

Philosophical Medical Ethics

Justice and medical ethics

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Some argue that medical ethics should have no truck with justice in the sense of fair adjudication between competing claims. Especially in the context of distributing scarce medical resources they take the view that the proper role of doctors is the Hippocratic one of doing the best they can for each patient. Their patients suffer when doctors start to temper this obligation with any conflicting considerations of fairness or justice.^{1,4}

I pointed out in my article on beneficence that if doctors chose not to concern themselves with justice in medical practice then inevitably others would (and should) so concern themselves. In any case the idea that doctors can somehow legitimately evade any need to concern themselves with justice is hardly tenable given that in the course of their practice they are often confronted with conflicting claims on their resources, even from their own patients. The doctor who stays in theatre to finish a long and difficult operation and consequently misses an outpatient clinic is probably relying—implicitly or explicitly—on some sort of theory of justice whereby he can fairly decide to override his obligation to his outpatients in favour of his obligation to the patient on the table. So is the general practitioner who spends 30 minutes with the bereaved mother and only five with the lonely old lady who has a sore throat.

Nor do distributive concerns—the proper allocation of benefits and burdens—exhaust the relevance of justice to medical ethics. In the Arthur case the prosecution was concerned that those who break the law should be punished—an aspect of reparative, retributive, or corrective justice. Forensic psychiatrists, who concern themselves with the sanity or “competence” of clients charged with offences, are concerned with responsibility in the context of reparative justice. The Declaration of Tokyo’s absolute prohibition of medical involvement in torture affirms a concept of justice based on rights that forbids certain things to be done to other people even if doing them may be of great social benefit. The General Medical Council, as a quasi court of law, is concerned with specifically legal aspects of justice. Even the selection of medical students or appointment of new medical colleagues concerns justice. So the idea that justice is a moral issue that doctors can properly ignore is clearly mistaken.

Aristotle’s principle of justice

Justice has always been one of the central concerns of philosophers, and indeed Aristotle’s formal principle of justice is still widely accepted. Aristotle, somewhat hampered by the fact that the Greek word for justice was cognate with the Greek word for equality, was at pains to reject the claims of the democratic factions of Athens, who argued that justice meant equal shares for all (well, for all freemen). In a sophisticated treatment Aristotle distinguished between justice as another term for overall goodness or “complete

virtue” and justice in a narrower sense, concerning equality of treatment. Such equality could not be sensibly understood as mere equal division of whatever benefit or burden was being considered, for “the origin of complaints and quarrels [is] when either equals have and are awarded unequal shares, or unequals equal shares.”⁵ Instead, argued Aristotle, the equality of justice had to be understood as meaning fair or proportionate treatment. He pointed out that in the latter sense justice was a relative term, in terms of relations both between people and for any one person between what he was owed and what he deserved. Those who deserved the same were owed the same, and in that sense justice required equality of treatment. Those, however, who deserved more were owed more, while those who deserved less were owed less. In both cases, as what they were owed was in strict proportion to their deserts, once again justice required people to be treated equally. The formal principle of justice or equality attributed to Aristotle is, therefore, that equals should be treated equally and unequals unequally in proportion to the relevant inequalities.⁶

The reason that Aristotle’s formal principle remains so widely accepted is, of course, that it has little substantive content. It requires an equality of consideration (for an excellent contemporary analysis of the concept of equality see Bernard Williams’s paper *The idea of equality*); fairness in the sense that conflicts are to be settled by mutually agreed principles of justice (for an account of fairness and fairplay see John Rawls’s paper *Justice as fairness*); and impartiality in the sense that inequalities of treatment cannot be arbitrary—based on mere opinion, preference, or partiality—but must be justified on the basis of, and in proportion to, relevant inequalities (for a useful analysis of the concept of moral relevance see R M Hare’s paper *Relevance*¹⁰). These concepts of fairness and impartiality, however, are also formal in that they do not specify the content of the “relevant inequalities” or the agreed principles. Different theories of justice can and do flesh out differently Aristotle’s formal principle of justice with its demands for equal consideration, fairness, and impartiality. My somewhat contentious view is that these differences usually arise because priority is given to different moral principles as the basis for assessing people’s just deserts. From the wide range of existing theories of justice five important types can be distinguished in this way.

Libertarian theories

Libertarian theories of justice emphasise that people should be accorded maximal respect for their personal liberty. Such theories usually start from a Lockean social contract designed to protect people’s personal rights¹¹—but, unlike Locke’s theory, they often emphasise only the last of his natural rights to life, health, liberty, and possessions. The result is what might be called economic libertarianism, stemming from the theories of Adam Smith¹² via those of F A Hayek¹³ (and in theory of the present governments of Mrs Thatcher and President Reagan) to that of the contemporary American philosopher Robert Nozick, who has purged these theories of any traces of utilitarian welfare maximising contaminants.

Although claiming to base his theory on a defence of Lockean

natural rights, Nozick concentrates on only two of those rights; the right to life—that is, not to be unjustly killed—and the right to have possessions. Nozick argues that provided people acquire and transfer their “holdings” without violating others’ rights no one is entitled to take them away. On that basis he argues that any taxation, beyond what is necessary to maintain the “minimal state” required to protect life and holdings, “is on a par with forced labour.”¹⁴

Nozick’s arguments have provoked vigorous philosophical response.¹⁵ One of the criticisms is that if the whole spectrum of Lockean rights allegedly of concern to Nozick is to be protected his conclusions against taxation to benefit the poor and sick and otherwise disadvantaged are unsupported by his theory.

Utilitarian theories

Utilitarian theories emphasise that people deserve to have their welfare maximised. The danger of such theories is that in their simplistic versions they give too little weight to Lockean personal rights, which they are prepared to override whenever to do so is likely to maximise overall welfare. As I have indicated in my articles on utilitarianism and autonomy sophisticated utilitarian theories from Mill onwards have shown awareness of these dangers and have incorporated moral concern for personal liberty (in the sense of autonomy) as a required condition of maximisation of welfare. Professor R M Hare’s form of utilitarianism sees the formal principle of justice as “nothing but a restatement of the requirement that moral principles be universalisable”—a principle that according to Hare is manifested in Bentham’s principle that everybody counts for one and nobody for more than one.¹⁶

Marxist theories

Marxist theories of justice emphasise that people deserve to have their needs met; people’s “deserts” are thus in direct proportion to their needs and Aristotle’s formal principle of justice can be met by making needs the relevant inequality. Apart from conceptual problems—What *are* needs?—Marxist moral theory faces objections similar to those levelled at simplistic utilitarianism—notably, that other moral concerns, particularly respect for individual autonomy, may be overridden in order to satisfy human needs. The Marxist corollary of “to each according to his needs” is “from each according to his ability,” and the operation of this rule, according to Lenin, results in “actual equality.”¹⁷ It is a rule that, again in its simplistic versions, brooks no rejection. (“The communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing conditions.”)¹⁸

Once again we must distinguish between simplistic and sophisticated versions, for sophisticated Marxists are undoubtedly aware of the dangers of inadequate concern for individual autonomy or freedom,^{19,21} and Marx himself sees a community of autonomous people living together in peace, harmony, and true consciousness as the utopian “objective” of the inexorable march of history.

Rawls’s theory of justice

A highly influential attempt to blend utilitarian theories and those theories of justice that respect autonomy—and indeed to incorporate the element of need of Marxist theories—is Professor John Rawls’s theory of justice.^{22,23} As previously indicated, he argues that people coming together to work out a theory of justice for their society, and rendered impartial by the device of a “veil of ignorance” whereby they do not know what role they are to have in that society, would choose a system of justice whose first principle was that people should have the maximal liberty compatible with the same degree of liberty for everyone and whose second principle was that deliberate inequalities were unjust unless they worked to the advantage of the least well off.

Reward for merit

Finally, the claim that justice is essentially a matter of reward for individual merit—the view, for instance, of W D Ross²⁴—remains plausible in at least some circumstances. For example, all competitions based on skill implicitly assume a principle of justice based on merit, including competitions to enter medical schools or obtain medical posts. Athletics competitions presuppose that “the best man (or woman) wins.” The structure of wages in a capitalist society, whereby skilled work is rewarded more highly than unskilled work, again presupposes both that skills confer merit and that merit should be rewarded. On the other hand, can all distribution of benefits and burdens be fairly or justly determined on the basis of merit and demerit? In particular, there is no merit in being ill: should medical resources be allocated according to merit rather than illness?

So varied and so complex are theories of justice that more than with the other moral principles it would be hopeless even to suggest a generally acceptable substantive position. Instead it seems more useful to acknowledge that people’s theories of justice are likely to continue to differ, I suspect largely on the basis of the relative weights they assign to the moral principles I have already outlined—that is, respect for autonomy, beneficence, and non-maleficence. I shall next look at allocation of scarce medical resources in the context of these various substantive theories of justice and in the light of Aristotle’s formal principle of justice, which is implicitly accepted by them all.

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Correction

Outbreak of poliomyelitis in Finland

In the fourth paragraph of the CDSC Report “Outbreak of poliomyelitis in Finland” (6 July, p 41) line 7 (p 42) should have read “regular Salk type trivalent poliovirus vaccine for all children under the age of 18 years.” The total number of cases was larger than six. The full details of the outbreak will be published by the Finnish investigators later. We apologise for this error.