are likely to reach and act on morally appropriate decisions if they do not lose sight of the fundamental issue of fairness.’

(LaRue Hosmer 1996)

It is equally important to clearly point out what kind of activities are considered as wrongdoings and what can be the consequences of transgressions. Also, all laws need to be followed not just in the word but also in the spirit.

‘As these Teachable Point of View (TPOVs) are communicated and internalized within the organization and it begins to grow, energized leaders who can engage in Virtuous Teaching Cycles to grow more leaders become indispensable.’ (Tichy, McGill 2003)

1. Business Ethics in India

1.1 ‘Dharma’ : The root of ethics and Values

Right from ancient days in India, individual and social ethics is related to pursuing ‘Dharma’, which is a prescribed and sanctified code of conduct for an individual. It is like the code of honour, in pursuit of which a person grows both internally and in the eyes of the society. He is expected to religiously perform his duties which includes among other things helping his less fortunate fellow beings in his community.

Religious scriptures like the Vedas, Ramayana, Bhagvad Gita and Tipitaka emphasize ethics and long term sustenance and victory of the one who is high on integrity. Later, Indian philosophers like Swami Vivekanand and Mahatma Gandhi also encouraged the philosophy of ‘Work is Worship’ and exhorted men to perform duties not from a sense of compulsion but through love.

1.2 Corruption in Modern India

An Indian has to deal with Petty corruption on a day to day basis, where local officials demand bribes for delivery of public services, and to lesser extent but also in the corporate world. Most citizens consider such situations normal and acceptable and expect to be asked for a bribe in interactions with government officials.

1.3 Consider the following:

India is ranked 87th in Transparency International’s rating of perceived corruption across 178 nations.

- India Household Corruption Study 2007 states that, Below Poverty Line (BPL) households in India pay about Rs 9, 000 million (€136 million, US \$212 million) in bribes to get access to basic and need based public services.
- Political parties are perceived to be the most corrupt institution by the Indians, according to 2009 Global Corruption Barometer.
- The cost of corruption to the country could exceed Rs 2, 500 billion-(C K Prahalad, 2010).

1.4 India Potential & Promise

Various projections by national and International agencies have projected that the next decade is going to be of exceptional growth for India.

The International Monetary Fund has projected the Indian economy will grow by 9.7 per cent in 2010 and 8.4 per cent in the next fiscal, driven by robust industrial production and macro-economic performance. Advanced economies, on the other hand, are projected to grow by just 2.7 per cent in 2010 and 2.2 per cent in 2011.

According to a report titled 'India 2020: Seeing, Beyond', published by domestic broking major, Edelweiss Capital in March 2010, stated that India's GDP is set to quadruple over the next ten years and the country is likely to become an over US\$ 4 trillion economy by 2020.

India will overtake China to become the world's fastest growing economy by 2018, according to the Economist Intelligence Unit (EIU), the research arm of London-based Economist magazine.

As the world looks up to India as a high Potential market, the challenge for her is in meeting global standards in not just products & Services, but in conducting value-based businesses across different cultures.

1.5 Urgency for Adherence to Business Ethics

Leaders have to deal with potential conflicts of interest, wrongful use of resources, mismanagement of contracts, false promises and exaggerated demands on resources. How they meet these conflicts, sets examples for all stake holders to gauge the commitment of present day leaders to run an Ethics driven business.

'Business is for profit but it cannot be divorced from ethics. This basic principle should be the guiding principle for business houses and their management. For corporate India to become a credible partner to India's progress, a trust-based relationship between government, organizations and society at large is a must'. (*Prathibha Devisingh Patil, President of India 2010*)- A statement like this from the highest Government office of the country, is indicative of an internal awakening and re-connection of the countrymen to their Corporate Dharma. Accepted resignations and Inquiries against corrupt officers for instance at the Common Wealth Games 2010 and 2G telecom Scam is also evidence for the Public and Media awakening. Equally encouraging are the comments on India's rise to Business Ethics, by (*Jagdish Sheth at Emory University 2007*). He cited a shift in India, from a focus on shareholders to a focus on stakeholders. Predicting that ethics will be anchored to the idea of business as a profession, similar to the way the field of medicine is now, he said there will be global standards of governance, but their application will be adapted to local conditions.

As we look to the future of the country & its leadership, we can see the waves of positive change and an over-riding belief as advocated by (Tichy, McGill 2003, 62) that free markets-like free societies-are both ethical and self-correcting.

2. Methodology

2.1 Phase I : Survey of Employed people

The Initial Survey of 500 employees from different companies, showed the following results:

Reasons identified by respondents for adherence to ethical policies:

- Fear of losing one's Job
- Personal Ethics
- Persistence of Leadership
- Peer Influences
- Work culture
- Social Approval
- Job Security and growth
- Emotional Ownership of organization
- Mental Peace
- Because company has a written code of ethics.

Findings of Phase I:

- **Written Code Of Conduct**
Of the respondents only 35% had a written code of ethics documented in their organization.
- **Adherence to Integrity Policy**
Of the senior employees surveyed 40% were optimistic about the ideal implementation of code of conduct; however, another 40% chose not to comment. About 20% clearly stated non adherence on most occasions.
- **In the entry & middle management 38% supported adherence & 62% accepted non-conformance to some or the other extent.**
- **Almost 70% felt that their seniors were not role models and did not walk the talk on varying occasions.**
- **Middle level employees were most uncomfortable of reporting unethical behaviors of seniors (61%), followed by entry level (53%) and lastly senior employees (40%).**

2.2 Phase II

In Phase II, the companies identified for focused study were Tata Group of companies and MindTree Consultants. (*See Annexure I for Company Profiles*)

Methodologies for Training in Ethics and Values

The ethics implementation machinery and documents related to training in ethics at Tata's and MindTree were studied. Interviews with senior leaders and employees at the selected companies were conducted, to identify the following 6 methods of Training in Business Ethics:

#1 Developing a Clear Teachable Point of View

- Thought Leadership
- Common and clear Code of Ethics
- Mission, Vision, Values and DNA of the organization – Co-created and Co-followed
- Corporate Social Responsibility – Building Cohesive communities

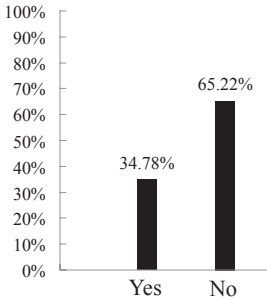


Fig.1 Percentage of Respondents having written code of ethics in their organisation

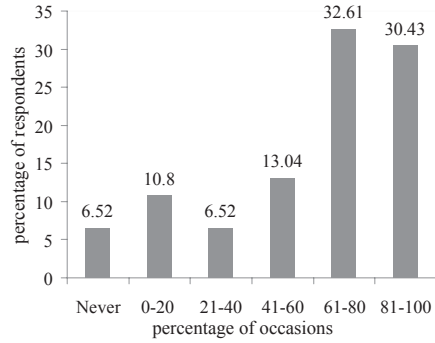


Fig.2 Percentage of occasions when respondents' Seniors personally lead by example
Percentage of respondents qualifying percentage of occasions of exemplary behaviour by Seniors

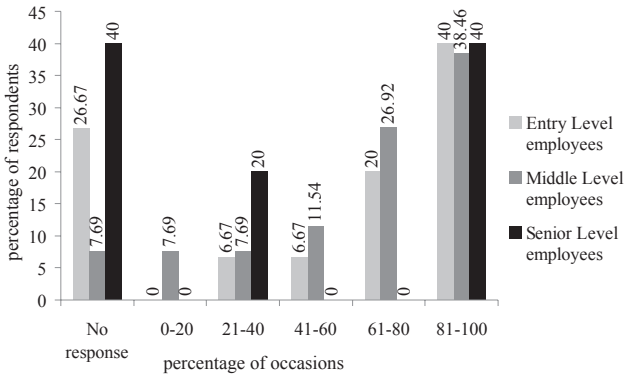


Fig.3 Percentage of occasions when respondents adhered to Integrity Policy

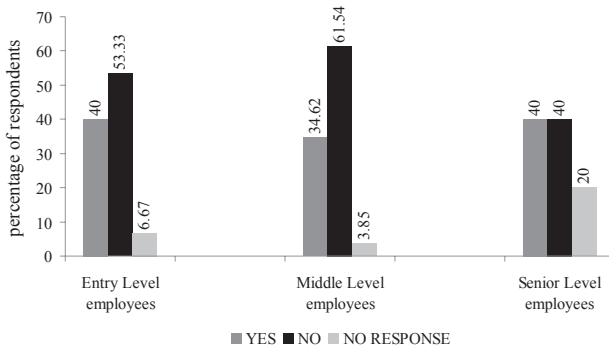


Fig.4 Percentage of respondents open to reporting unethical behaviour of seniors

#2 Virtuous Training Cycles

- Replicative and inclusive process of sharing knowledge, by teaching What is learnt.

#3 Creation of a Learning Environment

- Workplace Ergonomics
- Walk the Talk (Trust)
- Open Door Policy
- Living Documents (Vision, Mission and Values)
- Transparency
- Communication
- Inclusion and empowerment

#4 Training

- Selection process
- Induction Process
- Continuous Learning and Development

#5 Implementation

- Whistle-Blower Policy
- Seeking Counsel

#6 Monitoring

- Action on misalignments
- Surveys of employees and stakeholders
- Appraisals

#1 Clear Teachable Point of Views (TPOV)

“All business leaders at the beginning of the twenty-first century need to have a Teachable Point of View (TPOV for short), about their business in general and business ethics in particular – what they will and won’t do, values and absolutes for their organization, examples they model – so their employees can follow suit.”(Tichy, 2003, 4-5)

Thought Leadership

The role of a leader as a thinker and direction setter is of critical importance in ensuring that every employee in the company follows the ethical way of doing business. A leader must know how to involve and engage with the employees and other stakeholders and ensure periodic evaluation not just of employees but also of self in the ethical conduct of business.

The Tatas have been pursuing ethical values in conducting business for the last 140 years. All Tata leaders have been recognized for the human touch they extend not just to their employees and stakeholders but to all who come in touch with them.

For his contribution to building a trusted Brand like Tata, the Government of India honoured Mr Tata with its one of the highest civilian award, the Padma Vibhushan, in 2008.

“Integrity is one of the strengths that we have and differentiators that we have and we will, in fact, nurture it and cherish it and fight for it ferociously.” (*Ratan Tata 2007*)

Also, take for example how Mr Subroto Bagchi, MindTree’s Co-founder has taken on a leadership-building role with the title of - GARDENER AND VICE-CHAIRMAN, since 2008. This role is not part of the formal organizational structure, wherein he does not report to anyone, nor does anyone else report to him. It is a leadership-building role and he calls this role as ‘Hetero-archy’. Mr Bagchi tends the top 100 leaders at MindTree, by working one-on-one with them on personal and professional matters. The objective is to develop the organisation’s next level of leadership through the transformative journey of these 100 MindTree Minds, which cannot be achieved through regular workshops and classroom training methodology.

Further, Mr Bagchi not only coaches within the organization, but has shared his personal learnings and experiences in the form of 3 best-seller books - ‘The High-performance Entrepreneur’, ‘Go Kiss the World’ and ‘The Professional’. Particularly in his third book ‘The Professional’, he emphasizes the importance of Integrity and Ethics in the making of a true professional. He believes that ignorance is one of the main issues for flouting of laws In India and it is vital that ethics should be taught to students at professional colleges.

Common and clear Code of Ethics

A teachable point of view is also illustrated very clearly at MindTree by their White Booklet or The MindTree Integrity Booklet. This booklet not only articulates the Integrity Policy but goes a step forward to share some of the dark, difficult moments that were created by people who breached Integrity. All external suppliers and contract personnel are also familiarized and bound by this policy.

The sanctity of this document cannot be emphasized more, taking into consideration that it is presented by the Executive Chairman of MindTree to all new MindTree Minds in the values session of the Induction Program of MindTree, already a 10,000 employees strong company, across 17 locations.

As these Companies pursue their ethical goals, the external world is also sitting up and taking notice of their endeavours. MindTree’s Executive Chairman and co-founder, received the Golden Peacock Award - 2010 for his ‘outstanding achievements and leadership qualities’, from the Institute of Directors.

The Tata group of companies faces a bigger challenge just by virtue of its size – 3,95,000 employees and operations in more than 80 countries across six continents. To implement commonality in understanding of values, the Tata Group has articulated and deployed the Tata Code of Conduct (TCoC), which has been designed to enable Tata companies to embark on a path of ethical corporate and personal conduct, by ensuring the alignment of individual and corporate conduct with the requirements of the TCoC.

The reference manual provides 25 clauses which are broad-based and non-prescriptive guidance to implement the TCoC in the Group’s enterprises.

Vision, Mission, Values and DNA of the Organisation : Co-created and Co-followed

The V-M-V concepts are very well emphasised at TQMS (Tata Quality Management Services) as well as MindTree Consultants.

*All successful leaders have a **vision** for their businesses, projects or teams. However, it is important that employees should be able to articulate it without having to read the text, and to act upon it. Consider, how Mr Tata has articulated his vision for the group for the next 100 years:*

“One hundred years from now, I expect the Tatas to be much bigger than it is now. More importantly, I hope the group comes to be regarded as being the best in India – best in the manner in which we operate, best in the products we deliver and best in our value systems and ethics. Having said that, I hope that a hundred years from now we will spread our wings far beyond India.”

MindTree’s Five Year Vision (FY 2014) gives an equal weightage to financial performance as well as to their CSR activity.

- *To achieve US \$1 billion in sales*
- *To be among the global Top 20 in the IT Services business in profitability, as measured by PAT (Profit After Tax) to sales and RoCE (Return on Capital Employed)*
- *To be among the Top 20 most admired companies globally in the IT Services business, known for their customer satisfaction, people practices, knowledge management and corporate governance.*
- *To touch and improve the lives of the differently-abled, through leadership in Assistive Technologies.*

*A **mission statement** is the broad expression of the reason for an organisation’s existence. It often reflects the values and beliefs of top managers in an organisation. Take for eg: the Mission of Tatas as ‘Leadership with trust’.*

Studies support that almost 40 percent of employees do not know or understand their company’s mission. For similar reasons, MindTree simplified and redefined its Mission statement with the help of employees as:

- *Successful customers*
- *Happy people*
- *Innovative solutions*

***Values** are the guiding principles and behaviours that embody how an organisation and its people are expected to behave. Values reflect and reinforce the desired culture of an organisation.*

Values that define the Tata Group are:

- *Integrity*
- *Excellence*
- *Understanding*
- *Unity*

- Responsibility

The CLASS Values of MindTree

The values of Caring, Learning, Achieving, Sharing and Social Responsibility (CLASS) were crafted and re-structured by the employees of MindTree. The core values bind the people of this organization into one united family cutting across the barriers of language, distance and culture.

Corporate Social Responsibility

Mr Tata's share is 1%, or a little less and about 66% of the equity capital of Tata Sons is held by philanthropic trusts. The trusts provide aid and assistance to non-government organisations working in the areas of education, healthcare and livelihoods. Tata companies also extend social welfare activities to communities around their industrial units.

To find a way to use the core strengths and capabilities of the organization, MindTree Foundation's charter has been defined as: "to support primary education and the cause for differently-abled people by leveraging MindTree's Leadership, values and resources."

Chetan, a student with cerebral palsy gave the visual identity for MindTree. MindTree also makes an active effort to integrate differently-abled people into the organization, treating them on par with other employees. Presently, MindTree Foundation is working on an initiative to bring out 'Affordable Assistive Technology Solutions for the Disabled'.

In addition to its Vision, Mission and values, MindTree defines the DNA of its organization as:

- Imagination
- Action
- Joy

The DNA is replicated and imbibed, with the help of leaders and peers alike, by each new MindTree Mind through virtuous teaching cycles.

#2 Virtuous Teaching Cycles (teaching and learning from each other irrespective of rank)

The concept of Virtuous Teaching Cycles as developed and explained by Professor Noel Tichy of Michigan Business School is well illustrated at MindTree and TQMS. He emphasizes that: Knowledge creation and organizational learning are greatest when leaders – up to and including the CEO – see themselves as teachers who share their points of view and see this process as an essential part of their leadership.

The more it engages people, the more it replicates itself, with more and more people teaching the key ethical lessons, putting dilemmas on the table to be openly considered and debated, sharing experiences – both best and worst practices.

Ongoing Co-creation with the help of MindTree Minds is ingrained into the fabric of MindTree.

At MindTree the leaders not only proliferate their TPOV but also live them. They continuously teach, discuss and refine their views through collaborative

learning. MindTree uses a practice called “practitioner defined and practitioner refined” processes.

MindTree Minds have been made an integral part of the decision making system. For instance, MindTree conducts an annual People Perception Survey, which later sets the tone to change people’s policies and practices based on employees’ feedback. This is followed by a dipstick survey to ensure that the changes are on the right track.

MindTree has a voluntary mentoring system, where a mentee can choose a mentor of his choice from a central group, to consult and enhance his learning process.

Virtuous Training Cycles at Tata Quality Management Services (TQMS)

Tata Quality Management Services (TQMS) is a division of Tata Sons, the principal promoter company of the Tata Group. Through group and collaborative learning TQMS establishes Virtuous training cycles where all companies under the group are learning from each other.

The V-M-V Training Methodology at TQMS:

TQMS has over the years developed an expertise in conducting the Vision-Mission-Value workshops for the companies by facilitating the process of developing the V-M-V and helping the companies in its communications and reinforcement.

TQMS consultants also helps the Senior Leadership Team in this workshop to develop the approaches for communication cascade and measure the effectiveness of the same for taking the V-M-V forward in the organization.

One of the major benefits of the V-M-V processes is that, it attracts commitments and energises people and establishes a standard of excellence while creating a bridge between the present and the future.

#3 Creation of a Learning Environment

Workplace Ergonomics

An individual’s productivity is directly related to the environment he/she works in. Today, organizations are trying to create an environment which would be viewed by the employees as a home away from home.

At MindTree, Innovation in the physical infrastructure takes many forms. Office spaces are bright and colourful and no two floors look alike. MindTree office space is brought to life with colourful paintings by children from the Spastics Society of India, providing visual stimulus *and* a source of inspiration to their people. Innumerable writable surfaces allow for spontaneous ideation and creative expression.

A very interesting analogy given by Mr Subroto Bagchi at MindTree is about infrastructure having to be built at three levels:

- The Physical Infrastructure
- The Intelligent Infrastructure
- Emotional Infrastructure

The most difficult to build and sustain is the emotional infrastructure. However,

it is also most difficult to imitate or break apart a company at the emotional level. It is at this level that an organization can truly distinguish itself from others.

Walk the Talk (Trust)

MindTree was co-founded in 1999 by 10 senior IT Professionals under the leadership of Industry Veteran, Mr Ashok Soota. All the co-founders are still together contributing in establishing global standards on Corporate Governance, Knowledge Management, People Practices and Innovation.

The Tata Legacy of 140 years is predominantly the most trusted Indian company across the globe predominantly because of the leaders of the company who have never compromised ethics for the sake of short term gains.

Open Door Policy

An open door policy implies that employees are free to talk with any manager in the hierarchy to discuss an observation, complaint or suggestion. Redressal of issues ensures that the organization with its employees grows to a higher level of maturity and achievement.

All the senior leaders are highly approachable and in the interviews some MindTree Minds shared how the quick response rate of seniors to their suggestions and concerns encouraged them to share freely with a sense of emotional ownership.

An open-door policy is also evinced by open floor plans and community areas, encouraging a culture of trust and openness within MindTree.

The employee interviews at Tata's clearly reflected the confidence they had in their seniors alongside also cherishing the freedom they had in decision making.

Living Documents (Vision, Mission and Values)

Building holistic engagement with employees requires that, it should flow from the Mission, Vision and Values of the company.

The interviews with MindTree Minds showed that they identified and took a lot of pride in imbibing and abiding by the Vision, Mission and Values of their organization.

At Tata Companies, employees formally undergo a written test on their understanding of TCoC, V-M-V statements and their certificates adorn their workstations. On-line training sessions are available for all employees.

Transparency

According to Deloitte's 2008 Ethics and Workplace survey, transparency and openness in communications between leadership and employees can enhance productivity, contribute to a more ethical workplace culture, and help create a more value based organization.

The 95:95:95 transparency philosophy of MindTree states that, 95 percent of the people should have 95 percent of the information 95 percent of the time. At the end of the year the chairman of the company shares the successes and failures with everyone in the company. The leaders pick up the courage to stand up and share their appraisal with the people.

Open communication is also exemplified by a quarterly, multilingual magazine called the 'Circle of Life', which is a communication with the family of MindTree minds.

Communication

The communication and training framework must be robust enough to detect discrepancies and flexible enough to ensure easy adaptability to company specific situations.

The tenets of communication on ethical misconduct / violations at Tata Group are as follows:

- Understand the basic principles underlying the Code.
- Apply the basic principles in likely scenarios (correlation with TCoC clauses).
- Understand what constitutes a concern / violation.
- Understand what happens when an integrity concern is raised.
- Build clarity on how a concern is addressed.
- Emphasize the importance of confidentiality of information on cases detected / reported.

MindTree believes in open communication with all of their stakeholders, based on inclusiveness and transparency. Leaders send out monthly updates called Snapshots to all employees, detailing the state of organization and industry trends.

A regular open house dialog, All Minds Meet, encourages interaction with MindTree's leadership. Every question - from strategic and tactical queries to those relating to operational issues - is treated seriously and addressed on the spot.

The People Net intranet, which provides a platform for internal bonding, reference, and grievance redressal. Petals is a portal for self-expression where MindTree employees can write on any subject under the sun.

Inclusion and Empowerment

Leaders need to make an explicit decision to empower employees or members and keep the goal in front of the organization. They also need to be willing to confront their own continuing resistances to empowerment, e.g., their own desire to hold onto control, to manage all the details, impatience, the need to shift from a "psychological contract" of dependency to one of "autonomy in relationship", or interdependence. (Gallagher 1993)

MindTree's inclusion and empowerment policies allow them to maintain high employee retention and satisfaction levels. -It was one of the first companies to cover 100% of its employees under the ESOP umbrella.

Flexible hours, sabbaticals, and continuing education policies empower employees to take charge of their lives and careers. Baby's Day Out, a unique program that enables parents to bring their kids to work with them whenever required.

More than 60% of the lateral recruitment takes place through employee referrals. MindTree's employee surveys have shown remarkably high percentage of around 95% of the employees to be "satisfied".

26% of the workforce at MindTree is women and the organization is committed to providing them a safe and healthy environment for growth, taking serious note and action on the slightest misalignments.

#4 Training

Selection Process

It is very important that at the entry point candidates are filtered and a value match of individual and organizational principles is ensured.

Apart from evaluating competencies, MindTree also takes into account the candidate's personal values and ensures that there is a certain degree of harmony between the company's core values and personal values.

In 2005-'06, as many as 80 people were found to have submitted false information pertaining to past employment. In each such case, the company bore huge losses and work dislocation, because when they learnt about the false documentation, the person was asked to quit, irrespective of the immediate damage to the system. Parallel to this, they immediately shared such information with the impacted customer and did not hide such information for fear of reprisal or business loss.

Induction Process

An induction programme is the process used within many businesses to welcome new employees to the company and prepare them for their new role. Once inducted, the HR helps every employee assimilate the values of the company through different means.

This is exemplified by the fact that Chairman Ashok Soota himself steers the session on Values, - where he articulates and clearly lays out for all the new MindTree minds the directional compass and the path MindTree has chosen to walk in pursuit of conducting a value-based business successfully.

At MindTree Consulting, PALs (Parent-Anchor-Leader) help newcomers settle into their jobs. PALs are senior MindTree employees who nurture campus recruits who need emotional support while they adjust to the work environment.

Arboretum is a program designed to assimilate lateral hires by assisting and tracking them through induction, training, temporary project assignments, and other assignments up until their first performance appraisal.

Continuous Learning and Development

Continuous learning is a hallmark of all growing organizations. Many times it also involves unlearning, designing and adapting new system.

All learning initiatives at MindTree are overseen by a dedicated group called C2; aligned to business goals and customer needs systems. At MindTree, training sessions focus explicitly and implicitly on Integrity training, with role-plays and story-telling methodology to help imbibe the core Teachable Point of Views.

Many learning initiatives are undertaken such as Mentor and Buddy System to assess the preparedness of the trainees.

Learning bee is an intranet portal that allows MindTree Minds to view and

register for ongoing learning opportunities.

There are 45 different communities in MindTree consulting, there is an Orators club and technology communities and role based communities like the PM Community, where members are project manager. They get together to share and learn for self-discovery and knowledge re-distribution.

#5 Implementation

Whistle-Blowing Process

*A **whistleblower** is a person who raises a concern about wrongdoing occurring in an organization or body of people. Usually this person would be from that same organization. The revealed misconduct may be classified in many ways; for example, a violation of a law, rule, regulation and/or a direct threat to public interest, such as fraud, health/safety violations, and corruption.*

MindTree has adopted a Whistle Blower Policy and has established the necessary mechanism in line with clause 49 of the Listing Agreement with the Stock Exchanges, for employees to report concerns about unethical behavior.

Management of Business Ethics (MBE) at TATA Group

Globally, the realisation that goodwill is essential for the longevity of corporations has emerged only recently, as articulated in The King Report on Corporate Governance, 2002. The experience of the Tata Group shows, however, that such goodwill has held Tata enterprises in good stead for over 140 years.

Group companies and all Tata employees are expected to conduct themselves and their business according to the precepts and ethical standards prescribed by the TCoC (Tata Code of Conduct).

MBE (Management of Business Ethics) is a TQMS practice that helps companies maintain and monitor the ethics code. TQMS operates a survey-based process that captures how executives perceive their own company's progress on MBE. Through this approach Tata companies get feedback from their own employees on lead indicators of excellence and ethics.

Seeking Counsel

As aptly pointed out by Mr Bagchi, many ethical violations happen due to ignorance of rules and laws. In such situations it is very important to seek advice and counsel from a competent authority to avoid misalignments.

The MindTree integrity policy clearly states that an important part of the ethics training is to seek counsel from seniors, when in doubt about an issue.

#6 Monitoring

Action on Mis-alignments

It is important for leaders to deal with mis-alignments at all levels in a fair manner to ensure an ethical climate in the organization. Discrepancies in word and action seen by observers can lead to a loss of trust in the leadership and the entire ethical machinery of the company.

At MindTree all transgressions from the Integrity policy are dealt with swiftly

and decisively, and are also shared freely on their website after masking names of people involved.

Similarly, the Ethics officer at Tata's responsibly addresses all transgressions within 48 hours, as per laid down MBE Processes.

Surveys of employees and stakeholders

Regularly the ethical health of the organization has to be monitored, because good performance of the past does not ensure the present or the future.

The MindTree People Perception Survey is conducted each year by Fordham University, to know how actively people communicate and what they are happy about. About 70 questions are given. The feedback is analysed to find out qualitative aspects and areas for improvement. Consistently, more than 90 percent of employees have rated high satisfaction in working at MindTree.

Every October, the company does a DipStick survey to know how fair and - transparent its culture is. Here, employees voice their opinions about all departments, from HR to finance and administration.

Dipstick Assessment Methodology by TQMS is used for the purpose of assessing the maturity of the key processes in the client Organization, using the Baldrige model, assisting the client in the areas to focus on for improvements.

Appraisals

If ethics have to be imbibed in all day-to-day activities it is imperative that it be monitored in all evaluations of an employee.

What makes MindTree a part of India's Best IT Employers is its 360-degree employee feedback and extensive focus on leadership. The appraisal systems are designed to capture all the needs of the employees- training, better compensation, etc.

At MindTree all activities have at their core their Integrity Policy – for instance the 360 degree performance review has woven into it an assessment of the maturity & understanding of integrity issues. As an employee rises up the ladder, weightage to his ethics review increases and is about 40% at the senior most rungs.

Whenever Tata's or MindTree have considered acquiring another company in the past, a culture compatibility test takes precedence over all other factors such as potential financial gain, employee competence, and market share of the company being taken over. Ethics is a dominant and over-riding factor in all evaluations.

Conclusion

The Industry in India has many examples where businesses use Financial Prowess to influence state machineries for favours, approvals out of turn, relationship building, and vice-versa are also forced by officials to pay bribes even without any business irregularities. Also, in softer issues on ethics within the companies there is complacency in action against violations and general acceptance of transgressions being justified as a majority following.

While, most people felt that accepting and falling in line with violations is the only way for survival, a new trend is emerging where questions are being raised on long term sustenance of businesses as against one time profit making strategies. To answer these questions, ethics are now being considered not just at an individual level but increasingly being applied to corporates as a base parameter for measuring their success. Society is slowly becoming conscious about not just the end results but the means being applied to win.

While the new trendsetters were being looked upon with disbelief and sarcasm, they are now being recognized for their ability to stand their ground inspite of internal and external pressures. Ethical Issues are now coming out and being openly discussed in the media, at business schools and public forums. The youth of the country with their questioning attitude and connectivity on a global platform are accelerating this change in the country.

Age old companies like TATAs and newer companies like MindTree have been recognized and applauded for their stance on Integrity and they are slowly proving to the country that a change can be brought about.

Annexure

Company Name	Tata Group
No. of Employees	~ 395000
Established since	1868
founder	Jamsetji Tata
Products	over 90 products

Company Name	MindTree Consulting
No. of Employees	~ 10000
Established since	1999
Founders	Subroto Bagchi, Ashok Soota, N. Krishna Kumar, S. Janakiraman, Anjan Lahiri, Kalyan Banerjee, Kamran Ozair, Scott D. Staples, Rostow Ramanan, N.S. Parthasarthy.
Service Portfolio	IT Services, Independent, ITMS, Software Product Engineering, Knowledge services, R&D Services

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www.tata.com

www.tataquality.com

Manga, Virtual Child Pornography, and Censorship in Japan

Chris MATHEWS

1. Introduction

In recent years there have been repeated calls within Japan for tighter controls on the content of manga (comics) and anime (animated works), particularly in regard to the pornographic depictions of children in some works. This material is known as ‘virtual’ or ‘simulated’ pornography, or, in the Japanese debate, sexually explicit material involving ‘non-existent minors’. The works in question frequently contain explicit depictions of adult/child sex, rape, extreme sexual and non-sexual violence, and themes of coercion/manipulation of minors. This material is widely available in Japanese stores, generally without age restriction – there are no nationwide legal restrictions on who can purchase it, although some stores impose voluntary age restrictions.

The domestic debate on the topic of virtual child pornography (henceforth: VCP) has until recently been largely unproductive, with local government attempts to impose controls being met with firm opposition from publishers and artists, who generally frame the debate as an issue of the constitutional right to freedom of expression. Any restrictions, manga and anime supporters argue, represent a violation of the Japanese Constitution and the principles of free speech, and are therefore unacceptable. This paper will argue that Japan’s constitutional free speech guarantees are not absolute, but are in fact subordinate to the interests of the public welfare, and that there are clear grounds for an age-unrestricted ban of all VCP. Furthermore, such a ban would be entirely consistent with the existing Japanese legal and social practice regarding practices that go against the common good.

2. Manga and Attempts at Restrictions of VCP

The works under discussion are primarily of the *lolicon* and *shōjo* genres, the former referring to the ‘Lolita complex’ (sexual attraction to underage girls) and the latter literally meaning ‘little girl,’ works targeted at a 10-18 year old female demographic. In the manga format, the works are usually short stand-alone chapters with minimal plot – the inevitable and direct advance toward sexual activity mirrors that of traditional adult pornographic materials. Coercion, rape, incest (usually between siblings), bondage, pedophilia, and ‘rape myths’ (where the victim ultimately enjoys the experience) are common elements, with frequent inclusion of fetishism, hermaphroditism, coprophilia, urophilia, and, in specialized works, zoophilia. In regard to the depiction of minors, the situation can be ambiguous or unequivocal: child characters range from middle and senior high-school age (plausibly, 15-18

years) down to 5 years or lower (it is not unusual for a specific age to be identified, particularly in *lolicon*).

In recent years, there have been intermittent attempts by local governments to restrict the availability of sexually-explicit manga involving minors. In March 2006, Osaka Prefecture implemented its “Harmful Books Act,” aimed at limiting access to *shōjo* manga by children under 18 (“A History of Shōjo,” 2007). In the same year, the National Police Agency published a report calling for tighter controls of products that contain depictions of sexual activities involving children under 13 years (National Police Agency, 2006). This age is determined by the national age of consent in Japan (13 years) as established by the 1907 Japanese Penal Code, although this figure is generally overridden by local body legislation, raising the national norm to around 16-18 years. In 2007, the Kyoto Prefectural government named 13 *lolicon* works as ‘harmful books,’ requiring them to have warning labels (Doujinshi, 2007). In this case a ban was not implemented as it could be seen as an unconstitutional restriction of freedom of the press. Most recently, the Tokyo Metropolitan Assembly attempted to tighten regulations of manga in June 2010. Despite the support of the ruling Democratic Party of Japan, the bill failed to pass (“‘Manga’ child sex clampdown fails,” 2010). A second attempt was successful, and on December 17 2010 it became illegal for under-18s to buy sexually explicit manga/anime in the Tokyo Metropolitan Area – a decision with nationwide implications, given the size of the Tokyo market. Importantly, none of these attempts are aimed at banning VCP outright; they all share the lesser goal of preventing its availability to minors. The question of its appropriateness for adults is not currently under discussion in Japan.

3. The Case for Restricting VCP

The pro-censorship case for banning VCP in Japan has generally proceeded along three lines of argument:

- (A1) VCP leads to the sexual abuse of children
- (A2) VCP may be harmful to children who read it
- (A3) VCP is obscene and contravenes Japanese law

The first argument (A1) rests on the claim that VCP is responsible for some direct harm to real individuals, and therefore restrictions are justified. However, as the works contain ‘non-existent minors’ (virtual representations of minors) it is not possible to claim that its production harms real children – the primary justification for restricting actual child pornography. The focus is therefore on the effects of consuming the product and the purported link between VCP and child abuse; the fear that explicit manga and anime causes actual child abuse.

The direct harm argument (A1) is highly problematic. The purported causal link between VCP and the sexual abuse of children mirrors the oft-claimed link between pornography in general and sexual assault, a claim that has long been contested (see Dworkin, 1993: 38; Feinberg, 1985: 153). A study of pornographic material

in Japan in the period 1972-95 showed a marked increase in its availability, during which time the number of sexual assaults decreased. The study labeled a ‘myth’ the assertion that the widespread availability of sexually-explicit materials leads to rape: “It is certainly clear from our data and analysis that a massive increase in available pornography in Japan has been correlated with a dramatic decrease in sexual crimes and most so among youngsters as perpetrators or victims” (Diamond & Uchiyama, 2009: 16).

The specific link between VCP and sexual abuse also been addressed in highly relevant Western legal findings. In the U.S., a case brought in 2002 against the Child Pornography Prevention Act of 1996 resulted in two provisions relating to VCP being struck down for being ‘overbroad’. In its findings, the Supreme Court noted

VCP is not ‘intrinsically related’ to the sexual abuse of children. While the Government asserts that the images can lead to actual instances of child abuse, the causal link is contingent and indirect. The harm does not necessarily follow from the speech, but depends upon some unquantified potential for subsequent criminal acts. (*Ashcroft v. Free Speech Coalition*, 2002: 3)

The Supreme Court upheld the earlier decision of the United States District Court for the Northern District of California that there is no demonstrated link between computer-generated child pornography and the subsequent sexual abuse of children (*Free Speech Coalition v. Reno*, 1997). Once again, the finding mirrors a common problem in the larger pornography debate: establishing that pornographic material causes sexual crimes, even if a clear statistical correlation were to exist. It is not clear that pornographic material would cause an ordinary person to commit sexual crimes. Furthermore, if an individual has an existing predisposition to commit sexual crimes, then the material cannot be adjudged the sole (or even primary) cause of the acts. The connection is, as the US Supreme Court notes, “contingent and indirect”.

In combination, these findings are a critical challenge to the widespread assumption that VCP gives rise to any direct harm (in the form of child abuse). Japanese statistics suggest there is no correlation between the availability of pornographic materials and sexual crimes, and it is difficult to establish a necessary causal link between VCP and child abuse. As there is no harm done to real minors in the production of the material, and there is no clear proof of direct harm rising from the material’s consumption, the direct harm argument (A1) fails to provide sufficient grounds for its prohibition.

The remaining arguments for banning VCP in manga and anime, (A2) and (A3), are closely related to each other. (A2) is the claim that the exposure of minors to explicit material is inappropriate and morally harmful. (A3) is the related but wider claim that VCP is obscene and thus subject to Japanese legal restrictions of such material. For this claim, the relevant statute is Article 175 of the 1907 Criminal Code (*Keihō*), which governs the “Distribution of Obscene Objects”. It states

A person who distributes, sells or displays in public an obscene document, drawing or other objects shall be punished by imprisonment with work for not more than 2 years, a fine of not more than 2, 500, 000 yen or a petty fine. The same shall apply to a person who possesses the same for the purpose of sale.

The Code however offers no definition of ‘obscene’ (*waisetsu*), leaving the matter in the hands of the Japanese courts. As yet, only one manga has been prosecuted by Japanese courts on the basis of obscenity, the manga *Misshitsu* (see Da Silva, 2006). Nonetheless, this paper will argue that the Penal Code’s obscenity statute provides a clear basis for banning VCP in the interests of the public good. As such, (A2) is subsumed into the wider purview of (A3) – concern for children’s moral health is part of the larger issue of obscenity and the general public good. However, before discussing the obscenity issue in more detail, it is necessary to address the arguments against a ban of VCP, particularly the constitutional challenge to Article 175 of the Penal Code.

4. The Case against Restricting VCP

The slowly growing movement for tighter controls on anime and manga has been met by vigorous opposition. Concerned publishers, writers, artists, readers, and academics have defended the right to publish materials containing sexually explicit representations of children. There are four main anti-censorship arguments of differing importance to be discussed: one primary argument with a second closely related, and two more that can be considered supplementary.

- (B1) Any censorship violates constitutional freedom of speech and expression guarantees
- (B2) Any censorship could lead down a slippery slope to further free-speech infringements
- (B3) VCP may serve as a less harmful (or victimless) proxy for actual child abuse
- (B4) Explicit manga and anime are effective ways to educate children about sexual matters

(B1) is the most commonly presented anti-censorship argument and directly concerns the issue of free-speech; the claim that restrictions of manga or anime represents an infringement of the artists’ freedom of speech and expression (“A History of Shōjo,” 2007; Fukuda, 2010). The basis for this objection lies in Articles 19 through 23 of the 1947 Japanese Constitution, which guarantee certain fundamental individual rights. Article 19, for instance, maintains “Freedom of thought and conscience shall not be violated,” while the key, frequently cited Article 21 is seemingly unambiguous in its free speech provisions:

Article 21. Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.
No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

The constitutionally guaranteed right to freedom of speech/expression and freedom from censorship, supporters maintain, extends to manga and anime. Any restrictions of these works is thus legally and morally unjust as it violates publishers' and artists' constitutional rights.

Though ostensibly persuasive, the constitutional argument against censorship (B1) is flawed, as it is based on the assumption that the Article 21 guarantees are absolute and unconstrained by any other considerations. This interpretation of freedom of speech is however not accurate, neither philosophically nor in regard to Japanese legal and social practice. Despite apparent constitutional guarantees to the contrary, Japan does not have unlimited free speech; in fact, there has never been a society in which speech has not been limited in some way. As legislation prohibiting child pornography show (even possession is now illegal), Japan has already accepted the need to restrict more extreme materials. The country also enforces numerous other restrictions of freedom of speech and expression: it has strong libel laws, strictly limits publication of private information, bans most forms of gambling, enforces pixelation of genitalia in all forms of pornography, and outlaws public indecency. Each of these activities represents a direct denial of the absolutist interpretation of free speech. In Japan, as in every developed nation, the ideal of unfettered free speech is in truth unrealistic. Any country that applies restrictions to hate-speech, libelous statements, false advertising, violent and extreme forms of pornography, or sharing of state secrets, acknowledges that there are circumstances where the interests of free speech need to be balanced against the interests of the public good.

More importantly, the preceding argument against absolute freedom of speech is not merely philosophical; in Japan's case it also has a constitutional basis:

Article 12. The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

As Article 12 clearly demonstrates, all constitutional freedoms and rights (such as freedom of speech and expression guarantees) exist within a specific context: the needs of the wider community. The rights enshrined in Article 21 are explicitly subordinated to the broader goals of Article 12. Free speech is an ideal to be aimed at, but one that is always counterbalanced by the public good, allowing for limitations on materials or activities considered not to be serving the public good (or as detrimental to it in some way). The constitutional objection to restricting VCP (B1) is invalid. In specific cases, the needs of the wider public welfare justify constraints being applied to free speech; for example, in the case of obscene material.

This point returns the discussion to the unresolved issue of Penal Code Article 175, the obscenity law. Though undefined in the Penal Code, the present-day obscenity standard is based largely on the precedent set in the 1950s *Lady Chatterley's Lover* trial, which saw the Japanese translator and publisher of D. H. Lawrence's then infamous novel charged with and convicted of obscenity. The ruling provided the required definition of obscene, declaring that the term "refers to that which unnecessarily excites or stimulates sexual desire, injures the normal sense of embarrassment commonly present in a normal ordinary person, and runs counter to the good moral concept pertaining to sexual matters" (Koyama v. Japan, 1957: 7). This definition of obscenity is effective in three ways. Firstly, it requires the material to appeal to the prurient interest. Secondly, it ties obscenity to contemporary community standards, allowing it to be redefined as public mores change. Thirdly, the qualification 'unnecessarily' allows for the obscenity of a given work to be mitigated by artistic, scientific, or political value or purpose.

The *Lady Chatterley's Lover* ruling, which has been the basis all subsequent rulings on obscenity in Japan, clearly upheld that censoring obscene works is not a violation of constitutional free expression guarantees. As one legal commentator notes,

As a society, Japan has traditionally accepted and adhered to the notion that social welfare concerns preempt individual preferences. The Japanese courts have accepted and supported constitutional notions of individual rights defined primarily as matters of mutual respect, i.e., within the broader context of communal welfare [...]

In Japan, however, the regulation of individual behavior is already accepted as an appropriate responsibility of government officials and court judges. This issue is not argued on a case-by-case basis. Individual expression rights have always subject to constraint by legislation, and there has historically been broad societal acceptance and adherence to this goal. Obscenity law as applied by judges, not individual members of the public, continues to be the measure by which a traditional sense of public decorum is maintained. And that sense of decorum is considered societal rather than individual. (Alexander, 2003: 167-68)

As witnessed by Alexander's comments and the discussion preceding it, the apparent standoff between constitutional guarantees of free speech and the obscenity statute in the Penal Code is dissolved. Allowing restrictions of significantly obscene material is entirely consistent with the principle of freedom of speech as intended by the Japanese Constitution, and clear criteria exist for determining what is obscene or not.

With the failure of (B1), the slippery-slope argument against censorship (B2) is also revealed to be ineffective. (B2) is closely related to (B1), as some supporters of manga and anime fear any restrictions of VCP could mark the beginning of more widespread censorship, leading to "movements to suppress undesirable books"

(Fukuda, 2010). Any restrictions, it is warned, could be open-ended once a precedent is established, a slippery-slope towards greater infringements on freedom of speech/expression and undermining of constitutional rights.

There are a number of problems with the slippery slope argument objection to censorship (B2). Firstly, it fails to acknowledge that Japan, like every country, is already on this slope. In its application of libel laws (which are particularly strong by international standards), protection of privacy, censorship of pornography, and banning of child pornography, Japan already occupies a position one would expect of a stable, developed democracy: towards the top of the putative slope, near to the ideal of unrestricted free speech, but nonetheless allowing certain exceptions. Secondly, the practices that would prevent a sudden rush of censorship are already in place. Japanese censorship practices have long accepted artistic value as a mitigating factor when evaluating if a work is obscene or not. This is essentially a matter of looking at the context and intentions behind the use of explicit material: is it included for purely prurient reasons, or to serve some artistic goal of the work as a whole? In 2003 a book of Robert Mapplethorpe photography was prosecuted under the obscenity statute for its inclusion of male nudes. The Supreme Court ultimately ruled that the artistic value of the work and the absence of scenes of sexual intercourse were mitigating factors. “[I]t is difficult to find it to be appealing primarily to the sexual interest of people who see it” (as cited in Da Silva, 2006). The obscenity charge was overturned.

Of course, this point creates the possibility for a new argument against restrictions of VCP: a defender of extreme manga and anime may argue that it too is permissible due to its artistic value; it too is an artistic work and therefore deserving of the consideration that works such as Mapplethorpe’s photography, Hokusai’s *Tako to ama (The Dream of the Fisherman’s Wife)* - a famous Edo-era erotic woodcut), or Nabokov’s *Lolita* are afforded. However, this argument is unconvincing due to important differences between manga/anime and the examples above. Manga, in particular, is often quickly drawn and mass-produced on low-quality paper. The extreme works under discussion are, furthermore, highly generic and repetitive. Minimal plots generally serve as little more than the most rudimentary framework necessary to advance to the more explicit material, which is often the primary focus (the previously mentioned parallel with adult pornography is again appropriate – plot and character development etc. are entirely subordinated to the depiction of sexual acts). As such, the works can be said to serve no particular artistic goal or have any significant degree of artistic value. It is, rather, focused primarily on arousing sexual interest (one of the key criteria for obscenity in *Koyama v. Japan*).

The slippery-slope argument (B2) is further undermined by Japanese censorship practices, which have in recent decades become more permissive, not restrictive. As noted earlier, the amount of pornographic material available in Japan has increased dramatically since the 1970s (Diamond & Uchiyama, 2009). In addition, the severity of mosaics (pixelation over genitalia) required in adult pornography has been gradually reduced (Da Silva, 2006). For example, pubic hair is no longer required to be obscured by mosaics. Clearly, coupling the definition of obscenity to contemporary moral standards allows for restrictions to be lessened over time, if

society in general becomes more permissive of contentious materials. Ultimately, the use of clear criteria for obscenity prevents the type of unrestrained censorship that is feared. A slope that is ascended is clearly not so slippery. (B2) fails to provide a convincing position against the type of restrictions being discussed.

With the challenges posed by (B1) and (B2) resolved, the two remaining anti-censorship arguments, (B3) and (B4), can be discussed independently. (B3) is the claim that explicit manga or anime involving minors may serve as a valid alternative to real child abuse, a proxy for those who have a sexual interest in children. Using VCP as an outlet for these desires is put forward as a solution that causes no harm to any real individual.

The VCP as proxy (B3) proposal is flawed for a number of reasons. Firstly, it appears to sanction and even encourage sexual interest in children (even if by proxy). In doing so, it undermines an important and valuable taboo – the widespread condemnation of pedophilic activity or interest. This taboo serves an important purpose: it deters pedophilic activity and makes anyone susceptible to such desires aware of the unacceptability of their interest. Allowing VCP to serve as a proxy for sexual interaction with real children would significantly undermine the force of this taboo, as it requires that we abandon the idea that it is not morally healthy to be sexually interested in minors. Clearly, the safer course of action is to maintain the existing viewpoint that sexual interest in minors is abnormal, unhealthy, and morally unacceptable. Secondly, (B3) also seems to embody a hope that the individual using VCP as a proxy never acts on his desire, even though he has been given the means to action it, if in a limited form. This hope appears dangerous if not reckless, as it is equally reasonable to believe that use of VCP will normalize and embolden the individual's pedophilic tendencies (rather than merely satiating it), thus increasing the risk to real children. This is not to repeat the earlier, rejected claim VCP can cause the average person to engage in child abuse, but to suggest it would likely be a factor with an individual who has a pre-existing sexual interest in children. A third and final argument against (B3) is that it fails to address the obscenity argument against VCP. If the material is deemed significantly obscene by a person of normal sexual sensibility, then the grounds for prohibition exist. The existence of a minority with pedophilic tendencies in no way counterbalances the obscenity of the material, and is therefore no argument against censorship of VCP. For these three reasons, allowing VCP to serve as a proxy for sexual activity with children is both dangerous and morally indefensible.

The final anti-censorship argument (B4) concerns the possibility that explicit manga may serve an educational purpose, and that depictions of sexual activity between minors can actually be beneficial. Yukari Fujimoto, professor of girls manga and gender at Meiji University, argues that sexually explicit manga assists children in developing their sexuality, allowing them to address and understand their own desires. Protecting children from information regarding sex, she claims, may result in guilt and make them less likely to discuss sexual matters openly (cited in Fukuda, 2010).

The educational value defense (B4) is unpersuasive. While the value of sex education for children is not challenged, the appropriateness of the material under

discussion is extremely questionable. Given manga's popularity, it is an effective way to reach the public. For example, the manga magazine *Shukan Shonen Sunday* recently began to publish "Chiisai hito: Aoba Jido Sodansho Monogatari" ("Small Children: Stories From the Aoba Child Center"), a manga about child abuse. Similarly, a work written specifically for the purpose of sex education, such as Yu Yabuuchi's *Naisho no Tsubomi (Secret Buddy)*, has proven an effective and popular way to discuss issues such as child birth and puberty etc. Yet while these works may well be appropriate, the *lolicon* and *shōjo* works under discussion contain rape, coercion, incest, pedophilia, and violence as standard themes. They seldom depict innocent explorations of sexuality, but rather focus on sensationalized and hyper-real depictions of sexual athleticism; the culmination of sexual activity is, for example, invariably a deluge of sexual fluids. This content is furthermore presented as simple entertainment with no moral or pedagogical purpose being served – it is as formulaic and predictably sequenced as its counterpart in adult pornographic movies. The works are, on the whole, clearly motivated by, and aimed at, prurient interests, not educational goals. The claim (B4) that such material possesses educational value is difficult in the extreme to uphold.

5. Conclusion

As is apparent, the Japanese debate on VCP is a complex and multifaceted issue involving various philosophical and legal concerns, including a number of distracting and ultimately unfruitful lines of argument – on both sides of the debate – that have led to something of an impasse. One major aspect of the debate, the question of proving direct harm to specific individuals in order to justify censorship, is clearly problematic; no harm is done to any minor in the making of anime or manga, and there is no clear evidence that VCP leads to crimes against real children. As a justification for censorship, it is clearly inadequate. A further obstacle arises in the ostensible standoff between the Japanese Constitution's unambiguous free-speech and freedom-of-the-press guarantees and the 1907 Criminal Code's prohibition of 'obscene materials,' an area of confusion that has dominated the domestic debate thus far.

Nonetheless, there exists within the twists of this debate a strong case for the banning of VCP in Japan. In fact, there are clear grounds for the strongest pro-censorship position: that manga and anime containing VCP should be banned outright (i.e. not merely to under-18s) on the basis of being obscene. This position is both entirely consistent with existing Japanese legal and social norms regarding the restriction of pornographic and obscene materials, and able to avoid the concerns regarding constitutional free speech by acknowledging these guarantees are not without limits. The Japanese Constitution itself clearly subordinates all the rights it embodies to the interests of the public good – a fact completely unacknowledged in the ongoing public debate. The publication of manga and anime depicting minors in explicit sexual activity serves no public good, has minimal artistic value, and can clearly be determined obscene. There is a strong case for banning all VCP.

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A Study of Defensive Medicine in Japan

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Introduction

In Japan problems related to medical treatment seem to make the news so often these days: medical malpractice, a lack of doctors, a decrease of trainee doctors, and an increase of Monster-patients, etc. Then the problem of medical crisis has been brought to public's attention. After 1999 there have been many cases of shocking medical malpractices and medical accidents reported by the media,¹ and at the same time the number of medical lawsuits began increasing. This resulted in medical practitioners' avoidance of medical procedures with high risk, in order to avoid the risk of lawsuit. This is called Defensive Medicine (DM). A few decades ago DM had already become a serious social problem among American population. Today we are faced with the similar problem in Japan. There are many cases of DM particularly in the emergency medicine, obstetrics and other high-risk specialties. For example, there is a famous case 'Taraimawashi case' (2006) which means that the emergency patient was being sent from one hospital to another. If no hospital accepts the patient, he or she may die at the worst. In fact, such accidents do occur and many cases of DM happen. DM is a new medical problem in Japan, and in recent years the mass media have frequently picked up this problem. Today DM is an urgent and serious issue in Japanese society. However, very few attempts have been made at DM from the view of medical ethics ever. One of the reasons is that DM is a very complicated problem which includes various factors: socialized medicine, the doctor-patient relationship, risk-management, medical malpractice litigation, etc. Therefore, before considering the problem of DM, we need to understand the present situation of medical treatment in Japan and the first process of DM. Now, in this paper, I would like to consider a certain medical case, Ono hospital case, which became a trigger incident of DM in Japan. The purpose of this study is to show and analyze the case, and to discuss why DM in Japan was started. Through this discussion, we can consider the problem of modern medicine in Japan, from the view of medical ethics, especially Informed Consent (IC). The reason for selecting the viewpoint of IC from among various problems is that DM correlates well with IC. Apparently, DM and IC look similar, but they are substantially different, and so by making the difference clear, we can grasp the modern medical problem in Japan.

In the first chapter, we will define DM. The second chapter presents 'Ono Hospital Case,' which is the trigger of DM in Japan. Then chapter 3 analyzes the case and points out some problems and why DM started after the case. Finally, we will reconsider what the doctor-patient relationship should be, from the point of view of IC.

1 Chapter 1-3 discusses this problem.

1. What is Defensive Medicine?

1.1 Definition of Defensive Medicine

At first we try to explain DM. OTA (Office of Technology Assessment), which is frequently quoted in explanations of DM, defines DM as following:

Defensive medicine occurs when doctors order tests, procedures, or visits, or avoid high-risk patients or procedures, primarily (but not necessarily solely) to reduce their exposure to malpractice liability. When physicians do extra tests or procedures primarily to reduce malpractice liability, they are practicing positive defensive medicine. When they avoid certain patients or procedures, they are practicing negative defensive medicine.²

This exposure to malpractice liability means that doctors or hospitals are accused of medical malpractice. Namely, DM is that doctors and hospitals restrict their own medical procedures, being worried about arrests and lawsuits for medical accidents, or that they do unnecessary tests or procedures in case of medical lawsuits. This definition can apply to Japanese DM. Before investigating this definition of Japanese DM, it is necessary to explain the change of the doctor-patient relationship as the background of the problem of DM. In recent years, the doctor-patient relationship has changed from the paternalistic one. Patients are treated as consumers, and consequently this change of the relationship led to emphasis on the patient's right. Medical treatment is a kind of service occupation, and patients are treated as 'Guest.'

Ever since the right of patients has been emphasized, it is easier to accuse doctors and hospitals than it was, as a medical accident happens. Many excessive reports of medical accidents lead patients to doubt that the bad results of operations and procedures are medical malpractices. If a doctor is accused and lose a suit, the doctor will be without employment. On the contrary, even if he wins a suit, he will be suffering from judicial costs, mental burden and the lost of trust. In order to avoid such risk in advance, medical practitioners have been going to do defensive medical treatment voluntarily.

Indeed, the number of medical lawsuits is increasing from the late 1990's (see in Table 1.). In Japan there is no appropriate law of medical malpractice and medical accident at the moment. Medical practitioners were disappointed that bad effects led to arresting them without regard to their efforts. In certain circumstances, medical accidents are judged as a criminal suit, and medical practitioners might be regarded as accused persons. Most of hospitals and doctors have a fear of medical lawsuits every day. They decide to procedure low-risk medical treatments or avoid high-risk patients, which is DM.

2 U.S. Congress, Office of Technology Assessment, *Defensive Medicine and Medical Malpractice*, 1994, OTA-H-602, p.13.

Table1 The transaction situation and average length of examination of medical suit

Year	New Accepted	Already Accepted	Average length of examination (month)
1996	575	500	37.1
1997	597	527	36.3
1998	632	582	35.1
1999	678	569	34.5
2000	795	691	35.6
2001	824	722	32.6
2002	906	869	30.9
2003	1003	1035	27.7
2004	1110	1004	27.3
2005	999	1062	26.9
2006	913	1139	25.1
2007	944	1027	23.6
2008	876	986	24.0
2009	732	952	25.2
2010	794	921	24.4

Source: HP of 'Court in Japan' (http://www.courts.go.jp/saikosai/about/iinkai/izikankei/toukei_01.html)

1.2 Two Kind of Defensive Medicine

Now, following OTA's classification, we can group main examples of DM in Japan into two.

Positive DM: Doctors test patients by MRI, CT and more precise examination, if patients do not have dangerous wound. Let patients and pregnant women visit hospital more times as usual, etc.

Negative DM: Refusal to accept emergency patients. The patient is transferred from one hospital to another. The decrease of obstetric and pediatric wards. High-risk patients and procedures are sent to advanced hospitals, etc.³

By doing positive DM, doctors and hospitals will appeal for the justice of their

³ In recent years, Negative DM was particularly discussed as a serious problem in Japan. For example, 'Taraimawashi case,' (2006) (Refusal to accept emergency patient) is a famous medical accident reported by many media and attracted public attention. After this case, the media reported on the situation of obstetricians and hospitals, and a lot of books concerning about it were published.

medical procedures, when they are arrested for medical accidents. To the contrary, negative DM does not put doctors and hospitals in danger of arrest, medical accident. We can especially find the example of negative DM from the decreasing of obstetrics and ‘Taraimawashi case’. On the other hand, the reason for doing positive DM is the fear to overlook some dangerous illness and be accused of medical malpractice, even if patients have minor wounds and not serious symptoms. It means that doctors do precise tests which are not necessary under ordinary circumstances. Positive DM causes that the medical care is an enormous financial drain for hospitals and communities.

1.3 The Start of Defensive Medicine

Why doctors and hospitals feel such fear? When did they begin to procedure DM? Some people say that DM started in 1999, and other say that DM started in 2004.⁴

Table2 Main medical accidents concerned with DM

Year. Month.	Name of the Case	An Issue of the Medical Procedure
1999.1	Yokohama civic university hospital case	Misidentification of patients
1999.2	Hiro metropolitan hospital case	An Mistake of drip of antiseptic solution
1999.7	Kyorin university hospital case(Waribashi-jiken)	Underdiagnosis
2000.2	Kyoto university hospital case	Wrong infusion of ethanol into artificial respiration equipment
2000.10	Saitama medical center case	Overdosing with anticancer drug
2002.11	Tokyo Jikeikai medical university Aoto hospital case	Laparoscopic surgery
2004.12	Fukushima Ono hospital case	Caesarean operation
2006.8	Nara Taraimawashi case	Refusal of the emergency patient

In 1999 two serious medical malpractices (Hiro metropolitan hospital case and Kyorin university hospital case) happened. A certain case in 2004 happened in which a doctor received a not guilty verdict in court. In this paper, I show the case in 2004 as the start of DM. The reason for selecting the case in 2004 is because it is seen as the trigger of DM in Japan by many doctors. After this case doctors thought that they must avoid high-risk procedures and patients.⁵ The case in 2004 is the famous medical accident that a pregnant woman died from Caesarian operation in Fukushima Ono hospital. Next chapter organizes this case and consider why this case became the start of DM.

⁴ Honda, H. 2008, 160-166.

⁵ Jikumaru, Y. 2009, 107.

2. A Case of Ono Hospital in 2004

2.1 The Present Condition of Obstetrics

I will show the famous case of medical accident, Ono Hospital case, which is shocking to the Japanese medical world. It is regarded as a concrete trigger of DM in Japan by many medical practitioners. We try to explain the content of this case. Before explaining the case, however, it is better to show you the present condition of obstetrics and gynecology in Japan. This is the table of the number of cases concerned with medical accidents from 2007 to 2010.

Table3 The number of the cases of medical accidents (2007-2010)

Department \ Year	2007	2008	2009	2010
Internal Medicine	246	228	229	237
Pediatrics Department	36	22	22	22
Psychiatry	25	30	33	29
Dermatology	11	9	10	17
Surgery	170	180	165	142
Orthopedic Surgery	117	108	105	105
Plastic Surgery	20	18	19	24
Urology	26	18	22	9
Gynecology and Obstetrics	108	99	84	89
Ophthalmology	30	27	23	24
Otolaryngology	14	19	19	16
Dentistry	82	70	71	72
Anesthesiology	7	8	4	6
Others	115	119	116	104

Source: HP of 'Court in Japan' (http://www.courts.go.jp/saikosai/about/iinkai/izikankei/toukei_04.html)

From the Table given above, we can find that the department of obstetrics and gynecology is the fourth largest number of lawsuits. While internal medicine, surgery and orthopedic surgery are related to patients, obstetrics is mainly concerned with childbirth. Viewed in this light, we can point out that obstetrics is liable to be accused. Above all, pregnant women are in good health in many cases, they do not have a feeling of patients. Yet, they or their children will die, when their condition take a sudden turn during Caesarean operation or childbirth. This gap let the patients and their family suspect doctor's mistake in operation. Under this present condition of obstetrics, Ono hospital case happened.

2.2 Ordering of Ono Hospital Case

Now we will try to organize information of the case Ono hospital.

Hospital data

Ono hospital is a middle scale and prefectural hospital in Fukushima.

Doctor data

K doctor was a head doctor in obstetrics, and he was the only obstetrician in Ono Hospital. He had already experienced some cases of a Caesarian operation. He tested his patient carefully, in order to avoid risk of placenta accrete.⁶ He gave the patient Informed Consent (IC) before the operation.

Patient data

A woman was pregnant with the second child. She had a Caesarian operation at second time, because of placenta previa.⁷ She had already the same operation for her first baby at the other hospital. The reason that she selected Ono hospital this time is because the hospital is near to her office. She and her husband accepted IC before the operation.

Operation data

In December 2004 the doctor began to operate, and took up a baby by Caesarian operation. Then he tried to remove the placenta, but he could not do it, because it was placenta accrete which the doctor could not find before the operation at that time. Although he found it and began to remove placenta with his hand, it was very difficult to do it. Then he used a cooper scissors, and completed to remove it. However the hemorrhage did not stop, so he extirpated her uterus. The doctor tried to stop a hemorrhage again, but he could not. In about 5 hours from the start of operation, the woman died of excessive hemorrhage.

After the operation

That report by Medical Accident Investigation Commission of Fukushima⁸ points out three problems; 1) impossible extirpation of placenta accrete, 2) lack of doctors who would assist the procedure, 3) the late of transfusion. The director of the hospital and the prefecture officials apologized, and the news of these events immediately spread.

Police investigation

After one year and two months K doctor was arrested on suspicion of professional negligence resulting in death and prosecuted. (Yet the bereaved did not accuse him.)

6 Placenta accrete is a condition that the placenta attaches itself too deeply into the wall of the uterus.

7 Placenta previa is that placenta is too close to a cervix or covers it.

8 The commission belongs to Fukushima prefecture.

Reaction of the mass media

A lot of media picked up this news and they dealt with K doctor as offender. Some doctors criticized the reports on the Internet, and the news of this accident spread gradually around medical practitioners. This problem has been widely discussed on the Internet.

Reaction of medical practitioners

This news impacted on not only obstetricians but also doctors of all medical specialties. They feared being arrested and got angry about the wrongful arrest. It was surprising that about one hundred medical societies made a protest against this arrest.

Justice

When the research for this case began, it developed that 1) was false; K doctor's procedure was not a mistake, the report did not say the truth. The report was falsified because of compensation for the bereaved family. In 2008 the justice focused on only 1) impossible removing placenta accrete and whether K doctor was guilty or not guilty. The court returned a verdict of not guilty and judged that K doctor's procedure was normal and standard.

The Influence of the case

Medical practitioners: they began to do DM. They started to avoid operating on high-risk patients and to send them to advanced hospitals.

The Bereaved: they were criticized as Monster patient by those who were susceptible to influence of the mass media. And the compensation was not paid to them.

The Mass Media: They were criticized for biased reports. They started to report about today's obstetricians and medical treatment.

3. The Problem and Influence of Ono Hospital Case

3.1 Analysis of Ono Hospital Case

We will analyze the given above case. This case contains various factors: medical, politic, social, law, etc. I show you main problems about the case pointed out by a lot of scholars and doctors.⁹

- 1) No consideration of the other problems (lack of doctors who could assist the procedure and the late transfusion.)
- 2) The report by Medical Accident Investigation Commission is not exactly focused on the procedure itself.

9 Cf. Kojima, H. 2009, 61-165.

- 3) How should we judge the medical accident and medical malpractice? Is it treated as criminal or civil suit?
- 4) Is only K doctor guilty of this case? How about other surgical staff, hospital and system?
- 5) No Compensation for the bereaved family.
- 6) Did K doctor give the patient Informed consent properly? Did the patient understand the risk of the operation and give consent?

These two problems of 1) are serious issues of today's medical treatment. The lack of doctors is especially one of the causes of medical crisis. After this case, lots of hospitals began to reduce the obstetrics wards, where only one obstetrician works. Other wards were also reduced. This is concerned with the reduction of the national budget for medical treatment. It is too complicated to be examined in detail here.

The problem of 2) caused this case and justice. If the doctor and hospital had explained the truth, this case could not have become such big social problem. The Investigation Commission could not function adequately. We need the Investigation Commission as an independent third party.

I try to examine the problem 3). Is there any problem in the progress of arrest and prosecution? Did the police and the prosecution investigate the case in detail? They are unfamiliar with medical issues, so they may be biased against medical cases and practitioners. The media have a similar danger.

4) An operation is teamwork of doctors and nurses. All of the member have a responsibility. Moreover, not only member but also the director and hospital have a responsibility, and they must accept sincerely the fact.¹⁰

5) The compensation for this case is not paid to the bereaved. The hospital's insincere attitude must have hurt the feelings of the bereaved. Moreover, the law of the compensation for medical cases is not enough in Japan¹¹, and so this problem should be solved quickly.

The problem 6) is the most important problem. I will concentrate on the following issue: Informed Consent and the doctor-patient relationship. Of course, K doctor informed the pregnant woman and her husband of the operation before the day of operation. The patient consented to the operation and signed the letter of intent. An interview from the bereaved family shows the content of IC as follows:

- Preparing for 1000ml blood for transfusion.
- Another doctor, who is physician in charge of the first Caesarean operation for her, comes in an emergency.
- If a patient hemorrhaged, a doctor extirpates the uterus.¹²

10 A midwife testified that she had said that it was better to receive the Caesarean operation in another hospital.

11 Lately a law of indemnification for no fault liability for cerebral paralysis infants was enacted. However the law is not enough for all cerebral paralysis infants, and so it is need to improve it even better.

12 Toridamari, T. 2007, 115.

From this IC, we can understand that a Caesarean operation is a very dangerous operation with hemorrhage. Now the question arises: the patient and her husband do not seem to have recognized the danger of that operation. IC needs the doctor's explanation and the patient's consent. Yet, concerning this case, IC seems to be a mere formality, that is to say, the signature on the letter of consent, and the patient seem have understood not exactly the content of IC.

Doctors need to inform patients not only the preparation for operation but the risk of it. A Caesarean operation often results in hemorrhage, and the placenta previa is a rare case and difficult operation. In addition, there is a possibility that the patient, who already had a Caesarean section, become placenta accrete, even if it is low risk. Not to explain the risk exactly can become one of the factors in patient's doubt about medical malpractice. Besides, patients should listen to doctor's explanation about their operation and procedure, and understand the operation and its risk, and then they should consent to the medical procedure for them. Patients need to become aware of the danger of the medical procedure. If patients do not understand doctor's explanation well and believe and rely only on doctor unquestioningly, it will lead to abandon their autonomy by themselves.

In addition to this problem, it is the important problem that no one informed the change of the patient's condition: placenta accrete, hemorrhage, etc. Not only doctors, but also nurses and other staff on duty ought to have explained to the bereaved what was happening and why the operation was extending. According to the bereaved family, they tried to ask nurses something, they disappeared and avoided them.¹³ This patient's experience strengthened the doubt of medical malpractice, and therefore, the bereaved were going to doubt the hospital's explanation about the accident.¹⁴

3.3 The Reaction of Medical Practitioners after This Case

Many doctors say that DM was started after this case; doctors have a fear of being arrested by bad effects, even if they do their best. A doctor says, "This case is the very difficult operation for all obstetricians. Then if the result is bad, a doctor is arrested. I felt that the doctor's job with risk was denied."¹⁵ After that case, the atmosphere in the doctors was changed. They tried to do DM in short-staffed medical environment to avoid the medical treatments with risk, even if it is low risk. The same doctor tells that when doctors knew the case of Ono hospital, they felt that it was risky for them to procedure such patient and operation, that is to say, they lost their motivation.¹⁶

13 Cf. Jikumaru, Y. 2009, 108-109.

14 From what has been discussed above, we can conclude that the patient's and her family's reliance in her doctor was not built well, though it looked like good trust before the operation. One of the causes is that the risk and danger were not well informed to the patient and her family by IC.

15 Jikumaru, Y. 2009, 107.

16 *Ibid.* 107.

Obstetricians began to avoid even a little difficult case, and other doctors also do. Minami (2008) points out that some doctors escaped from the hospitals, the other doctors are a kind of syndrome, and they fear being arrested; 1) They do not want to take responsibility, and test patients by MRI, CT and more precise examinations, if patients are severely diseased and injured. 2) They avoid high-risk treatments and tests. 3) They are willing to report the death of patients to the police, even if the death does not result from negligence.¹⁷ In this way, DM has started in Japan. At first glance, the unnecessary tests are not bad practice for patients. Yet, the high cost of exact tests is a burden on hospitals, because of the reduction of healthcare cost by government. Besides, as unnecessary tests and procedures need staffs, the doctor's examination of next patient will get delayed and patients, who urgently need medical procedures, cannot speedy receive appropriate medical treatments. Therefore, we can say that the advance to DM is the very dangerous condition for us.

4. Conclusion

This paper dealt with the medical case that is seen as the concrete trigger of DM and analyzed the problems from this case and considered why DM began in Japan. As a result, we can find that there are various problems, and I particularly focused on IC and consider the doctor-patient relationship. This consideration makes it clear that IC does not function well in the field of Japanese medical treatment, and that an ideal doctor-patient relationship is not built well today. Moreover, we could represent that the modern Japanese medical problem which medical treatments and hospitals tend to advance to DM. Though this paper recommends the explanation of risk of the operation and medical procedure to doctors, it does not mean the excessive emphasis on the danger. If it goes excessively, it will cause a kind of DM in order to avoid medical malpractice. Although DM, which doctors emphasize risk for a medical treatment, and IC apparently look quite similar, they are different substantially. What is called for here is an explanation by which patients can understand necessary information. Patients understand adequately the explanation, and then they need to consent to or refuse the doctors by their own will. If a contingency situation happens, medical practitioners are sought for their sincere attitude in which they tell the fact as it is. Patients and the bereaved family should not believe doctors one-sidedly, and they should build the reliable relationship to doctors through talking and confirmations.

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Revision of Organ Transplantation Law in Japan: Brain Death, Presumed Consent, and Donation of Children's Organs

Keiko YASUOKA

1. Introduction

Most countries have been faced with organ shortage problems (Murray 1987), but my research has shown that the present situation of organ shortages in Japan is the most severe globally (Yasuoka 2002). As a result, most Japanese recipients have to depend on living or overseas donors (Yasuoka 2010). In Japan, most living donors come from inner family circles, because of the prohibition on donating organs to others, even between close friends and life partners or unmarried couples who have lived together for a long time; the law allows organ donation between newly-married couples, but not between unmarried couples of many years, although there is no evidence that married couples are good organ matches. However, living donors can donate only specific organs such as kidneys (Starzl 1992), and therefore it is impossible for heart recipients to survive in Japan under these circumstances. As a result, most heart transplant patients have to go abroad for treatment, often depending on charitable financial support from people passing in the street to obtain the money for overseas organ transplantation using foreigners' organs. Who pays for Japanese recipients to have a chance of survival with foreign organ donations in the USA, Australia, and South Asian countries? Japanese people kindly donate money but rarely donate their own organs, even after death. The Japanese say that money is just a material, while organs are not, but when an American donor donates his/her organs to a Japanese recipient, an American recipient loses their own chance of survival. Where is the ideology of organ donation; the 'Gift of life', based on altruism? Do organ donations among the blood family circle really reflect the ideology of a 'Gift of life'? Or is organ donation simply one ways to keep a family member's body alive longer (Yasuoka 2004)? Organ transplantation is one of the miraculous inventions of the 20th century, but it has produced many ethical problems (Sharp 2006).

2. Background

We are facing a worldwide severe organ shortage and every country is struggling to resolve this situation but no one has yet found the solution (Simmons R.G., Klein M.S. and Simmons R.L. 2002). In parallel, various ethical and legal problems have been occurring in the organ transplantation arena all over the world, including issues such as medical tourism and medical refugees. Reacting to this situation, WHO called for national organ self-sufficiency in 2009 (World Health Organization website 2011). This meant that Japan faced serious problems, because WHO's

policy required a reduction in numbers of living donors and a prohibition on overseas transplants, while most Japanese organ recipients have depended on just such donations for years. WHO's policy stimulated Japanese recipients and the Japanese Diet decided to revise the Japanese organ transplantation law as a matter of urgency in July 2009. In fact, they had planned to revise the law in 2000, three years after the original law was established, but the Ministry of Health, Labour and Welfare postponed the revision of the original organ transplantation law year after year. No-one imagined such a quick reaction from the Japanese Diet in 2009, but the decision, made in haste, has produced many serious problems. The revision of the organ transplantation law was implemented on 17 July, 2010. Various concerned parties could not keep abreast of such an extensive and quick change in the law and many serious misunderstandings have been being caused as a result. Because of this historical background, some Japanese people saw the revised organ transplantation law as an interesting topic, while others considered it an unimportant issue. Based on this situation, I would like to present some arguments about the revised Japanese organ transplantation law of 2010.

3. Organ Donations 2008

2008 data from the Medical Information Network Society website 'Transplant Communication' page (2011) shows the infrequency of Japanese organ donations. It also shows the severe organ shortage conditions in the USA, EU and Japan, compared through the numbers of donations of kidneys and hearts. Heart donation numbers were 2, 190 (USA), 581 (EU), and 11 (Japan), and kidney donation numbers were 16, 519 (USA), 4, 610 (EU), and 210 (Japan) in 2008. Looking at the numbers, American organ donation numbers are the highest compared with other countries. But even American people face a severe organ shortage and many recipients have to wait for organs for a long time, or have to give up hope of receiving organs, which means that they have no chance of survival. The donation numbers in the EU do not meet demand from European patients, but match average donation numbers throughout the world. This means that, although the situation is not as severe as in some countries, the EU is still facing a serious organ shortage. In Japan the number of organ donations is ridiculously

low compared with the USA and EU, and all of kinds of organs are in very short supply. Focusing on the individual organs, kidney donations can come from various donors, including brain-dead donors, heart-dead donors and living donors, since we have two kidneys. As a result, global kidney donation numbers are reasonably high and it is quite a popular organ to donate as techniques to make the operation less invasive are improving. However, Japanese kidney donation numbers are very low – only 1.3% of American and just 4.6% of EU kidney donation numbers. The heart, on the other hand, is a very difficult organ to donate because recipients require beating hearts, so donations can only come from brain-dead donors. The number of heart donations in Japan is minuscule, with only 11 heart donations in 2008 (which was still a larger number than in earlier years). There is almost no hope for survival for

heart transplant patients in Japan; however, the proportional donation rate of hearts is greater than that of kidneys: Japanese heart donation numbers are 5% of American and 18.9% of EU donation numbers. Nevertheless, heart donation numbers are also very low in other countries because heart donation requires brain-dead donors, and therefore patients requiring heart transplants from overseas can be unwelcome, as they diminish the already low supply.

4. History

To understand the reason for the Japanese problem of infrequent organ donation, we must consider the unique history of organ transplantation in Japan since 1968. I would like to outline that history in this section, to show the two kinds of mistrust toward organ transplantation issues among Japanese people and in Japanese society in general.

Medical anthropologist Dr Margaret Lock pointed out this problem of mistrust in *Twice Dead: Organ Transplants and the Reinvention of Death* (Lock 2002), and she outlined it to me in her office at McGill University in Montreal in 2002. Since then, I have tried to expand on her views through my own research and I have found that Japanese people have two kinds of mistrust: one is a mistrust of transplant surgeons as a result of the Wada case of 1968, and the other is a mistrust of organ transplantation treatment itself. I had the opportunity to learn about the Wada case in detail from Dr Yukihiro Nose, a Japanese artificial organ inventor working in Houston in the USA and involved in ‘PROJECT BIONICS, Artificial Organs from Discovery to Clinical Use, An ASAIO History Project at The Smithsonian’ (PROJECT BIONICS website 2011).

Japanese Organ Transplantation History

- 1968 : First heart transplant in Japan
 - 1997 : Organ transplantation law established
 - 1999 : First organ donation from brain-dead donor under the new law
 - 2000 : Revision of the transplantation law planned – postponed
 - 2008 : ‘Declaration of Istanbul’ created – begins calls for organ self-sufficiency
 - 2009 : New organ transplantation law passed by the Diet
 - 2010 : January 17 – ‘Family-first organ donor rule’ implemented
 - 2010 : July 17 – revision of organ transplantation law implemented
- (data from Medical Information Network Society website 2011)

The first heart transplant operation was performed in Japan by Dr Wada in 1968 in Sapporo, just one year after the world’s first heart transplant by Dr Barnard in 1967 in South Africa (Murray 2001). However, this first great achievement in Japanese medical history turned into a murder case, known as the Wada case, because the drowned donor was still alive and the recipient didn’t need a heart transplant: Dr Wada performed the operation because he wanted to do the first heart transplant in Japan, not because of medical need. As a result, the story of Japanese

organ transplantation was interrupted for 29 years until the first organ transplantation law was established in 1997, and actual operations only restarted after 31 years in 1999. When the original organ transplantation law was implemented, there was a plan to revise it three years later, in 2000. However, this revision was postponed year after year and the topic was not discussed further. Since then, the worldwide organ shortage has become more and more severe, and many related problems are occurring all over the world, such as organ tourism, organ tracking, and organ commercialism. In 2008, The Transplantation Society created the ‘Declaration of Istanbul’ (The Transplantation Society website 2011), which stimulated WHO to call for organ self-sufficiency in 2009. Accepting WHO’s policy, the plan to revise the organ transplantation law was passed by the Japanese Diet on 20 July, 2009. One part of the new law – the ‘Family-first organ donor rule’ – came into force on 17 January, 2010, and on 17 July, 2010, the total revision of the organ transplantation law was implemented.

5. Revision of Organ Transplantation Law

I will set out and explain the details of the revised organ transplantation law in this section. There are three areas of note in the revised version: 1. Brain death, 2. Children’s organ donation, 3. Presumed consent.

- 1) Brain death: until 16 July, 2010, the criterion for human death among Japanese was heart death, but from 17 July, 2010, brain death is the new accepted criterion. As a result, heart donation numbers from brain-dead donors should increase for heart recipient candidates and Japanese patients should no longer have to depend on overseas transplantation.
- 2) Children’s organ donation: the organs of children under 15 years old can be donated under the revised law (the original law prohibited organ donations from children under that age). Japanese babies and children can now be organ donors, which means that they can receive Japanese organs within Japan under the revised law and should not have to go abroad to seek organ donations.
- 3) Presumed consent: only the family’s consent is now required for organ donation, as the donor’s consent is presumed. One of the reasons that Japan had such a severe organ shortage problem was because the Japanese organ transplantation law had been among the strictest in the world: the original law required both the donor’s signed donor card and the family’s consent. This meant that even donor card holders could not donate their organs if their families refused to allow it, and families willing to agree to organ donations could not enable those donations without the donor’s written consent. Under the revised law, the requirement is only that the family gives its consent, unless the donor has specifically expressed opposition to organ donation which should lead to far larger numbers of donations.

6. Results #1: No Change

About six months have passed since the revision of the organ transplantation law was implemented in Japan. As outlined above there are three main points of revision from the original law. The results show interesting phenomena: two of the points have resulted in no change at all in donation.

- 1) Brain death: many people misunderstand that the criterion for human death in Japan is brain death under the new law – the assumption is still that it is heart death, as before. This is not helped by the fact that death is very much a taboo subject in Japan, and therefore rarely discussed in any context. In addition, because it is only under very specific conditions that brain death can even now be considered to be human death (such as when there is a donor's signature on a donor card, driver's licence or health insurance card) the legal interpretation of human death is much the same as under the original law and therefore the change has not been reflected in donation numbers at all.
- 2) Children's organ donation: the abolition of the age limitation was a significant change in this revised law, because organ donation became allowable from children under 15 years old for the first time. Transplant surgeons, recipients and recipients' families expected an increase in organ donations from babies and children under 15 following the change in the law, but not one organ donation from anyone under 15 has been forthcoming. Since 16 October, 1997, under both legal prohibition and legal permission, the organ donation numbers from babies and children has remained at zero. Therefore Japanese babies and children still have to depend on charitable funds to enable them to afford overseas organ transplants, just as before the revised law. The system of give and take doesn't seem to work among Japanese concerned parties; it seems that the idea of organ donations from babies and children causes too many fundamental problems for human nature, which legal revisions are unable to change.

7. Results #2: Change

On the other hand, one of the three revised points has led to much greater changes in results that had been expected that of presumed consent by donor families in Japan. Concerned parties to organ transplantation cared greatly about whether the number of organ donations would increase or decrease after the revision of the organ transplantation law. Many recipients expected organ donation numbers to increase but most specialists imagined the opposite, thinking that there would be little or no increase in organ donation numbers even though the law had been revised so easily. But the result was a big change, which has been increasing rapidly, explained in

more detail below.

- 1) Presumed consent: under the revised organ transplantation law, donations are allowable with solely the consent of the family. This means that Japanese donors can donate their organs without a donor card, provided their family allows it, unless they have created a ‘refusal will’ to express their opposition to organ donation. The original law required both a signed donor card and the consent of the family and was the strictest transplantation law in the world from 16 October, 1999 to 16 July, 2010, making it one of the reasons behind the severe organ shortage in Japan. However, one ethical concern arises from this: should a family be able to decide to donate their family member’s organs without a signed donor card?
- 2) Organ donation numbers: the data shows the big increase in organ donations since the revision of the organ transplantation law. There were only 86 cases of organ donations from brain-dead donors between 16 October, 1997 and 16 July, 2010 – an average of about six donations per year. Between 27 July, 2010 and 14 January, 2011 there have been 31 cases of organ donation from brain-dead donors, giving a projected average estimate of 62 donors a year – a ten-fold increase.

8. Family-First Rule?

Six months before the whole organ transplantation law was revised, the ‘Family-first organ donor rule’ came into force on 17 January, 2010. This is an unusual rule, and unique to Japanese law. Interestingly, most Western people’s assessments of this rule consider it ‘unfair’ but people in far Eastern countries such as China, South Korea and Japan assess it as ‘natural’. It does seem natural that everyone would want to save a patient from their blood family circle as a priority; however, the basic idea of organ transplantation is the ‘Gift of life’, based on altruism (Price 2000). To introduce this unique rule, we must firstly bear in mind that it is not applicable for everyone – the donor candidate must meet the three qualifications below.

- 1) Donor candidates have to be over 15 years old and they must have their own signed donor card to donate to specific named family members. Anyone of 14 and under is prohibited from donating their organs under this rule, even though the main organ transplantation law now allows it, so, for example, a 14-year-old child could not save her sister under the ‘Family-first’ rule.
- 2) ‘Family’ includes only spouses (husbands and wives), children (sons and daughters), and parents (fathers and mothers) who must be named as the organ recipients. However, there are many families that are more complicated, such as common-law married couples, and families of step-brothers, -sisters, -fathers and -mothers. This rule doesn’t take any of these people into account, and the relationship between the donor candidate and his/her recipients can be very sensitive.

- 3) The donor candidates have to match specific medical conditions required by each recipient.

9. Who Can Donate?

The ‘Family-first organ donor rule’ is a little complicated and there are four conditions to being a donor for a named recipient. This section explains these conditions with practical case examples.

- 1) When a family recipient cannot accept the organ for medical reasons, the organ will be donated instead to a non-family recipient.
Example: a mother tries to donate her kidney to her daughter, but her kidney and her daughter’s body have a mismatching problem. As a result, she cannot donate her kidney to her only child and she has to donate to an unknown recipient candidate on a waiting list. So her donation goes first to her daughter and second to someone outside her family who needs a kidney transplant
- 2) When a family member is named on a donor card, all family members can receive the donor’s organs.
Example: a mother tries to donate her kidney to her daughter, but her kidney and her daughter’s body have a mismatching problem. As a result, she cannot donate her kidney to her daughter, but she will be able to donate her kidney to her son if he needs it. So her donation goes first to her daughter and second to her son
- 3) When a potential donor refuses organ donation *except* to the named family member, their donation will be inadmissible to all.
Example: a mother tries to donate her kidney to her daughter, but her kidney and her daughter’s body have a mismatching problem. As a result, she cannot donate her kidney to her daughter, and if she thereafter refuses to donate her kidney to an unknown recipient candidate on a waiting list, she loses any opportunity to become an organ donor. Therefore, she can’t donate her organs not only to unknown recipients but also to family members who may need them in the future
- 4) Suicides can’t donate their organs.
Example: a mother decides to kill herself to try to donate her kidney to her daughter as soon as possible. She loses any opportunity to become an organ donor.

10. The Latest Japanese Donor Card

The latest Japanese donor card was reissued in English and Japanese when the organ transplantation law was revised. It lists three options: organ donation after brain death, organ donation after heart death and refusal to donate organs, with space to

sign and date the card. Donor cards holders can fill in the name of a recipient within their family on the Japanese card; however, there is no such space to insert a name on the English version of the donor card. Most Japanese people don't speak English so it is unclear who would carry the English donor card; are foreigners likely to hold Japanese donor cards? Recently Japanese people have been given many more chances to show their willingness to donate organs, for example via health insurance cards or driver's licences. It seems that the increase in organ donation numbers stems from this increased opportunity to learn, think and show willingness to donate, and yet most Japanese people are still indifferent to organ transplantation issues. However, as my narrative data from concerned parties (transplant surgeons, recipients, and donor families) shows, donor cards are a key element in helping a donor family's grieving processes; donor families that know the donation wishes of their family member experience a shorter and lighter grieving period while donor families that don't have this knowledge experience a longer and deeper grieving process.

The donor card is just a small piece of card, but it is very informative and includes many thoughts of donors as well as providing various interpretations for donor families. This is a changing time for donor cards in Japan, and I hope that it becomes an opportunity for each Japanese person to think about issues of life and to discuss them with their family members (Scheper-Hughes 1999).

11. Transplant Surgeons' Narratives

I would like to introduce narratives from some concerned parties as data to support these findings – first of all, from transplant surgeons. One kidney transplant surgeon working in Southern Japan said:

‘Donation numbers won't increase much, even after the law is revised, I think that change will not happen quickly – since the first organ transplantation law was implemented in 1997, how much has the Japanese organ transplantation situation changed? How many problems have been solved? How many recipients could we have saved with organ transplants in Japan? Of course, we saved some recipients from brain-dead donors, but the numbers are so low, and how many recipient candidates passed away while waiting for an organ donation? ... However, the Japanese have slowly been moving towards consensus year after year, so I hope that things will go well eventually, but it takes a long time, as usual, so it will be “No Change” for a while, but there has been gradual and slow change to reach social consensus, which should continue...’

Another transplant surgeon, who worked in the USA before working in Japan for many years, had a lot of experience of heart transplant operations from brain-dead donors and he said:

‘The “Family-first organ donor rule” is not fair for recipients who have no family, especially heart recipients who can only depend on brain-dead donors. Every recipient should have the same opportunity for organ transplant treatment because organ transplantation depends on the altruism of others. We have to respect a donor’s altruism as a greater good, not just for their family circle. I understand that everyone wants to save a family member’s life, but organ donation is a different issue. Once we make an exceptional rule, where does it end? That’s why organ donation, organ transplantation, and organ reception must be based on fairness and should be fair and clear for everyone. We have to strive all the time to find the best thing for recipients ...’

12. Recipients’ Narratives

Secondly, I would like to introduce some narratives from Japanese organ recipients. One recipient who received a kidney from his sister told me:

‘When the new law starts, we can expect more and more organs to be donated, so we can receive organs much more easily and can have a much greater chance to survive ... I expect after the revised law starts to see 100 more organ donations this year and 200 more organ donations in the near future. I hope that this revised law will be the start of an increase in donation numbers and I hope that organ donations will be able to cover all the recipients who need organ transplants in Japan. We recipients will not be able to wait on a long waiting list for organs, especially if no more overseas transplants are allowed and organ self-sufficiency is essential. We kidney recipients should not have to depend on dialysis so when we suffer kidney failure, we can receive an organ and go straight to organ transplantation, skipping dialysis ...’

Another recipient was given a kidney from her father after more than 10 years’ dialysis; her father’s kidney worked in her body for 7 years, but then she had a chronic rejection of the kidney and it had to be removed, since when she has been back on dialysis. She told me:

‘I think that we recipients should not ask for more organs ourselves, although I really appreciate my father, the medical staff and other people who supported me. And I have no regrets about receiving the kidney donation from my father. But he offered me his organ: I never begged him. My doctor recommended a kidney transplant from others or my father [her mother was mismatching], I refused it once to my doctor and my mom, but they recommended that I receive the organ donation. Of course, I needed some advice. And organ transplantation is a wonderful treatment and I can recommend it for other patients but ... because it means that we are

waiting for someone's death or sacrifice, it leaves us with such complex feelings ...'

These two recipients' thoughts are very ambivalent but I learned from them that we can't stereotype all organ recipients. Every recipient has a different background and process for organ reception, so we have to pay attention to the differences between them, reflected in their own various concepts of life and death. It seems that there might be as many concepts of life and death as there are organ recipients.

13. Donor Families' Narratives

Thirdly, I would like to introduce two narratives from Japanese donor families. One donor family donated their daughter's kidney, and the donor's father told me:

'When presumed consent is allowed, I wonder whether the pressure on donor families will be stronger. I guess that many patients in the ER may feel pressure about organ donation, and maybe medical staff expect or feel it is their duty to request organ donations from patients' families. If ER staff do care about organ donation too much, or if they think about organ donation more than regular treatment for ER patients and us, families who have donated a family member's organs will have uneasy feelings after donation ... First save the patients (potential donors), second deal with the patients' deaths after ER treatment, then finally think about organ donation; please do not change the order ... it is a very sensitive problem for us ... we are afraid that we may not get enough treatment at a hospital in order that staff can harvest organs ...'

Another donor mother donated her son's organs after a car accident. She criticised both overseas transplants and the infrequency of organ donations in Japan. She mentioned the donor family's uneasy feelings about current organ donation problems in Japan:

'There is no mental health care provision for donor families in Japan yet like there is in Australia ... Under the revision of the organ transplantation law, the number of donors could increase dramatically ... the more organ donations are made under the new law, the higher the number of donor families will rise in Japan. Why should a donor family do without mental health care like other countries? If the medical support system is not enough now for donor families and yet numbers of donors and their families will increase, what we should do? And who will help us? The Japanese Ministry of Health, Labour and Welfare cares about donation numbers, but they don't consider the donor family after they take the organs. While we have uneasy feelings after organ donation, donation

numbers will never increase!’

14. Anxious Conclusion

The revision of the organ transplantation law stimulates our discussion of the concepts of life and death, but reveals some fundamental problems through the revising process. The main reason why the original law was revised is obvious; not just to re-think the organ transplantation law itself, but also reacting to the calls for organ self-sufficiency by WHO. In other words, it was necessary for Japan to react to WHO’s policy and remake the law to increase organ donation numbers in Japan. I would like to point out three ethical problems revealed by the process (Caplan and Coelho1999) as an anxious conclusion:

1. Is increasing organ donation numbers really ethical?

This is the most difficult and fundamental point and we have to remember to think about organ transplantation as an emerging medical treatment (Fox and Swazey 1992), because organ transplantation issues have produced many ethical problems to which we can’t find clear answers or solutions yet. Is depending on another’s organ ethical? Is it right to save one life from one death, rather than losing two lives?

2. Is it ethical that people donate their organs only among their family circle?

According to the basic principle of organ transplantation, it is the ‘Gift of life’, with which someone saves a patient with his/her organ donation after his/her death. Only saving someone in the family circle strongly opposes the altruistic idea of organ transplantation. However, it is assuredly an effective rule to increase organ donation numbers in Far East countries such as China, South Korea and Japan.

3. Is organ self-sufficiency possible globally?

This is a tricky issue. However much WHO calls for organ self-sufficiency, it is an impossible goal, because of the imbalance between the numbers of organ donations required and those supplied. It is an incontrovertible fact that however much organ donation numbers increase, it will be impossible to make up for the global organ shortage.

15. The Future

The ‘Family-first’ part of the revised organ transplantation law that came into force in Japan in 2010 means that married and blood family members can receive priority over others for organ donations. Some specialists criticize this new rule because it goes against the fundamental philosophy of organ donation as a ‘Gift of life’. The aim of the revised organ transplantation law, as a response to the ‘Declaration of Istanbul’, is accomplishment of organ self-sufficiency and overcoming the national organ shortage. Japanese people have to overcome two problems – dependency

on both living donors and overseas transplants. Neither is easy to resolve because Japan is facing the severest organ shortage in the world. My conclusion is a very pessimistic and anxious one about both living donors and overseas donors. First the living donors issues: Japanese patients are now dependent on living donors inside their family circle, and this will just be encouraged under the ‘Family-first organ donor rule’. In addition, under the new law it will be possible to expand to ECD (Expanded Criteria Donor) kidney transplants or NHBD (Non Heart Beating Donor) heart transplants in Japan. This means that the situation moves from living donors to all domestic donors but this does not provide a fundamental solution. Secondly, the overseas donors issue: most heart recipients now depend on overseas transplants, but when recipients stop being able to depend on overseas donors they will just shift from overseas transplants to domestic donors under the ‘Family-first organ donor rule’, moving their dependency to the interfamilial relationship donors allowed by the new rule. This means that Japanese recipients will just transform the dependent relationships from foreigners to domestic relatives.

This is a time of change in organ transplantation issues for Japan and the Japanese: a time of change that may bring better results, but also carries the risk of bringing worse outcomes. Just six months have passed since the revision of the organ transplantation law was implemented, and already the number of organ transplants in Japan has dramatically increased. However, only the number of organ donations under the new presumed consent rule has increased ten-fold, while the donation figure from babies and children under 15 years old still stands at zero, and the number of organ donations from heart-dead status: that is, organ donations from individual ‘donation wills’ is decreasing. We must be careful not just to glance at the statistics – we have to understand the problems correctly and deeply to draw a conclusion. Over the next couple of years, I plan to watch these issues carefully, and I firmly hope to see a way to build a better situation, which I will report on again in November 2011.

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Parental Involvement and Children's Perception of Competence: From Gender Perspectives

Takayo SASAKI

1. Introduction

In the last two decades, the number of Japanese women in the labor force has nearly doubled (White Paper on the Labour Economy, Ministry of Health, Labour and Welfare 2007). Consequently, the recent demand for fathers' involvement with the children is attributed to mothers' increased participation in labor force. Employed mothers have the added stressful demands of hard work involving housework and child rearing, Makino (1982) revealed that "isolated" mothers with young children had the burdens of child care and subsequently higher maternal anxiety and stress. These mothers tend to have negative feelings involving child rearing. However, communication with their husbands and a shared responsibility for the children were found to be important factors in diminishing their anxiety. Paternal participation in child' care activities directly impacted the mothers' negative emotional levels towards child rearing (Makino 1982: Kashiwagi & Wakamatsu 1994). Therefore, Japanese fathers' involvement with children has been highly advocated by many scholars (e.g., Ishii-Kuntz 2004, 2007: Makino, Nakano & Kashiwagi 1996) and recently the Japanese government has made a nation-wide media campaign to promote fathers' involvement in child care (1996).

According to this recommendation of paternal involvement with children, many studies revealed fathers' involvement and child care activities influenced their children. A number of studies focusing on fathers' involvement with children found that fathers' involvement promoted children's sociability, self-esteem, emotional development, global self-worth, affection and evaluation toward fathers (e.g., Ishii-Kuntz et al. 2004: Ishii-Kuntz 2007: Sasaki 2009a, 2009b, 2010). Moreover, fathers' involvement with children advanced the fathers' perceptions of their paternal role and their development, and made fathers' lives more fulfilling and worthwhile (Ishii-Kuntz 1999: Matsuda 2006: Sasaki 2009a, 2010).

However, fathers' long work hours are increasingly yearly and approximately 25% of Japanese men in their thirties and forties work more than sixty hours per week (White Paper on the Labour Economy, Ministry of Health, Labour and Welfare 2007). According to the 2007 White Paper on the National Lifestyle by Cabinet Office, fathers' time spent with children is on a declining trend. Although the government has recommended companies to provide opportunity for fathers taking child-care leave, it is evident that this is difficult for men and does not improve the work environment of companies (Ishii-Kuntz 2007).

In Japanese deeply seeded gender ideology, the meaning of fatherhood has been centered on the men's economic role and the meaning of motherhood has been centered on household work and child care (Ishii-Kuntz 2009). Doherty (1997)

has suggested that gender norms may be more important than family structure in affecting fathers' behavior. In Japanese school textbooks, there are different examples concerning the paternal role written according to the diverse level of traditional gender ideology (Okada 2006), hence, it is speculated that it is difficult for children to form ideas of equal gender ideology. From the gender perspective of parental involvement, it is necessary for increased paternal involvement therefore that the government recommends fathers' taking child-care leave and institutional reform of companies. Dollahite & Hawkins have argued for the need of work to improve cultural and institutional support for good fathering. Nevertheless, at the individual level, it is important for men to gain understanding of the parental role toward children by men's participation in work shops and school's education.

In addition, it is also pointed that there is a level of scarcity in the children's establishment of a sense of self (Komiya 1994). Research shows that warm parental involvement promotes children's self-esteem and competence, however, excessive parental control constricts children's establishment of a sense of self (Mutoh 1991; Morishita 2001). This suggests that paternal appropriate involvement is needed for children's healthy development. Therefore, we have to research the influence on children by paternal involvement style. However, there are also few studies conducted about how fathers' and mothers' excessive control influences their children. Ishii-Kuntz (2009) suggested that future research of parental involvement with children was needed to measure parental activities varied depending on children's ages.

In Japan, various types of extracurricular activities have become popular among children, and, in particular, swimming schools are the most popular (Benesse 2006; Reports on Children's Extracurricular Activities, Ministry of Education, Culture, Sports, Science and Technology-Japan 2008). In Japanese swimming school, parents are able to see their child's swimming style and perceive their child's advancement to next grade. Many involved parents are likely to increase involvement in children's extracurricular activities. Therefore, in swimming schools, this research on the relationship between parents and children is adapted from the parental supportive perspective (Sasaki 2009b).

The objectives of this study are twofold: to examine how several factors influence both paternal and maternal involvement with children, and how parental excessive control and supportive involvement through children's swimming lessons influence children's perception of competence.

2. Theoretical Model

2.1 Generativity Theory

According to generativity theory, parental supportive involvement is important for children in terms of developing the next generation. Involved fathers provide resources and opportunities for their children (Hawkins & Dollahite 1997). Generative parents provide important support for their children's development and fathers as well as mothers develop important competencies for child care (Snarey

1997). To create and maintain a developing ethical relationship between fathers and children, generative fathering meets the needs of children by working (Dollahite et al. 1997). It is important to study from these supportive perspectives for children in regards to parental involvement.

2.2 Identity Theory

According to identity theory derived from symbolic interactionism, identities are internalized sets of role expectations with the person having as many identities as roles played in distinct sets of social relationships (Stryker 1987), and that self is a structure of identities organized in hierarchical fashion (Stryker & Serpe 1994). Stryker & Burke (2000) underscore that the relationship of social structures to identities influences the process of self-verification, while the process of self-verification creates and sustains social structures. A major premise of identity theory is that there is a strong direct relationship between an individual's identity hierarchy and behavior, and that identity theory generally has focused on role identities.

Identity theory has been used to explore fathers' involvement with their children (Rane & McBride 2000). Focusing on the centrality construct in assessing fathers' identity hierarchies, Rane & McBride (2000) found that fathers who considered the nurturing role highly central to their sense of self involvement had significantly more interaction and responsible behaviors with their children. Furthermore, the fathers' evaluations about their paternal role affect their performance in that role, even after taking into account the influence of sociodemographic factors (Fox & Bruce 2001). Identity theory explains men's involvement in terms of the significance they attribute to the parental role, and theoretical approaches with identity theory are effective in accounting for men's commitment behaviors (Fox & Bruce 2001). Fathers who attach great importance to their paternal role are likely to be involved with their children (Ishii-Kuntz 2009). Precise behaviors and attitudes of mothers are positively related to their spouses' assessments of the centrality of the nurturing role (Rane & McBride 2000). Accordingly, in this study, I study paternal involvement with their children from fathers' and mothers' perception of their parental role as their parental identity.

2.3 Time Availability

Ishii-Kuntz et al. (2004) revealed that the time availability perspective was particularly an important factor for father's involvement in child care in Japan. Other Japanese studies have also reported that fathers' and mother's child rearing activities were significantly reduced by parents' long work hours (Nagai 2001; Matsuda 2006). Long work time makes it very difficult for fathers to be positively involved in child care activities. When mothers are employed they tend to spend fewer hours at home than others mothers who are not employed, and it becomes harder to have involvement in caring for children (Ishii-Kuntz et al. 2004). In addition, Sasaki (2009b) revealed that fathers' long work hours reduced their supportive perception of their children's extracurricular activities. Therefore, the perspective of the time availability is necessary to examine parents' supportive involvement toward their children.

2.4 Marital Quality

Fincham (1998) argued that it was important to study the impact of the relationship between fathers and mothers toward children's development. Previous studies concerning marital quality in Japan have shown that marital quality is an important contributor to paternal involvement (Makino 1996) and for a positive relationship between a father and a child (Nagai 2004). Parental cooperation encourages children's sociability (Ogata & Miyashita 1999), and paternal involvement with children's extracurricular activities (Sasaki 2009a).

Furthermore, the higher marital quality is associated with warmer parental involvements with children, and mothers' perception of higher marital quality promotes children's feelings of affection toward their fathers (Sasaki 2009b). In addition, marital quality is negatively correlated with children's depression (Sugawara et al. 2002). Thus, higher marital quality promotes more paternal and maternal involvement and positive relationships among families. In this study, it is important to examine how marital quality influences parental involvement with children.

2.5 Conceptual Model

As shown in Figure 1, the theoretical model in this study incorporates the relationship between children's perception of competence and parental involvement along with other demographic variables, marital quality, and the paternal role. The basic premise of this model is that children who are involved and receive parental support are more likely to have higher competence, although, children who are excessively involved are more likely to have low competence. The model also assumes that parents' higher perception of marital quality and parental role promotes their supportive involvement toward their children. I predict that parents' marital

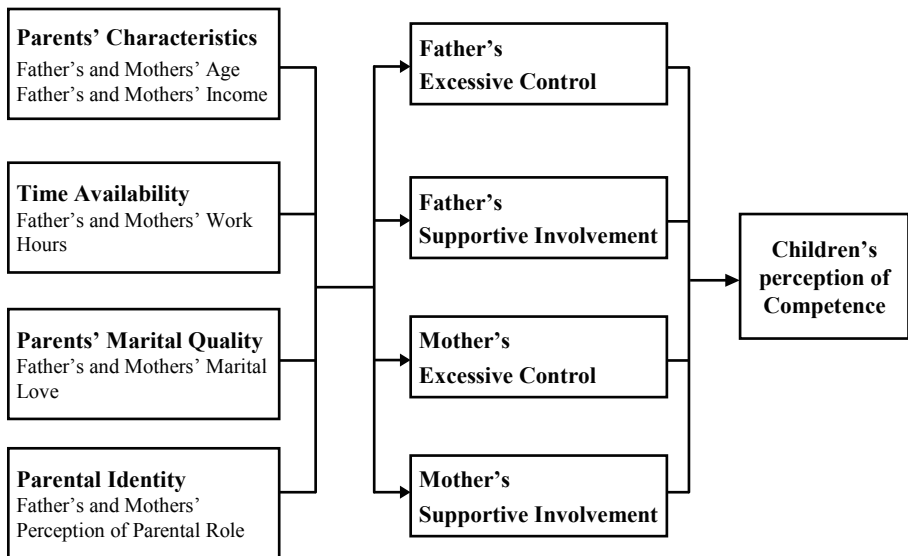


Fig.1 Conceptual Model

quality lowers their excessive control toward their children.

It is, therefore, hypothesized that parents' supportive involvement toward children is positively associated with children's perception of competence. It is also predicted that parents' excessive control reduces children's perception of competence. I assume that parents' marital quality increases their supportive involvement. In addition, I predict that parents' income promotes their supportive involvement because of financial capability to be involved with their children. Finally, I used several control variables including the father's and mother's age and work hours by time availability.

3. Methods

3.1 Sample

The data used in this study came from 743 families with school-aged children whose children are enrolled in swimming lessons in the four prefectures, Kanagawa, Saitama, Aichi and Shiga. The father-mother-child matching questionnaires that I created were distributed to 2448 families through children by coaches of eleven swimming schools in four prefectures in 2006. The response rate was 30.4%. In order to protect individual privacy, the three questionnaires of fathers, mothers and children were put into separate envelopes and were collected through the children by their coaches.

The final sample used for this study consisted of fathers, mothers, and children of 362 families (N=1086) to examine the father-mother-child relationships. The response rate of 362 matching data overall was 14.8%. Although this rate was low, I used this data mainly because father-mother-child matching data of 362 families with school-aged children is rare data in Japan.

3.2 Sample characteristics

The major demographic characteristics of the samples are presented in Table 1. The fathers' and the mothers' mean ages were 43.0 years old and 40.3 years old. Approximately 59% of the families had two children, 26.2% had three children, 12.4% had one child, 2.2% had four children and 0.2% had five children. Their children's mean age was 10.7 years old. The ratio of boys to girls was 54.4%.

The fathers' and the mothers' mean incomes were 747.2 and 95.7 million yen. The proportion of employed mothers was 64.1% and 35.9% of the mothers were unemployed. The average daily work hours of the fathers and the mothers were 10.2 and 5.2 hours. The economic level of the families was higher than the Japanese household income average: the national average was 563.8 million yen (Survey of Household Economy, Ministry of Internal Affairs and Communications 2007).

In addition, the fathers' educational level was higher than the national average: 53% of the fathers graduated from 4-year universities or graduate schools. Although the families in this sample were likely to be more educated and financially well-off, I speculated that this sample was useful because swimming lessons, in particular, are the most popular among various types of extracurricular activities for children in

Japan.

3.3 Measures

Marital Quality: Fathers' and mothers' marital quality in this study is comprised of five items taken from the Marital Love Scale from Sugawara et al. (1997):

1) I will do anything for my spouse, 2) I realize I love my spouse really when we are together, 3) I think my spouse personable, 4) I deeply respect my spouse as a human being, 5) My greatest concern is for my spouse to be happy.

A five-point scale for these items ranged from "I think so" to "not at all". These five items are summed up to create each composite variables of father's and mother's Marital Quality with ranges of scores from 5 to 25. The alpha of fathers and mothers are .90 and .91.

Father's and Mother's Perception of Parental Role (as Parental Identity): Parents' perception of their parental role toward their children was measured by five items which I created:

1) Parental love toward children is to do anything possible for their children. 2) To create an environment in which children can study and enroll in extracurricular activities is a parental role. 3) You sacrifice yourself to fulfill your children's wishes. 4) You place emphasis on your family and less on your job. 5) According to the declining birthrate and delaying marriage in Japan, it stands to reason that parents become child-oriented.

A five-point scale for these items ranged from "I think so" to "not at all". These five items are summed up to create each composite variables of the father's and mother's perception of their parental role with father's range of scores from 6 to 25 and mother's range of scores from 9 to 25. The alpha of fathers and mothers are .60 and .62.

Father's and Mother's Excessive Control: Parental excessive control toward their children in this study is comprised of six items taken from Sugawara et al. (2002) which they recreate from the Paternal Bonding Instrument of Parker (1997):

1) I try to control everything my child does, 2) I intrude on my child's privacy, 3) I overprotect my child, 4) I think my child can not look after himself/herself unless I am around, 5) I tend to baby my child, 6) I make my child feel dependent on me.

A five-point scale for these items ranged from "I think so" to "not at all". These five items are summed to create each composite variables of father's and mother's excessive control toward their children with the fathers' range of scores from 6 to 24 and the mother's range of scores from 6 to 30. The alpha of fathers and mothers are .82 and .82.

Father's and Mother's Supportive Involvement: To measure father's and mother's supportive involvement toward their children's swimming lessons, I created twelve items: 1) I center my life on my children, 2) I record graphically all my child's records in swimming, 3) I buy swimming magazines and swim textbooks for my child, 4) I take pictures and shoot on the video camera my child's swimming lessons, 5) I reward my children for their best time in swimming, 6) I present a challenge time for my child before a swimming grade test, 7) I repeatedly watch my

child's swimming films, 8) I go to swim meets in which my child participates far from home, 9) I watch swim meets on television with my child, 10) I take my child to the national swim meet to promote my child's perception for swimming, 11) I always talk with my child about swimming, 12) I accord swimming school priority over other school events.

A five-point scale for these items ranged from "I always do" to "I do not at all". These twelve items are summed to create each composite variable of the father's and the mother's supportive involvements toward their children with the father's and the mother's range of scores from 12 to 51 and from 12 to 56. The alpha of fathers and mothers are .90 and .88.

Children's Perception of Competence: To measure children's perception of competence, I created 3 items to adapt to swimming school from the Hater's Athletic Competence Subscale (1985):

1) I do very well at all kind of swim styles, 2) I think I can swim at new even swim style, 3) I can swim faster than others of same age.

A four-point scale for these items ranged from "I think so" to "not at all". These three items are summed to create a composite variable of children's athletic competence with range of scores from 3 to 12. The alpha is .71.

Demographic Variables: I expect parents' age and income to influence the level of the intervening variables. Therefore, I included these variables in these analyses.

3.4 Analyses

The analytical strategies in this study involve descriptive statistics, correlation analysis, and path analysis. First, descriptive statistics are used to examine the respondents' characteristics and the variables used in this study. Mean and standard deviation of all used variables are calculated. Second, correlation analysis is used to examine all variables used in this study. Finally, the main part of the path analysis involves the independent and intervening variables with the demographic variables and investigates their influences on the children's perception of competence.

4. Results

The means and standard deviations of all variables are shown in Table 1. Concerning their marital quality, the fathers' mean was higher than that of the mothers', however, the fathers' perception of parental role and supportive involvement were lower than the mothers'. There are little differences on excessive control between the fathers' and the mothers' means.

In Table 2, correlation analyses for key variables in this study are presented along with the results of the correlation coefficients. At the bivariate level, the fathers' marital quality is associated with the mothers' marital quality, the parents' perception of their parental role and the fathers' supportive involvement, whereas, the mothers' marital quality is only associated with the maternal role.

In addition, the fathers' perception of their parental role significantly correlates with the mothers' perception of their parental role and their supportive involvement,

Table1 Descriptive Statistics(n=362/N=1086)

Variables		Means	SD	Range
Parents' Characteristics	Father's Age	42.99	5.05	28-59
	Mother's Age	40.29	4.38	28-56
	Father's Income	747.24	314.30	25-1750
	Mother's Income	95.72	153.623	0-900
Parents' Time Availability	Father's Work Hours	10.19	1.44	6-12
	Mother's Work Hours	5.20	4.18	0-12
Parents' Marital Quality	Father's Marital Quality	18.83	3.89	5-25
	Mother's Marital Quality	16.69	4.18	5-25
Parental Identity	Father's Perception of Parental Role	17.40	2.95	6-25
	Mother's Perception of Parental Role	18.37	2.73	9-25
Father's Excessive Control		13.58	4.53	6-24
Mother's Excessive Control		14.17	4.45	6-30
Father's Supportive Involvement		23.24	9.47	12-51
Mother's Supportive Involvement		26.04	9.73	12-56
Children's Perception of Competence		8.62	2.59	3-12

Table2 Bivariate Correlations Among Key Variables

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
(1) Father's Marital Quality	----								
(2) Mother's Marital Quality	.29***	----							
(3) Father's Perception of Parental Role	.41***	.09	----						
(4) Mother's Perception of Parental Role	.20***	.17**	.25***	----					
(5) Father's Excessive Control	-.08	-.05	.22***	.03	----				
(6) Mother's Excessive Control	.04	-.01	.02	.31***	.34***	----			
(7) Father's Supportive Involvement	.17**	.06	.30***	.10	.04	-.06	----		
(8) Mother's Supportive Involvement	.09	.04	.21***	.23***	-.04	-.03	.69***	----	
(9) Children's Perception of Competence	-.03	-.03	-.03	.03	-.11*	-.10	.18**	.26***	----

n=362(N=1086), *p<.05, **p<.01, ***p<.001

the fathers' excessive control, and supportive involvement toward their children. The mothers' perception of their parental role is positively associated with their excessive control and supportive involvement.

Focusing on the correlation between the children's perception of competence and the parental supportive involvement, both the fathers' and the mothers' supportive involvement are positively associated with the children's perception of competence. However, it is clear that the mothers' magnitudes of correlation coefficients are stronger than the fathers'.

Furthermore, the children's perception of competence is negatively associated with the fathers' excessive control whereas that of the mothers is not. The highest magnitude of the correlation coefficients is between the father's and the mother's supportive involvement toward their children.

Figure 2 reports the results of the path analysis that explores the effects of the intervening variables in this study on the children's perception of competence. All independent, intervening, and dependent variables are entered simultaneously in this analysis. The Goodness of Fit Index is .963, indicating that the data reasonably fits the theoretical model.

First, the effects of all the independent variables for the intervening variables are accounted for. The fathers' perception of their parental role and the mothers' age are positively associated with the fathers' amount of excessive control of their

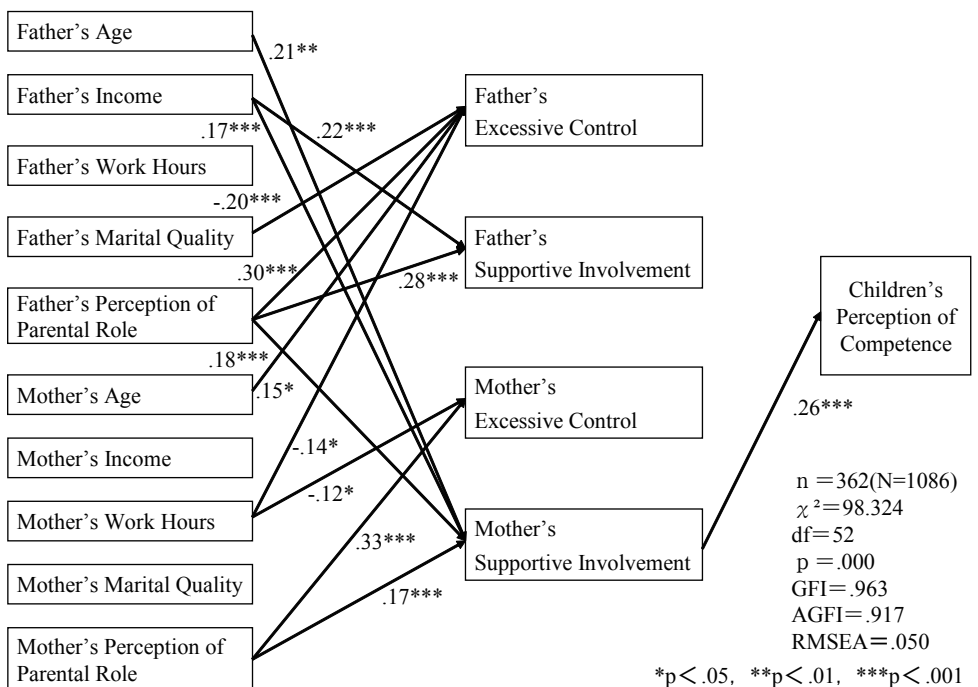


Fig.2 Results of Path Analysis

children, whereas the fathers' marital quality and the wife's number of work hours are negatively associated with the fathers' amount of excessive control. The fathers' perception of their parental role and income are positively associated with their supportive involvement through their children's swimming lessons.

The mothers' perception of their parental role is positively associated with their excessive control of their children, whereas, their number of work hours is negatively associated with their excessive control of their children. The fathers' perception of their parental role, income and age, and the mothers' perception of their parental role are associated with the maternal supportive involvement through their children's swimming lessons. Additionally, the mothers' supportive involvement through their children's swimming lessons is positively associated with their children's perception of competence, whereas that of the fathers' is not. From the results of correlation analyses, the children have a lower perception of their own competence when their fathers involvement with them with more excessive control, whereas, that of the mothers' does not correlate to that of their children's.

Although the fathers' supportive involvement does not directly promote their children's perception of competence, the fathers' perception of their paternal role and income advances the mothers' supportive involvement with their children. Consequently, factors related to paternal involvement indirectly promote their children's perception of competence. From gender perspectives, one of differences between the fathers' and the mothers' involvement is that the paternal excessive control is influenced by their lower marital quality, whereas, that of the mothers' is not. Marital quality is associated with the fathers' involvement in their children's activities.

5. Discussion

This study examined how parental involvement influenced school-aged children's perception of competence from gender perspectives. Using father-mother-child matching questionnaire data collected from 362 families with school-aged children enrolled in swimming schools, I found that mothers' supportive involvement is significantly associated with their children's perception of competence, whereas that of fathers' is not. That is, maternal supportive involvement is an important factor for school-aged children to perceive themselves as competent. However, the fathers' supportive involvement does correlate positively with the children's perception of competence. Sasaki (2009a, 2009b, 2010) found that paternal supportive involvement through their children's lessons promoted their children's perception toward their lessons, consequently, enhancing their children's perception of global self-worth, and affection and evaluation toward their fathers. Therefore, it is also necessary for the fathers to be involved supportively in children lives to improve their children's perception of competence. Paternal warm involvement for their children is necessary to encourage children's perception of competence because the fathers' excessive control is related negatively to their children's perception of competence.

This study also examined how fathers' and mothers' demographic variables, marital quality, and perception of their parental role influenced their involvement toward their children. The fathers' perception of their paternal role promotes both their excessive control and supportive involvement toward their children and that of the mothers is the same. These results suggest that parents' perception of their parental role may have latent ambiguity. In particular, the magnitudes of path analysis coefficients concerning maternal perception of their parental role toward their excessive control is at double strength compared with their supportive involvement. This suggests that the mothers are likely to become more overprotective and over possessive of their children. It is speculated that proper parental consideration for their children is needed without forcing their children into an uncomfortable position.

Additionally, the higher the fathers' marital quality is, the lower the paternal excessive control toward their children. This suggests that the fathers who have higher marital quality are more likely to communicate with their wives in regard to their children than others who have a lower marital quality. According to conversations with wives concerning their children, it is speculated that the fathers realize and perceive their children's needs and reduce paternal overprotective involvement. Marital quality is an important factor for fathers' having more involvement with their children.

On the other hand, mothers' number of work hours lowers the fathers' and the mothers' amount of excessive control. Several reasons are speculated for this result. First, the mothers who are employed have fewer hours to be involved in their child's involvement than others who have no job; therefore, they have more of a tendency to not overprotect their children. It is speculated that the mothers' job may advance children's establishment of a sense of self. Moreover, the negative relationship between fathers' excessive control and mothers' work hours suggests that these parents of dual earner families are likely to have to share both household and child's involvement with each other. These fathers, accordingly, may reduce their overprotective involvement toward their children.

The mothers' supportive involvement is significantly encouraged by the fathers' age, income and perception of their paternal role. The fathers whose income is higher are likely to be more financially able to allow their children enroll in swimming school and have unemployed wives. The previous studies revealed that mothers' perception of fathers' involvement with their children influenced their spouses' involvement toward their children (e.g., Rane & McBride 2000). However, according to these results, it is revealed that the fathers' perception of their children improves the mothers' positive involvement with children. Concerning parental involvement with children, it is suggested that the fathers and the mothers have a tendency to interact with each other, and that fathers will provide resources and opportunities, not only for their children, but also for mothers from fathers' generative characters. It is speculated to be an important aspect from gender perspectives that to promote fathers' perception of paternal role is needed for mothers to encourage maternal role.

This study has a few limitations. First, the sample consists of families

whose children are enrolled in swimming schools and the fathers are likely to be more educated and of above average income. Therefore, the findings cannot be generalized in comparison to a larger population of Japanese families. However, the data collected from fathers, mothers, and school-aged children in my study are a scarcity in Japan, thus, it is speculated that the analyses of this data may be useful. Secondly, parents' supportive involvement toward their children is measured by involving in children's swimming lessons. These findings need to be carefully interpreted with these limitations.

Future parenthood research needs to identify diverse dimensions of parental supportive involvement and include a more in-depth measurement and multiple item measures of another field among children's extracurricular activities. Additionally, future studies in this area also need to examine, in more detail, how different types of paternal involvement influence children's perception of competence (Ishii-Kuntz 2004).

Despite these data limitations, the findings of this study also have several important implications. First, the findings reveal that the fathers' perception of their parental role promote both the paternal role and maternal role. That suggests that paternal identity is an important indirect factor for children's perception of competence. Therefore, for men who have children or have a baby due, there may be a need for a fathers' work shop and educational programs to encourage paternal identity.

Finally, the fathers' marital quality reduces their excessive control toward their children. This shows that marital quality is an important factor for paternal involvement and in enhancing children's perception of competence. In summary, from gender perspectives, fathers' perception of high marital quality is more important for parental involvement with children, than the mothers'. Parental excessive control prevents children from establishing a sense of self and negatively affects the children's perception of competence.

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