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CONSENT AND PATIENT INFORMATION

Abstract

The practice of medicine is based on the observance of the rules of ethics and medical deontology. One aspect of the physician-patient relationship is informed consent. There have been medical malpractice cases related to informed consent.

In this paper the author gives some general information on consent, forms of consent, the informed consent, the refusal of treatment, and the use of consent throughout history. It was only in the 20th century that consent began to be treated as a legal obligation and was gradually introduced in medicine. One of the key elements of informed consent is the doctor's obligation to inform the patient.

The situation about informed consent in Albania is discussed, which it is included in the respective medical legislation (code of medical ethics and deontology).

Medical advances with the use of modern techniques have become the focus of attention, which may have contributed to the devaluation of the physician-patient relationship, paying less attention to informing the patient. This situation may have contributed to increased patient dissatisfaction with physicians and increase in the cases of denunciations against doctors.

The most important problem of informed consent that has begun to emerge in our country, is related to its use in medical malpractice.Thus, when a physician accused of medical negligence, if he has applied the ethical rule of informed consent, this will protect him from the charge he has filed against him. On the contrary, he will be held accountable for this charge, which may be criminal or deontological.

Today's advances, applied in our country, with the introduction of new invasive techniques and more efficient, but more dangerous medicines, require greater care by doctors in terms of information which they should give to the sick and their relatives, thus ensuring the strict application of informed consent and avoiding cases of denunciations against doctors.

Key words: consent, patient information, medicine, ethics, treatment

1. Consent

The practice of medicine reflected in the physician-patient relationship is based primarily on the observance of the rules of ethics and medical deontolo-

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gy, where an important place is concerned to the consent, or more precisely, informed consent, which immediately reminds the unpleasant forensic questions, which have to do with medical breaches. For this, very meaningful is the saying of an English lawyer's[6]: "An ounce of informed consent is worth a pound of malpractice defense".

Or a physician, for this term, mentions this sad sayng [8]: "When I hear talk of informed consent, I draw my revolver".

Before we analyze the relationship of informed consent with medical malpractice issues, we provide some general data on consent and patient information.

Consent will be considered as a right of the patient which authorizes the physician to carry out the demanded treatment, even if it affects the integrity of the patient, but it is provided in the patient's interest and explained it beforehand to the patient.

In other words, for the patient the given consent for a medical treatment, it means that he has made the choice of treatment (the principle of patient independence) and on the other hand has authorized the physician to apply this medication to his body (principle of respect for bodily integrity) [6,10, 11].

The patient protects his independence by referring to the physician as a specialist that will help the patient recover and not as a "magician" that will decide everything about the patient.

This respect towards the independence of the patient, in this case, needs that the relation physician-patient to be characterized by the faith to the physician. The lack of the faith or the rules that ensure its application damage the function of the medical profession.

Consent, in the case of the human experiment, it has as it's characteristic that the subject to this research, despite having morally and legally authorized the experimenter for the appropriate intervention, however, he remains always in the position of the "experimental mice". The only way to get out of this situation and restore its human dignity will be achieved when this subject is considered and treated as a collaborator of this research by becoming aware of the content of the experiment, the objective, the circumstances, risks and later the results.

The common consent during treatment is several types[2,6]:

- Understood consent, oral consent (verbal), writing consent: eg. for an surgery.
- For the application of consent, as an expression of the principle of patient independence, it should have these qualities[2,6]:
- Conscious consent means giving the patient consent without any obligation, or external constraint, or any manipulation that may have been made to this patient. Thus, in cases where force is used to the patient, or false information

has been provided in order to ensure consent, such consent will be considered null.
- Informed Consent is considered when the patient has given the consent after having fully understood the information provided to him from the doctor. For this purpose, the explanations that the doctor gives to the patient in a direct way should be as complete and expressed as clear and understandable as possible.
- Today, in the literature of these domains, the term "informed consent" has been widely used, meaning consent in general [11].
- Substitute consent is a term that is used in cases where consent is sought from legally incompetent persons, for example, from children, mentally handicapped persons, sick in a comatose condition.

How will these cases be followed in order to respect the principle of independence according to the consent?

From an ethical point of view, the most appropriate possible consent should be sought. Thus, a patient with comatose condition will be seen if the patient has expressed a desire earlier; for a mentally ill or a child, according to the relevant legal documents, the consent will be taken by tutors, guardians, or their parents.

Regarding the doctor's explanations given to the patient by respecting the consent, and especially the informed consent, they must contain all the elements necessary to make a decision[2,6]:

- Proposed treatment, which means recognition by the patient of the diagnosis and prognosis of his illness.
- Possible side effects associated with this medication.
- Risks and benefits of this treatment: where do benefits outweigh risks?
- Principal alternative treatments and their secondary effects, their risks and their respective benefits.
- Approximate length of this medication and tightening measures to the patient, for example, time of hospital stay etc.

In addition, the physician regarding the informed consent should also consider these elements:

- Verify that the patient's information is better understood by the patient.
- Encourage other questions from the patient.
- Assess the degree of patient anxiety and try to avoid and fight it.
- Obtain oral approval of the patient for the treatment of this medication.

The main ethical dilemma that may arise during the implementation of the consent concerns the conflict that may arise between the principle of independence of the patient and that of the non-maleficence (beneficence) of the physician.

This conflict is related to the problem of refusal of treatment[3, 6], which occurs in cases that the patient does not accept the medication proposed by the doctor (the patient does not give the consent). Such refusal, which can have severe, even lethal consequences for the patient, tends to strain his relationship with the doctor. In this case, the doctor must respect the decision of the patient, a decision that for the doctor is not in the best of the patient.

Thus, refusal of treatment in medical practice creates a conflict between the patient or his or her third representative and physician who harms the relationship between them. To resolve this conflict between the principle of patient independence expressed by the consent and that of the beneficence of the doctor, can be achieved to the court intervention is required. But usually in medical practice, this kind of conflict is most often resolved in different ways: the reatreat of this doctor and the treatment of this patient by another doctor, or a newer open dialogue between them, about the possibility of the use of other therapeutic tools.

2. Some historical data

Historically, the consent began to be mentioned for the first time as an important ethical principle in the first quarter of the 20th century, gradually replacing the paternalistic attitude (the behavior of the doctor to the patient is like that of the father to his child)[9,11].

In previous medical records the consent is not mentioned.

Thus, in the Hippocratic Oath it is noted that the purpose of medicine is to make the patient well and avoid physical or mental injuries and injustice to him. Therefore, failure to provide information is justified in order to avoid the patient’s injuries. Exactly, the term “primum non nocere” supports the idea that the doctor is obliged not to provide patient information, as this would have a harmful outcome for the patient[9,11].

Later on, the obligation of the doctor to inform the patient begins, as a common relationship between them: the doctor has knowledge of the disease and also the power (power). For this reason, it comes out of his obligation to inform the patient that he has no such knowledge.

For the first time in the Talmud (the Hebrew Bible) the first instructions are given for informing the patient: “the doctor can not do any action without the consent of the patient” [13].

In the middle Ages, medical paternalism reflects the image of church authority. The patient should be subjected to a doctor, considered as a representative of God.

Another author states that the patient has to obey to the doctor as a slave (slave) towards his master.

In the 18th century, John Gregory, a professor of medicine in Edinburgh, advises that information should be given to patients by doctors, unless it is harmful and compromises healing.

Likewise, in the attitudes of other doctors at that time, it appears the idea, that the truth is more harmful to health and that the doctor must hide it from a person who is dying.

Thus, the concept of informed consent in general has not been accepted and is therefore not addressed in the texts of ethics and medical deontology.

Later, in the 20th century, the issue of consent began to be treated as a legal obligation and gradually began to engage in medical practice, especially with regard to medical malpractice cases [10].

In the case of Schloendorff v. Society of New York Hospitals, it is affirmed for the first time the patient's "right of independence" (self-determination).

While the term "informed consent" was used for the first time in a decision of 1957: "Salgo v. Leland Stanford Jr. University Board of Trustees "[10.11].

Since then, "informed consent", especially with regard to the obligation of the physician to provide information to his patient about the dangers of treatment, was gradually introduced into the practice of the justice authorities on these issues, as well as in the discipline of ethics and medical deontology.

3. Patient information

One of the key elements of informed consent is the doctor's obligation to inform the patient.

Nowadays, new medical advances with the use of modern techniques have become the focus of attention, which may have contributed to the devaluation of the physician-patient relationship, paying less attention to the patient information. This situation may have contributed to increase dissatisfaction of patients against doctors and the increasen of denunciaton cases against the physicians [9].

Another reason in today's failure to properly inform the patient is due to the inertia of ongoing paternalism in the doctor's relationship with the patient. The doctor knows what the patient needs, but he does not want to give up the power that has given him medical knowledge (that does not have the patient). On the other hand, most patients stay fixed in their traditional roles, hesitating to express excessive curiosity to the doctor. But this situation should be avoided.

Why should the patient be informed?

Patient information means that he is respected and not deceived.

The French writer Montaigne has expressed this way [9]:

"It should not always be said everything, because it would be a foolish thing, but what is said is what it is supposed to be, otherwise it would be wickedness."

Even when the patient is not curious to be informed about his illness, the doctor should again inform him about the most important issues of this disease.

In serious illnesses with fatal consequences, the patient's information from the doctor is a particular problem that has to do with the ethical issue of telling the truth of the patient.

Information is needed to establish good communication between the physician and the patient.

Adequate communication between them makes the patient give the physician more detailed information about his illness, helping to realize the curative goal of the medical profession.

In the case of contagious diseases such as HIV/AIDS, the patient information and/or their partners will have, among other things, the intention avoid transmission of his / her illness, to other persons[8].

The information the doctor gives to the patient must be straightforward, clear, appropriate (to enable the patient to act in the best interests of himself) [8].

It should be given tactfully, kindly, usually oral, but can be done in writing, sometimes accompanied by explanatory brochures.

Sometimes you may encounter some difficulties in providing your doctor's information, because your doctor is very busy at work, lacks time, sometimes there is a lack of consulting facilities, etc. [8].

In some other cases psychological difficulties are encountered due to inadequate medical training of the doctor. The physician unprepared to give bad news to the patient does not tell him anything. For example, diagnoses such as cancer, HIV/AIDS, senile dementia, etc. which will be severe for the patient, the doctor decides not to tell him, without thinking that silence in these cases is even worse.

4. The informed consent in Albania and its impact on medical malpractice

In our country, the consent and its rules are for the first time given in the 1994 Medical Code of Deontology. Thus, Article 7 of this Code states: "respecting the will of the patient with regard to medical interventions to be performed, unless the patient is unable to express his / her will ". Whereas in Article 35: "... the clear and simple formulation of the recommended treatment, so that he can be understood by the patient and his relatives" [6].

As can be seen, according to these articles, all the conditions for a full application of the consent are completed: conscious consent by a person capable in the legal sense, full patient information, etc.

In special cases, when the patient is unable to give consent, the legislation provide for consent to be taken by parents for a sick child, or by a legal representative for an individual with serious disability (Article 41 of the Medical Deontology Code), or from the legal custodian of a mentally ill person (Article 17 of the Law on Mental Health).

While in the 2012 Code of Ethics and Medical Deontology, the consent is treated in Article 28:

Article 28

(Informed consent)

It is an obligation for the physician to have the approval of the patient before any intervention, examinations or proposed treatments, after he is informed with detail and after being sure that the patient has the understanding.

When the patient is in condition to declare his will, and refuses the proposed intervention, the doctor must accept the will of the patient after being informed and convinced of the expected consequences.

If the patient is under 16 years of age or unable to express his/her will to make decisions, the physician may not interfere without notifying the patient's relatives or the legitimate responsible person, except in cases of urgency or inability to contact these people.

Informing the patient and obtaining his / her consent or refusal is expressed in writing in the patient's clinical file and signed by him or the legitimate persons who are in custody.

As can be seen in this article, all the components of informed consent and the refusal of treatment are provided in our country.

A feature about patient information as an integral part of the informed consent that emerges in the medical practice of our country has to do with the impact that the disease may have on the principle of patient independence. It may happen that the disease reduces autonomy and the patient becomes less demanding to be informed by the doctor[8].

Indeed, this has to do with the issue of patient information by the doctor, or called "telling the truth to the patient about diagnosis and prognosis".

In our medical practice, unfortunately happens when patients suffer from severe illnesses, with poor prognosis, where the doctors are shown to be reserving without informing the patient.

So in a study performed by us in 2013, based on a questionnaire with 100 doctors of Tirana University Hospital Center, it turned out that most doctors informed in detail patients suffering from a disease with good prognosis. While in the case of patients with unfavorable prognosis, telling the truth to the patient has not been practiced as widely. The physicians are more reserved towards patients with unfavorable prognosis. This situation could be explained by the reduction of patient autonomy due to their serious illness, which made these patients less demanding from their physician, to inform them[7].

The most important problem of informed consent that has begun to emerge in our country is to use it in questions of medical malpractice[4,6].

Thus, when a physician accused of medical negligence, if he has applied the ethical rule of informed consent, this will protect him from the accusation raised against him. On the contrary, he will be responsible for this accusation, which may be criminal or deontological.

In a case of our medico-legal practice of the year 2000, a middle-aged patient suffering from kidney stone disease, was subject to surgery, in which it was removed one kidney, because it was completely destroyed. The doctor who operated, he did not even inform the patient or their relatives about the removal of the diseased kidney.

After several years, she learned this by accident, by a doctor who did an ultrasound examination of the abdomen.

For this, she denounced this doctor to the Albanian order of doctors, which he considered as a case where the ethical rules of patient information were not applied.

So in this example, the doctor's failure to inform the patient that was not accompanied by any specific damage of the patient from the doctor, did not take criminal responsibility, but only - deontological.

* * *

A problem that has come about the patient's consent and patient information at the present time is about the advances of world medicine applied in our country.

Thus, for example, in the fields of cardiology and cardiosurgery are introduced into daily practice: open heart surgery (the heart has stopped its work) by using extracorporeal circulation, to repair its malformations and pathological lesions, repair of coronary arteries through by-pass operations, replacement of damaged heart valve, conservative hypertension treatments, coronary diseases, cardiac insufficiency, etc., all of which have had an impact on life expectancy. But the sick and their families have ever greater demands and disagree with the defeats and the poor outcomes of these new medications[13].

This situation has begun to appear in our country, where have began to be accused the doctors for medical negligence.

In order to avoid such cases, it is necessary to apply strictly, the patient's detailed patient information, on the basis of which the patient will give or will refuse the consent (informed consent - Article 29 of the Code of Ethics and Deontology medical).

Consent in these cases is not enough to be formally simple, with only the signature of its form, but it should be a continuous process by the physician who informs in details the patient himself and his relatives.

An uncomfortable situation has happend, in some cases of elderly patients who have suffered from aortic stenosis and have been subjected to aortic calcified valve replacement surgeries with artificial valves. Of course, these are very difficult operations. But in some of these operations that have ended with the deaths of the patients, the failure to fully inform the family members of these patients, has influenced tha to happen the denuntiations against doctors.

Finally, it should be emphasized that patient information and the consent are one of the key issues of medical ethics, which are recognized and applied in our country.

Today's medical advances, applied in our country, with the introduction of new invasive techniques and more efficient, but more dangerous medicines, require greater care by doctors in terms of information which they should give to the sick and their relatives, thus ensuring the accurate implementation of informed consent and avoiding cases of denunciations against doctors.

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БИОЕТИЧКИ ПЕРСПЕКТИВИ НА СУРОГАТ МАЈЧИНСТВОТО

Апстракт

Темата, а особено прашањето во насловот побудува зголемено внимание за оваа нова морална инвазија во сферата на човечката репродукција, после контраверзиите околу прашањето за абортусот, човечкото „подобрување“, клонирањето....

Иако овој тип на мајчинство е допуштено, законски, само во одреден број на земји, додека во останатите е илегално, и во комерцијани цели, но и во облик на лечење на неплодноста, се работи за ситуација која поттикнува потреба од отворена деба.

Се работи за комплексност на едно подрачје кое воедно претставува и сложен медицинско-социјалноправен-биоетички извор на голем број на проблеми и недоумици: која е реалната мајка, или дали со сурогат мајчинството се нарушува и во која мера единството на бракот, интегритетот на детето и достоинството на самиот чин на раѓање?

Авторот во текстот се обидува, од аспект на биоетиката, да претстави една можна скица на третирање на проблемите кои произлегуваат.

Клучни зборови: човечка репродукција, сурогат мајчинство, транснационален репродуктивен пазар

BIOETHICAL PERSPECTIVES ON SURROGATE MOTHERHOOD

Abstract

The topic, and especially the issue in the title, provokes increased attention to this new moral invasion in the sphere of human reproduction, after the controversy surrounding the issue of abortion, human “improvement,” cloning ....

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Although this type of maternity is allowed, legally, only in a small number of countries, while in the others is illegal, for commercial purposes, but also in the form of treating infertility, it is a situation that encourages the need for an open debate.

It is about the complexity of an area that at the same time represents a complex medical-social-legal-bioethical source of a number of problems and misunderstandings: who is the real mother, or whether with a surrogate motherhood is disturbed and to what extent the unity of the marriage, the integrity of the child and the dignity of the very act of birth?

The author in the text tries, from the aspect of bioethics, to present a possible sketch of treatment of the problems that arise.

Key words: human reproduction, surrogate motherhood, transnational reproductive market

Вовед

Сурогат или заменското мајчинство, а особено прашањето дали матката треба да се изнајмува, денес побудува зголемена морална-етичка нелагодност од оваа релативно нова инвазија во сферата на човековата репродукција означена како „репродуктивна револуција“[3], особено после дилемите и контраверзите околу абортусот[4], клонирањето, ин-витро оплодувањето....

Ова оттаму што до пред некоја деценија човековата репродукцијата се разгледуваше само како феномен кој припаѓа пред и над се во приватната сфера на секоја жена и маж, а тоа го потврдува и традиционалното сфаќање на репродукцијата според кое „доколку се работи за традиционална брачна заедница, за репродукцијата не се говори, уште помалку договара, а најмалку истата се планира. Во вaквите традиционални заедници репродукцијата едноставно му се случува на човекот, тој не ја планира, не интервенира во тековите на одредени надворешни сили“[5].

Но, актуелноста на прашањето денес добива на особена тежина во услови кога секое општество преку своите културни образци и законска регулатива се обидува да ги нормира сите фази на репродукција. Во вакви услови, приватната сфера станува јавна, а со самото тоа и (не)раѓањето станува не само јавно, туку и особено важно политичко прашање.[6] Па затоа совреме-

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[3] Подетално за репродуктивната револуција погледни кај Robert G. Lee & Derek Morgan, *Human Fertilization and Embriology: Regulating the Reproductive Revolution*. Blackstone Press Limited, London, 2001.

[4] Janice B. Ciccarelli & Linda J. Beckman, “Navigating Rough Waters: An Overview of Psychological Aspects of Surrogacy”, *Journal of Social Issues*, Vol. 61, No. 1, 2005, p. 23.

[5] Berislav Berić, *Uvod u osnove seksualnosti čoveka i planiranje porodice*. Dobra Vest, Medicinski fakultet, Novi Sad, 1992, str. 105.

[6] Подетално во предавањата на Мишел Фуко на Колеж д’Франс (1977-1978) под наслов *Безбедност, територија, население.* Фондација Отворено општество, Скопје, 2017, особено

ниот медицински и родово одговорен дискурс на планирање на семејството налага проактивен пристап во односот на индивидуите кои нудат знаење (лекарите) и индивидуите кои тоа знаење го примаат (жените) и во кој однос постојат можностите на свесно одлучување за репродукцијата.[7] Уште повеќе, оправдувањето за ваквиот пристап дојде и од можната конечна разрешница на дилемата што и како доколку раѓањето на дете, а кое се смета за „природен одговор“ на општествено очекуваните родителски улоги, не е реален позитивен исход, достижен за сите.

Па така, на сцена се појавија новите репродуктивни технологии, најпрво за паровите кои неможат да имаат деца, а потоа и за хомосекуалните, трансродовите, трансполовите лица, како и за жените во постменопауза[8], да можат да имаат деца кои би биле биолошки поврзани пред се со двата (или барем со еден) од родителите. Логично, постапката на ин-витро фертилизацијата веќе неколку децении експандира[9], како во ветеринарната медицина, така и во хуманата медицина, почнувајќи од 25 јули 1978 година кога во Велика Британија гинекологот Патрик Степто и ембриологот Роберт Едвардс[10] го објавија раѓањето на Лујза Браун, првото бебе зачнато надвор од телото на мајката, но со генетски материјал на двајцата родители.[11]

Michael Foucault, *The Order of Things. An Archaeology of the Human Science*. Vintage Books Limited, New York, 1994; потоа Џорџо Агамбен, *Homo Sacer – Суверенаᴛа моќ и ḡолоᴛ живоᴛ*. Сигмапрес, Скопје, 2014; како и компилациската студија на Marijan Krivak, *BIOPOLITIKA-Nova politička filozofija*. AntiBarbarus, Zagreb, 2008; но и одговорот на Питер Слотердајк на Хајдегеровото „Писмо sa хуманизмот“, под наслов „Pravila za ljudski park“, *R.E.Č.*, 57.3, 2000, str. 187-202. Достапно на: http://www.b92.net/casopis_rec/57.3/pdf/18.pdf. Датум на пристап: 01.02.2019.

[7] Раѓањето и мајчинството, како прашање на избор на жената, секогаш биле битни теми на феминистичкото промислување за репродуктивните права на жената, на националните политики, како и законските регулативи за оваа област.

[8] Омкари Панвар во 2008 година, на свои 70 години роди близнаци и стана најстарата жена која роди син и ќерка со помош на ин-витро, за кое платила со распродажба на целиот имот и подигнување на кредит, со цел конечно да добие син (покрај двете возрасни ќерки и петте внуци од нив). „Woman in India ‘has twins at 70’“, *BBC News*, 05.07.2008. Достапно на: http://news.bbc.co.uk/2/hi/7491782.stm. Пристапено: 03.01.2019.

[9] Се пресметува дека до 2018 година со помош на ин-витро родени се околу 6 милиони деца во светот. B. Radivojević, „Prva beba iz epruvete slavi 40. rođendan“, *Вечерње новосᴛи Online*, 25.07.2018. Достапно на: http://www.novosti.rs/vesti/planeta.299.html:740285-Prva-beba-iz-epruvete-slavi-40-rodjendan. Датум на пристап: 01.02.2019.

[10] кој во 2010 година ја доби Нобеловата награда за развој на постапката за вонтелесно оплодување.

[11] Robert Geoffrey Edwards & Patrick Christopher Steptoe, *A Matter of Life: The Story of a Medical Brakethrough*. Hutchinson, London, 1980.

Транснационалната репродуктивна индустрија и бизнисот наречен „туризам на плодност“

И додека добивањето на деца од сурогат мајчинство редовно се практицира во редовите на американските пред се филмски ѕвезди и други популарни лица од јавниот живот, на ваков тип мајчинство денес се почесто се решаваат и анонимни парови од различни краишта од Европа кои не можат да имаат деца, при што државните граници и националните законодавства не претставуваат особена пречка.[12]

Со оглед на фактот дека законските рамки во поглед на сексуалните и репродуктивните права и биомедицинските истражувања се разликуваат од држава до држава[13], создадена е шаренолика палета на забрани и дозволи, како и законски рамки во врска со транснационалната репродуктивна индустрија и туризам на плодност, а чие што главно обележје е социјалната нееднаквост помеѓу класите и етницитетите, Северот, Истокот и Југот, како и „империјалниот“ начин на живот.[14] Тоа дава за право да се тврди дека, од една страна, на темелот на репродуктивната и регенеративната медицина во изминатите децении изградена е комерцијална репродуктивна бранша и трговија со телесни супстанци и органи.

Имено, транснационалниот репродуктивен пазар брзо се шири помеѓу константната интеракција на понудата и побарувачката, со што производството на човечки живот станува производен процес во кој може да се купат биолошките неопходни делови и да се понудат услуги. Со тоа биоекономијата, очигледно, непрестано реагира на неисполнетите потреби, болести и репродуктивни права. На пример индискиот биолог, Сундер Рајан, истражувајќи го геномот, покажа дека „актуелната биотехнологија може да се разбере само во контекст на интеракцијата со фармацевтските компании и развојот на лековите. Она што научниците и истражувачите го произведуваат во биотехнолошките лаборатории и во репродуктивниот ланец на вредности, имено претставува биокапитал и создава технолошко-научен облик на капитализам“.[15]

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[12] Подетално види кај Бернадет Бордаш, „О потреби међународног регулисање сурогат материнства: Судска пракса и активности у 2014“. Во: *Зборник радова Правноī факулшеша у Новом Саду*, Нови Сад, 2/2014, стр. 151-171.

[13] „Surrogacy By Country“. Достапно на: https://www.familiesthrusurrogacy.com/surrogacy-by-country/. Датум на пристап: 05.02.2019.

[14] Sven Bergmann, “Fertility Tourism: Circumventive Routes that Enable Access to Reproductive Technologies and Substances, *Signs*, 40 (1), 2014, pp. 280-289; како и Ulrich Brand & Markus Wissen, *Imperiale Lebensweise. Zur Ausbeutung von Mensch und Natur im globalen Kapitalismus*. Climate Partner Klimaneutral Verlag, Munchen, 2017.

[15] Kaushik Sunder Rajan, *Biocapital: The Constitution of Postgenomic Life*. Duke University Press Books, Durham NC, 2006.

Доексплицирана до крај тезата, оваа индустрија, која е се пошаренолика, се користи со социјалната неправда, меѓународниот натпревар и разликите во правните системи. Неопходен предуслов е снабдувањето со биолошки материјал. Но исто така, во овој сегмент од пазарот, вклучувајќи ги репродуктивните клиники и агенциите за посредување во разни земји, се користат и три компаративни предности. *Прво*, овие компании се фокусираат на услугите за кои има висока побарувачка согласно специфичните општествени и културни норми, како што е на пример одредувањето на полот во Јужна и Источна Азија. *Второ*, во светлото на глобалната конкуренција медицинските услуги во земјите на Југот и во Источна Европа се поефтини многу повеќе од оние на Северот (на пример, Унгарија, Чешка, Полска и Украина во споредба со Средна и Северна Европа). *Трето*, овие компании се концентрираат на медицинските и репродуктивните услуги кои во многу земји се забранети, но за кои на меѓународно ниво постои голема побарувачка, како што е случајот со сурогат мајчинството во Русија, Украина и Индија. На пример, една австралиска агенција за посредување има можност да воспостави контакт помеѓу хомосексуални парови од Израел и донаторки на јајце клетки од САД или со сурогат мајки во Индија.

Ваквата „задкулисна работа на глобалниот слободен пазар“[16] ја потврдува митот за взаемната корист, кој е типичен за глобализацијата. Се мистифицира договорот за работа и услугите помеѓу богатите родители кои сакаат да имаат дете и сурогат мајката и истиот се претвора во „репродуктивна подвижна лента“[17] за понатаму. Во Индија, со регистрирани 3.000 репродуктивни клиники, сурогат мајчинството прави годишен промет од околу 450 милиони долари, при што половина од 25.000 произведени бебиња се „нарачани“ од странство. При ова Индија го поддржува овој медицински туризам, како и останатите извозни индустрии, со намалени даноци и царини.

Резимирано, како што наведува Амрита Панда, која претходно осум години има работено на етнографското истражување на сурогат мајчинството во Индија, „ваквиот outsourcing и неолибералната транснационална реорганизација на репродукцијата се нарекува *неоевгеника*“[18]. Жените од Југот вршат услуги за репродукција на луѓето од Северот и со тоа му овозможува-

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[16] Arlie Hochschild, „The Back Stage of Global Free Market Hannies and Surrogates“. In: *Transnationale Vergesellschaftungen*, Hans-Georg Soeffner (ur.). Springer VS, Wiesbaden, 2012, pp. 1125–1138; Исто така и Sharmila Rudrappa, “India’s Reproductive Assembly Line”, *Contexts*, 19.05.2012. Достапно на: http://contexts.org/articles/spring-2012/indias-reproductive-assembly-line. Датум на пристап: 01.02.2019.

[17] Ibid.

[18] Amrita Pande, *Wombs in Labour. Transnational Commercial Surrogacy in India*. Columbia University Press, New York, 2014, pp. 104–128; како и Kalindi Vora, “Potential, Risk, and Return in Transnational Indian Gestational Surrogacy”, *Anthropology,* Vol 54/7, 2013, pp. 97–106.

ат на транснационалниот репродуктивен бизнис да се стекне со огромна добивка, додека нееднаквоста помеѓу жените и социјалната стратификација на репродукцијата, се зголемува.[19] Тоа им овозможува на паровите од глобалната средна класа да ги остваруваат своите репродуктивни права како дел од својот „империјален“ начин на живот, додека во исто време се создава нов светски поредок на репродукција[20].

Морално-(био)етички дилеми, импликации и консеквенции

Иако овој тип на мајчинство е допуштено, законски, само во одреден број на земји, додека во останатите е забрането, за комерцијални цели, но и како облик на лечење на неплодноста, се работи за ситуација која поттикнува потреба од отворена деба околу дилемите, импликациите, а особено околу консеквенциите. Имено, сурогат мајчинството за многумина е етички сомнително, особено поради тенденцијата истото да стане помодарство. Уште повеќе и затоа што медицинската струка го поддржува ваквиот пат преку кој се доаѓа до дете, но се додека за тоа се има медицинско оправдување, односно за оние жени кои не можат да добијат дете по друг пат.

Оттука, голем е бројот на морално-(био)етички дилеми кои треба да бидат разгледани. Во обидот истите да ги систематизираме, се чини дека кога се работи само за учесниците во сурогат мајчинство истите можат да се сведат на следниот тематски збир[21]:

- прашања кои се поврзани со односот помеѓу „нарачаното“ дете и сурогат мајката;
- прашања кои се поврзани со односот помеѓу сурогат мајката и личноста со која таа склучува договор за сурогатство;
- прашања кои се поврзани со односот помеѓу сурогат мајката и нејзиното потесно семејство;
- прашања кои се поврзани со односот помеѓу „нарачаното“ дете и другите учесници во сурогатството;
- прашања кои се поврзани со улогата на сурогатството со/во поширокото семејно окружување (пријатели, роднини, соседи, познаници);

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[19] Pamela Laufer-Ukeles, “Mothering for Money: Regulating Commercial Intimacy”, *Indiana Law Journal*, Vol. 88, 2013, p. 1246.

[20] Elly Temman, „The social construction of surrogacy research: An anthropological critique of the psychosocial scholarship on surrogate motherhood”, *Social Science & Medicine*, Vol. 67 (7), 2008, p. 1105.

[21] Mirjana Radan, *Zamjensko majcinstvo - Bioeticka prosudba*. Centar za bioetiku, Filozofsko-teološki institut Družbe Isusove, Zagreb, 2018.

- прашања кои се поврзани со договорот, законските одредби, прекршувањата, судовите, како и создавањето на други можни штети во семејството;
- прашања кои се поврзани со поттикнувањето на негативни општествени појави.

Ваквата селекција најмногу произлегува од потребата сурогат мајчинството да биде разгледано во комплексноста, т.е. сложеноста на меѓучовечките односи. Колку за илустрација, првиот случај на сурогат мајчинство од 1986 година во САД, кога сурогат мајката, која во истовреме била и донор на јајце клетки, 24 часа по породувањето отишла по детето, го зела од родителите и го одвела надвор од државата. Година дена подоцна, судот во Њу Џерси старателството над детето го доделува на родителите (поради прекршување на договорот за сурогатство), додека на сурогат мајката и дозволува само да го посетува. Исто така, кога се работи за рагледување на прашањата кои се поврзани со поттикнувањето на негативни општествени појави како резултат на практицирањето на сурогат мајчинството, не треба да се заборави дека, на пример, во Индија и денес, жените ги изнајмуваат своите матки за 5.000 евра, како би можеле да побегнат од своите села во урбаните делови од земјата, т.е. на истото гледаат како на шанса за подобар живот.

Сепак, генерално, корпусот дилеми се „врти“ околу разгледување на односот меѓу парот кој го „нарачува“ детето и сурогат мајката; цврстата поврзаност меѓу сурогат мајката и детето кое се раѓа; односот меѓу сурогат мајката и детето во однос на сопственото семејство; односите помеѓу сопствените деца на сурогат мајката и „нарачаното дете“ кое го раѓа нивната мајка; прашањата кои се инцираат кај сурогат мајката и односите надвор од семејството, т.е. влијанието од нејзината постапка во потесната и поширокота средина; како и проблемот на хетерологното родителство. Тука неодминливи се секако и прашањата за последиците од влијанието на постапката во однос на, како телесното, така и психичкото и духовното здравје на сурогат мајката.

Во оваа смисла, за биоетичко разгледување особено се важни две прашања кои се поврзани со инструментализирањето на достоинството на човечкото раѓање[22], како и инструментализирањето на детето родено од аранжманот на сурогатството[23]. Не помалку вредно за разгледување е секако и прашањето за можна злоупотреба, особено комерцијализација на сурогат

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[22] Elizabeth S. Anderson, “Why Commercial Surrogate Motherhood Unethically Commodifies Women and Children”, *Health Care Analysis* 8(1), 2000, pp. 19-22.

[23] Robert Edelmann, “Surrogacy: the psychological issues”, *Journal of Reproductive and Infant Psychology*, Vol. 22 (1), 2004, p. 129.

мајчинството, но и прашањата кои се однесуваат на слободата на изборот во однос на сексуалните и репродуктивните права, а кои се засноваат на претпоставката дека телото е лична сопственост – „Мојот стомак ми припаѓа само мене!“[24]. Според истиот концепт, жената се разгледува како активен субјект кој својот живот го зема во сопствени раце и има контрола над него: тоа важи за жената која може да одлучи дали сака да ги користи техниките на репродукција или ќе изнајми сурогат мајка за да добие дете, или жената која донира јајце клетки или ја нуди својата матка за да роди дете за некој друг, или пак жената која нуди сексуални услуги за пари[25].

Оттука, можеме да сумираме дека се работи за комплексност на едно подрачје кое воедно претставува и сложен медицинско-социјалноправен-биоетички извор на голем број на проблеми и недоумици: која е реалната мајка, или дали со сурогат мајчинството се нарушува и во која мера единството на бракот, интегритетот на детето и достоинството на самиот чин на раѓање? Притоа, овие проблеми и дилеми можеме да ги групираме во три поголеми групи – комерцијализацијата на услугата, моралното недозволување на хетерономност на брачното единство, како и проблематиката на непочитување на дигнитетот на раѓањето. Од нив, издвојуваме:

- Со предавањето на детето после породувањето на други, се нанесува голема рана во неговиот живот и во односите со другите. Последиците од оваа рана на самиот почеток на животот се тешки, иако истите не е можно да се квантифицираат;
- Со раздвојување на желбата за зачнување и носење на детето на овој свет, од желбата за негово подигнување, воспитување и образование како „сопствено дете“, се прави и промена на гледањето на детето:
    1. Имено, детето повеќе не е посакувано поради него самото, туку заради нешто како што се тоа на пример парите или во најдобар случај желбата за признавање на услугата! Во вакви околности со детето се однесуваме како со предмет со што се крши основното етичко начело: не е дозволиво да се создаде човечки живот со намера истиот да се напушти![26]
    2. Жената исто така се сведува на орудие! Дури и да не ја земеме во предвид штетата на психолошки план која може да биде предиз-

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[24] што како центален слоган се појави во европското женско движење во борбата за легализација на абортусот.

[25] За сличностите помеѓу сурогат мајчинството и проституцијата види повеќе кај Jean, M. Sera, “Surrogacy and Prostitution: a Comparative Analysis”, *Journal of Gender & the Law*, Vol. 5, 1997, p. 343.

[26] H.T.Krimmel, „The Case against Surrogate parenting“, *Hasting Center Report,* Vol. 13, No. 5, 1983, p. 35.

> викана со прекинатото мајчинство (што некогаш и се случува, кога мајката не сака да го даде детето на „нарачателите“), жената се сведува на улога на инкубатор, а ликот на личноста на еден од нејзините органи![27]

Од жената се бара да отстапи од богатиот однос кој се воспоставува помеѓу мајката и детето во текот на бременоста. Со тоа се понижува и дехуманизира нејзината личност (заедно со личноста на детето) до ниво на трговија со телото на жената!

Евентуалната мотивација со помош на „големото срце“ (великодушност) во однос на позајмувањето на матката не го менува проблемот, затоа што таа дарежливост не може да ја надокнади објективната штета која е составен елемент на сурогат или заменското мајчинство. Со тоа овој аргумент на дарежливост станува изговор!

Mater simper certa est или сурогат мајчинство!?

Денешната примена на сурогат мајчинството и сепозголеменото напуштање на милениумската концепција mater simper certa est, според која мајка на детето е жената што го раѓа детето, доведе до исклучително сериозни правни, етички, морални и филозофски дилеми. Основната теза од морално-етички и биоетички позиции е дека во феноменот на бременост се потврдува една зголемена телесна интеракција помеѓу мајката и детето што укажува дека таа интеракција е телесна, психичка и духовна и преку истата се реализира изворната поврзаност меѓу мајката и детето[28]. Од една страна, мајката го замислува детето, мечтае за него и разговара со него, додека од друга страна, детето добива тело и го обликува својот дух во оваа невербална комуникација со мајката[29]. Во оваа смисла, бременоста и раѓањето на детето водат кон создавање на емоционални врски меѓу мајката и детето, кои, се чини дека е неприродно, па дури и нехумано да се раскинуваат.[30]

Согласно на ова, проблемите кои можат да се јават во/со сурогат мајчинството (етички, правни, економски...) се особено чувствителни и комплицирани, а во екстремни случаи се и во спротивност со принципот на најдобар интерес на детето. Оттука, биоетичката проценка на сурогат мајчинството

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[27] Michele Aramini, *Uvod u bioetiku.* Kršćanska sadašnjost, Zagreb, 2009, str. 202-203.

[28] Alan Wertheimer, “Two Questions About Surrogacy and Exploatation”, *Philosophy and Public Affairs*, Vol. 21, No.3, 1992, p. 216; како и M. M. Tieu, „Altruistic Surrogacy: The Necessary Objectification of Surrogate Mothers“, *Journal of Medical Ethics*, Vol. 35, No. 3, 2009, p. 175.

[29] Olga B. A. van den Akker, “Psychological Aspects of Surrogate Motherhood”, *Human Reproduction Update*, Vol. 13, Issue 1, 2007, p. 57.

[30] Ruth A. Lawrence & Robert M. Lawrence, *Breastfeeding: A guide for the medical profession*. Elsevier Mosby, Missouri, 2011, p. 197.

првенствено зависи од „мотивите на основа на кои поединци се одлучуваат за овој тип на мајчинство, а потоа и за условите, како и за начините на кои истото се реализира преку (не)почитување на законодавните и договорените обврски, комерцијализацијата на човечкиот живот. Моралната оценка пак во голема мера зависи од (не)почитувањето на достоинството на човечкото раѓање и од хетерономното нарушување на брачното единство“[31].

Но од друга страна, пак, сурогат мајчинството за одреден број на парови е единствениот можен начин да се добие дете кое за нив би било генетски поврзано, нивна најважна животна цел. Во овој контекст, дали сурогат мајчинството би требало да се дозволи само во случаи кои се медицински оправдани, додека сите останати мотиви (естетски, професионални...) да бидат третирани како неприфатливи и недозволиви? Имено, во ваков случај, многу е важно во животните ситуации каде постојат најразлични интереси, прецизно да се одреди кои интереси би требало да бидат заштитени и оправдани. А за тоа кој интерес ќе биде заштитен, постојат многу околности, почнувајќи од етичкиот и биоетичкиот аспект и општествена прифатливост, како и секако од развојот на репродуктивната медицина.

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[31] Mirjana Radan & Suzana Vuletić & Željko Rakošec & Žarko Šperanda, „Bioetička kompleksnost problematike zamjenskoga majčinstva“, *Diacovensia* 23(1), 2015, str. 49.

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Review article/Прегледна научна статија

BIOETICS AND ITS OPPONENTS: HANS JONAS VERSUS KARL-OTTO APEL AND JÜRGEN HABERMAS

Abstract

In the form of conspectus-theses, the text starts from fundamental ecology (ontology) of *the Principle of Responsibility* of Hans Jonas (as ontological antipode of *the Principle of Hope* of Ernst Bloch), specifically reviewing the premises of a new ethics, which implies as a necessary need ("imperative" moral practice) in the conditions of technological civilization and its destructive and auto-destructive tendencies in relation to the world of life in general, and health and human life as an ethical priority *(the Principle of Life).* The new ethics (Bioethics!) of Jonas we can name it conditionally postmodern, or rather post-conventional, which in the opinion of Karl-Otto Apel cannot be interpreted as neo-Aristotelian, or proto-Aristotelian. Jürgen Habermas is in similar and even opposite positions of Jonas, especially in the context of free eugenics and the manipulations with the human genes, which are causing new bio(ethical) and humanistic dilemmas, temptations and controversies. This particularly applies to the paradig-matic areas of biology, genetics and medicine, and which is only part of the most general thematization of the problems and the different philosophical/ethical understanding of the essence of humanism and human individual rights and freedoms, today brought to relativization, especially in some normative concepts, among other things, in terms of gender strategies.

Key words: ontology, ethics, bioethics, nature, technique, power, civilization, genetics, eugenics, gender, life

> *Better to have principles covering impossible situations than no principles for situations that are suddenly upon us.*
>
> (Nicholas Agar, 2004)

As a philosopher, ethicist and bioethicist, Hans Jonas is relatively famous in the former Yugoslav republics, including Macedonia. So, we will briefly stop and

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view only what is less known about his ethical, general philosophical opus, or what is less familiar or is forgotten. We'll start from this last.

Namely, it is forgotten that his *Principle of responsibility* is an explicit ontological and ethical antipode of Ernst Bloch's *Principle of Hope*. (Bloch, 1981) It almost automatically implies an indirect philosophical/ethical dialogue that Jonas leads with Karl Marx and G.W.F. Hegel. Why Hegel? It's because Immanuel Kant is presupposed, because without him one cannot run a serious gnoseological/epistemological and ethical dialogue in modern and postmodern western philosophy. Hegel is not presupposed, because he leads to Marx, and both are considered philosophers with a weak "ethical" side, especially when it comes to the ethical premise of a new philosophical sociobiology in the conditions of a technological, "Promethean" civilization, and which is in a chronic axiological crisis. The new philosophical socio-biology - which Jonas advocates - is impossible without the edging of a new philosophy of nature. We are supporters of those grades that the **philosophy of nature** – starting from the Cartesian dualism – it is insufficiently present and represented in the modern western philosophy in general. The same disadvantage – according to our and not just our opinion - is also characteristic for the great philosophical system or the historicist construct of Hegel` philosophy. It is evident that the latent **Christian consciousness** and its underdetermined, namely theocentric (read: anthropocentric) relation to nature and the subjection of all other living beings (from the Old Testament) to human power. Despite good intentions, this puts into question and obstructs the possibility of the deduction of a new Christian ethics of the natural environment. And without understanding the Hegel's philosophy, however, it is not possible to understand Marx's philosophy, let alone philosophy/ *The Principle* of Ernst Bloch, without which the *Principle of responsibility* could not be understood, namely *the Principle of life* of Hans Jonas. This Jonas's *Principle* – said with Kant's language as "power of the principle" - is one of the main assumptions that **ontologically** determine the modern **bioethics.** (Jonas, 1994) To sum up, without knowledge of a certain theological and philosophical historical sequence and interference, it will be impossible to reflect, articulate and standardize modern biological dilemmas and paradoxes, i.e. to be constituted in some new, postmodern **normative** order and **social** system.

Unfortunately, from certain **non-**philosophical, **non**-scientific, namely **ideological**, **(geo) political** and other reasons, young generations of philosophers little or not read the original works of Marx, Engels, even Lenin, and not even mention **Lukács**. I hope that this year, on the occasion of two hundred years since the birth of Marx, young philosophers will begin to deal more intensively with Marx and Marxist philosophy, especially the Western, starting with Georg Lukács and ending with Ernst Bloch and Jürgen Habermas. This is not because they have to accept the opinion of Marx and his followers, about the crisis and the end of civil society, i.e. **capitalist system**, but to know what they wrote or did not write at all. This mostly refers to the Marxist theory of alienation/reification/fetishism, which in the 21st century is **still** likely to be the most relevant social philosophy in general. (Marx, 1975)

Otherwise, I am afraid that Jonas will remain insufficiently or partially understood, because, ultimately, Jonas himself **acknowledges** that his *Principle* is not so radical ontic antipode of the Bloch's *Principle*, which we can see as such at first glance. Ultimately, it is only a kind of ethical, critical (i.e. Aristotelian-Kant's!) "corrective" of the Promethean spirit of positive utopia and its boundless, excessive, narcissistic and **uncritical optimism** and **meliorism**, without which Marxist philosophy would not be what it **is**, among other things - a speculative theory of the future. (Jonas, 1984) And the **future** of technological civilization is what Jonas is (bio)ethically and heuristicly **concerned** (heuristics of fear!), which can be briefly sub-summarized in the latest attempts by some Marxist theorists for re-actualization and development of **the idea of socialism.** (Honneth, 2015) On the basis of analytical knowledge of social causality, Jonas does not deny the possibilities and "laws" of this global development of human society - namely the scientifically proven necessary evolution/revolution towards socialism. He only maximally critically relativizes those possibilities if it is continued on the traces of the **Western** philosophical heritage so far, especially in the field of the **philosophy of nature**, which, because of the high and **immodestly** set **goals** in the interest of human **self-liberation**, can seriously spoil the Marxist dream for the path of humanity to the "realm of freedom" (read: communism). (Jonas, 1984) This is because the practical implications of this philosophy/ethics "legalize" the exploitation and destruction of nature - including the **human nature!** - and **instrumentalize it** in an industrial resource of capitalist **progress**, whose fierce critics were and remained **the** Marxists **exactly**. (Horkheimer, 1988; Szawarski, 1990; Allen, 2015)

This may look as a boring academic philosophical quibble for anyone, but it is not at all so, because the actual social/moral processes that are happening globally all over the world, unfortunately or fortunately, have confirmed almost all of Marx's **predictions** (and of some Marxists, including Lenin) in relation to the development tendencies of the modern/postmodern civil society, or more specifically, the capitalist postcolonial/**imperial system**, regardless of some correct, but also wrong and hasty conclusions and predictions i.e. their relative prematurity. Let us not forget that Jonas quotes Lenin in several places, and that - perhaps surprisingly - in a **positive** context, namely as a man who as a statesman and a genius politician was prepared to take on himself the moral and political **responsibility** for an entire society and its future, no matter that he certainly did not intend to do what he later did as an absolute ruler. (Jonas, 1984) This applies to all those subsequent actions that are imposed on Lenin as a direct or indirect criminal (among other things we mean the liquidation of the family/dynasty of Romanovs).

But let's go back to Ernst Bloch and conclude that we can consider him a kind of "preliminary" opponent of the bioethics of Jonas, and of contemporary bioethics in general.

The next opponent, mentioned in the title of our brief essay, is Karl-Otto Apel, who, despite some positive critical remarks on Jonas, still prevails to the traditional humanistic understanding of humanism and the moral progress of humanity and humanism. We will summarize his remarks in several points:

First. Apel believes that Jonas' critic of the Promethean utopia of the Modern has nothing, or there is little, in common with the critic of the Modern, as it is currently understood, namely, as a critic of the Mind-Principle (Vernunft-Prinzip), among other things because Jonas is away from the temptation to promote fatalistic and irrationalist, or nihilistic consequences.

Second. Although with Jonas it is about **preservation** as a primary and immediate **duty**, stemming from the principle of **responsibility**, Apel believes that he **cannot** be ordered/ classified in the modern tendencies of **neo-conservatism**, which is mostly developed in the United States and Germany, disagreeing with such ratings about Jonas, said by Iring Facher, Erhard Epler and Jürgen Habermas.

Third. Although in Jonas's attempt may be "read" the inclination to restore Aristotelian ethics, and although "the basic inclination of Jonas is to take back, before Kant, to a quasi-Aristotelian – namely **ontological and teleological - metaphysics**, however this inclination has little or nothing in common with what today in FR of Germany we can name as the prevailing skeptic-pragmatic Neo-Aristotelianism." (Apel, 1990: 186-187)

Fourth, recognizing the high discursiveness of Jonas' ethics, Apel argues that, in fact, it would be sufficient already "the measure of the charge of power in the actualization of responsibility" (underlined by – D.S.). (Popularly and in a simplified manner, Jonas' stance could be: the **more powerful** you are, the **more responsible you are**)! At the same time with this positive "politicization" of responsibility, Jonas asks the question of the necessity of establishing a new ethic on the basis of a previously metaphysical (pre-Kantian) enlightening of the question of being, and considering it as sufficient Kant's "factum of the mind," but, of course, "in a more radical sense than Kant himself did." (Apel, 1990) So, in appealing tone, Apel will conclude what Jonas concludes in a way:

> *And all the more the necessity rises here again - even in the crisis situation of modernity - the* **principle of progress** *to follow along with the* **imperative of the existence** *and* **dignity of man**.
>
> (Apel, 1990: 216)

For the second chief implicit opponent of bioethics, i.e. an explicit opponent of Jonas, we took **Jurgen Habermas**. The main point at which Habermas and Jonas diverge/ confront are the latest research and experimentation with human genes, namely on the **liberal eugenics** plan. The ability to clone life not only on plants and animals, but also on the man himself, causes some admiration for some ethicists, and for some fear of **uncertainty**. (Simonovska, 2006; Protopapadakis, 2012) Simply put, Habermas leans towards those who are still uncritically admiring such possibilities of human limitless freedom for experimenting with oneself, above all with **unborn** human beings. On the other hand, Jonas leans towards those who grasp the justified **fear** of such "unlimited" freedoms and rights. However, with all the theoretical ambiguity and normative uncertainty, Habermas helps us at least delineate the "lines of the front":

> *With this dramatization, Jonas restores gene technology in the context of a self-destructing dialectic of enlightenment, according to which the very control over nature spins the genus back into nature. The collective singular 'genus' creates a reference point for a debate between the natural teleology and the philosophy of history, with Jonas and Spaemann on the one hand, and Horkheimer and Adorno on the other. However, the level of abstraction at which this discussion takes place is too high. We must clearly distinguish authoritarian from liberal eugenics.*
>
> (Habermas, 2013, 86)

We can ask Habermas a lot of questions, but that would take us to immensity. Therefore, we will satisfy only with a few:

Why would Jonas be "dramatic" when we know that experiments with human genes are more than dramatic, and because of which we are **namely** concerned, and we lead these dramatic ethical/ bioethical debates?!

What does Habermas mean by "lapse of genus **back** into nature" when the nonlinear, circular "teleological" development of nature is known, where there is no "forward" and "back", in contrast to human development, which is historical, temporal, and according to some philosophers - eschatological? This would be a typical Hegelian underestimation of the dependence of the development of the human "linear" spirit from the development of the human "circular" nature?! The man (man/woman) lives in two worlds: the world of nature and the world of culture; their interdependence and **dialectical interference** would have to become the **motto** of our moral action. (Dobžanski, 1982) However, starting from such a **dialectical philosophical position** - dating back to the time of Johan Wolfgang Goethe - we must be aware that nature does not tolerate experiments, nor jokes and plays, and that it is always "right". In contrast to its **slowness**/ evolution, there are **speed**/ revolution, crazy ideas, unrealistic hopes (among others, hope/ **faith** in the salvation mission of technological revolutions), illusions, fictions, mistakes and misconceptions that always originate - **from human beings.** Some **contemporary** philosophers, like Jonas, have perceived this as a "Zeitgeist!", unlike others, including Habermas, as though they do not want to understand and accept it.

What does Habermas mean by "authoritarian" and what by "liberal" species of eugenics? Today, as if it has entered into an ideological "fashion" that **any** attempt on ethical and legal **norms** of human actions **to** be **automatically** proclaimed as "limitation" and "endangering" of human **freedoms** and rights?! Has Habermas forgotten that the **history** of the struggle for **recognition** (Honneth) of human freedoms and rights has no linear/ **progressive** (spiritual), cultural character (Hegel), but a **dialectical/** contradictory, (material) **social** character (Marx)?!

What is meant by the "high abstraction of this discussion" if the absolute longevity of the **specific** natural evolution (teleology) is known, including the human (Dobžanski, 1982), compared to the relative short-term (historical, temporal) of human **plan** action, which is in capitalism primarily economical/ **profitable**, and in which homo sapiens is reduced, crippled, to a "one-dimensional man" (Marcuse), namely to homo faber, i.e. generally - to **homo economicus**. (Honneth)

Has the world's greatest living philosopher "in his old age" become too "practical" or even "pragmatic", as an act of intellectual opportunism/ conformism in a computer **techno-capitalist society**, in which is radically decreasing the importance, **power** and influence of top intellectuals, especially the humanists from a Marxist philosophical provenance!?

Habermas, of course, **recognizes** the **nonlinear** and Faustian (moral) nature of the human being and its face of Janus, but he stubbornly avoids giving an explicit answer to the crucial moral question in all human (historical) situations, namely the question *What Should I Do? (Was soll Ich tun?)* Recognizing Kant (under Hume`s influence!) as a founder of the Critical Theory, certainly Habermas sets critical substantial questions, starting with the traditional philosophical questions about the character of human **nature**, the relation of nature and the **lifeworld of man**, the interaction “spirit-body” (Jonas 1981; Davchev, 2010), and ending with content related to issues of ethics and **gender**, that is to say, **gender strategies**. (Simonovska/ Skalovski, 2012) However, he constantly **restrains** from giving substantive answers to this crucial **ethic!** question, i.e. provides multifaceted, multidimensional and “unreliable” answers, of which we do not have much benefit, and with which it is a bit helpful to us to deal with ethical dilemmas, temptations and challenges on the concrete and **practical** field of our **contemporary moral** social action.

Unlike Habermas, Jonas is an explicit, unrestrained, “dramatic” and categorically “takes side”, wanting to overcome the deep ethical crisis of the Postmodern, and its moral skeptic-cism, **restraint**, insecurity and chronic ambivalence, especially on a **normative** level. (Bauman, 2004) His first thesis reads: “Experiments with unborn human beings are unethical as such!” Unlike Habermas - namely in the context of genetic manipulations - Jonas goes a step further, and from this categorical imperative he tries to “norm” premises of the new, post-conventional ethics, in areas that are paradigmatic: biology and genetics, i.e. medicine. (Jonas, 1987) Regardless of his “conservatism,” Jonas himself is skeptical about the chances of practical adherence to these “new” norms. He admits that - knowing the Promethean drive of the unstoppable pace of modern science and technology - he does not believe in the prospect of keeping closed the Pandora’s box of human melioristic, exploratory and perversely curious adventurism, and its reluctance to recognize its **own responsibility** for the unforeseen/ unpredictable and bad consequences of technological interventions in the genetic structure of the human embryo. The question is whether man in his Promethean instinct would have stopped even if at certain moments/ stages of experiment he felt a certain “heuristic fear” that would have led him to predict the unpredictable. (Jonas, 1987, 216-217; Agar, 2004)

In a broader philosophical context, bioethics should pay more attention to Jonas’ premises to a new, **philosophical biology** that deals with **the phenomenon of life** in its totality/ whole, which in its object of study includes the philosophy of **the body** and the philosophy of **spirit** (Jonas, 1973, Davchev, 2010). Starting from the old and traditional philosophical questions, starting from the problem of causality (Hume), the relations and **interactions** of body-soul, body-spirit, necessity-**freedom**, life and death issues, Jonas is explicit and successful in building the premises to a new, **biocentric philosophy** and **social theory**. (Jonas, 1994)

Nevertheless, let’s give a little right to Habermas, and unlike his **critical** attitude to social reality, what Jonas constantly “forgets” to criticize - in almost his entire philosophical opus - is a “drive” which in modern technological civilization prevails **over** all others - the “drive” for **profit** , or any other form of **materi-**

al gain. Hence, the question of our "homework" in the field of social philosophy would arise, which could read: Are there any dangers that bioethics can be **commercialized**, "corrupted", "prostituted", **instrumentalized** , as were the series of virtuous and humanistic ideas, projects and concepts that were created in the history of liberal and democratic societies, which are the result of their capitalist, namely profit/ **profiteer** social and political **systematization**, conducted with the mediation of the **technolo-gical** revolutions!? (Honneth, 1994; Horkheimer, 1988)

Finally, in other words: Are **bioethics**, as a social-psychological product of the civil **society**, on the one hand, and the capitalist social and political **system** that normatively (legal) articulates/**regulates**, on the other hand – at all **compatible** at a time when the unsolvable contradictions are obvious, **social pathologies** and **pathologies of the mind** of a **system of values** which in a broader context can be conditionally referred to as **Western** civilization and culture?! (Bauman, 2004; Honneth, 1994; Honneth, 2007). In addition to this, **bioethics** must never forget, and constantly return to the original organic conditions, i.e. the **biogenesis** of human consciousness as a crucial **epistemological** problem/ challenge. (Piaget, 1983) The unfavorable ethical/ **anthropologic** situations are most strongly expressed by the Polish bioethicist Zbigniew Szawarski, paraphrasing, in fact, the **Marxist theory of aliena-tion** (Cuculovski, 2007):

> *Hans Jonas is completely right when he writes that modern technique has ceased to be just a useful tool for meeting human needs, but that it has become the goal of itself, and that it has succumbed to its own autonomous logic of development. It can, therefore, be highly likely to prove that man, along with the development of science and technique, will increasingly alienate, losing gradually any control over the products of his mind. (underlined by – D.S.)*
>
> (Szawarski, 1990)

Recognition of these situations, and confronting them with the goal of their constant overcoming in the interest of the survival and prosperity of the human anthropological habitus, are of substantial **importance**, because we must be ethically aware that "this time the barbarians are not waiting in front of the doors; they have been ruling for some time with us. The absence of awareness of this fact is part of our unfavorable situation. " (MacIntyre, 1998) (underlined by – D.S.) Hence, the new post-conventional ethics - namely **Bioethics** - must be aware that this time it is not a matter of struggle for moral **progress**, but for - a struggle for moral **survival**. (Allen, 2015: Bauman, 2005) So, the global **axiological** crisis is **yet** to confront us with the **paradoxes** of moral **progress**, (Szawarski, 1990), in which the Western civilization will be less authentic and **Promethean**, and more and more – reified/ fetishized and **Protean**.

KODA: ***And as for the barbarians, who are they?!***
Well, we know: it's never We,
It's always - some Other!?

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AFFILIATION VIA SPERM BANK

Abstract

Recent family law debates have been predominantly paedo-centric. Yet, the founding of "bio-medically assisted families" focuses on the individual parents' rights to reproduce. By introducing donations, the donor's genetic contribution becomes instrumental and the legal attribution of parenthood negotiated through expressed intentions. The absence of genetic, social and legal father can only occur in single women's conceptions by choice, hence calling into question the role of the societal fathers. This neglects the future child's voice in private and family life issues on at least two levels: informational (lacking information about origins, often related to personal identity) and legal and functional (care provided by both parents). It furthermore emphasises the inconsistency in the treatment of "naturally" and "artificially" conceived children since the latter have restricted access to parental judicial proceedings.

Key words: Affiliation, sperm donation, human rights, children's rights, paternity proceedings.

1. Introduction

The rationale behind the choice of the topic can be located in the diagnosed problems in the case of the Republic of Macedonia. Namely, the Law on Bio-medically Assisted Fertilization[34] stipulates that single women can be beneficiaries of Assisted Reproductive Technologies (ART) under condition of infertility and protects the donor's confidentiality. The Family Law[35] stipulates that access to parental proceedings is forbidden to children conceived by ART. The main hypothesis is that: there is an inconsistency between the treatment of children conceived "naturally" and "artificially" because the latter have a restricted access to judicial proceedings for establishing parenthood.

The research questions are formulated as follows:

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[34] The Law on Bio-medically Assisted Fertilization, *Official Gazette of Republic of Macedonia*, No. 37, 19.03.2008.

[35] Family Law, *Official Gazette of Republic of Macedonia* 80/92, 22.12.1992.

Are laws tailored to satisfy the reproductive wishes of prospective parents or to protect the best interests of the prospective children?

How is the child's right to know his/her genetic identity and to respect his/her family life balanced with the reproductive rights of the prospective parents?

How is the fragmented affiliation conceptualized in the legal parenthood in terms of biology/genes versus the child's family life?

Is the current impossibility of launching a proceeding to establish the parenthood of children conceived by sperm donation in the Republic of Macedonia harmonized with the internationally ratified documents (mainly the Convention on the Rights of the Child (CRC) and the practice of the European Court of Human Rights (ECtHR), and consequently is there a necessity to introduce legal changes?

Family laws in general and these issues in particular differ around the world. For instance in ten European countries (chosen on different grounds) the situation is as follows:

Single women (1) hold an unconditional right to use ART in the United Kingdom (UK), the Netherlands, and Belgium, (2) can use sperm donation under certain conditions in Macedonia, Serbia, and Croatia, and (3) are banned from exercising their individual reproductive right in Italy, France, Germany and Sweden.

Children (1) have a right to know the identity of the donor in Sweden, the UK, the Netherlands and Croatia, (2) have a conditional right in Germany and Belgium, and are banned from knowing the idea of the donor in Macedonia, Serbia, France and Italy.

Legal proceedings for establishing the paternity of children conceived by sperm donation (1) are allowed/conditionally allowed in the Netherlands, Germany, and the UK (even though their purpose is different and not related to establishing the fatherhood of the donor), and (2) are banned in Macedonia, Croatia, Serbia, Italy, France, Belgium and Sweden. [36]

The evaluation of the eligibility of the beneficiaries of an ART in most of the European legislations is connected to infertility. As a medical condition to claim treatment for realization of the reproductive right, infertility is defined as a failure to conceive following 12 months of unprotected intercourse. [37] This comes from the experience of couples, and as such, it cannot be related to single women's application for sperm donation.

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[36] For more, see in Ignovska E., Sperm Donation, Single Women and Filiation, Intersentia, 2015.

[37] Twelve months is the lowest reference limit for *time to pregnancy* by the *World Health Organization.* See also: DeMelo-Martin, I., "On Cloning Human Beings", *Bioethics*, Vol. 16, No. 3, 2002, pp. 246-265; Cooper T.G., Noonan E. von Eckardstein S, *et al*., "World Health Organization Reference Values for Human Semen Characteristics", *Human Reproduction Update*, Vol. 16, No. 3, 2010, pp. 231-245.

Even though *in vitro* fertilization was primarily introduced to overcome couples' infertility, for single women using sperm donation the reasons are usually lack of partner, lesbian orientation etc.

The United Nation's goals on population and development confirmed the World Health Organization (WHO) definition on *health* and integrated it in the definition of *reproductive health*, defining the latter as: "a state of complete physical, mental, and social well-being and not merely absence of disease and infirmity in all matters relating to the reproductive system and to its functions and processes".[38] Along these lines, everyone should be enabled to use the capacity to decide if, when and how often to reproduce. In concordance with the definition of health, reproductive health care is defined as "the constellation of methods, techniques and services that contribute to reproductive health and well-being by preventing and solving health problems".[39]

Therefore, to name sperm donation as a medical treatment is to refer to the other aspects of the definition of health, such as mental and social wellbeing, or to refer to *infertility* as the inability to conceive, making the condition not just medical, but also social such that it requires promoting access to ART for single women too.

2. Conflicting rights

The strong need of the potential parents to have genetically related children is expressed in terms of reproductive freedoms and human rights.

Nevertheless, the realization of the reproductive rights of a single woman inevitably conflicts with other individuals' rights as a principle, such as the resulting child.[40]

On the one hand, women's right to be single parents by choice derives from their (1) right to marry and to start a family,[41] (2) right to decide on the number

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[38] *Report of the International Conference on Population and* Development, United Nations, Cairo, 1994, pg. 40.

[39] *Ibid.* pg. 40.

[40] For more on conflicts between fundamental rights see in: Ieven A., "Privacy Rights in Conflict: In Search of the Theoretical Framework Behind the European Court of Human Rights' Balancing of Private Life against Other Rights", Brems E. (ed.), *Conflicts Between Fundamental Rights*, Intersentia, 2008, pg. 48.

[41] Article 12, European Convention on Human Rights: "men and women of marriageable age have the right to marry and to start a family, *according to the national laws governing the exercise of this right.*

and spacing of children, as well as to access means to enable them to exercise this right,[42] and (3) right to respect for their private and family life.[43]

Thus, single women's reproductive rights are considered individual human rights, while the availability of assisted reproductive technologies enables them to start families on their own (without a partner). Consequently, the conceptualization of family life also changes for their children.

On the other hand, children's rights should not differ depending on the modus of their conception. Therefore, children conceived by sperm donation to single women also have rights including: (1) the right to be registered from birth, (2) the right to know and be taken care of by both parents,[44] (3) the right not to be discriminated against, among other grounds also based on their birth and other status, as well as parentage,[45] (4) the right to protection of their best interests by legal/administrative authorities in conjunction with their right to a fair trial,[46] and (5) the right to respect for their private and family life. [47]

3. Affiliation via Sperm Banks

The mother's biological participation has always been certain as she was the one who physically gives birth to the child. Nevertheless, paternity had to be discovered or invented. Thus, the "marital fiction", the "fiction of adoption" and the "reality of kinship" were considered as equal as long as the family formation was maintained.[48] Even in contemporary families the father's role is negotiated through the husband's "legal fiction" when sperm is donated to couples and his non-existence when sperm is donated to single women. Lacking both the genetic and social father is a characteristic exclusively ascribed to "artificial" families founded by single women - parents by choice. Is genetic fatherhood so unimportant?

A common general feature from the existent literature is that the donor is neglected as a person and as a stakeholder, treated merely as a mean towards an

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[42] The *Proclamation of Teheran* from 1968 states: "Parents have a basic right to decide freely and responsibly on the number and spacing of their children and a right to adequate education and information in this respect". *Proclamation of Teheran*, International Conference on Human Rights, 1968.

[43] Article 8, European Convention on Human Rights (ECHR). Council of Europe, 1950.

[44] Article 7, Convention on the Rights of the Child, United Nations, 1989.

[45] Article 14, European Convention on Human Rights.

[46] Article 3, Convention on the Rights of the Child in conjunction with article 6(1), European Convention on Human Rights.

[47] Article 8, the European Convention on Human Rights.

[48] Pateman C., *The Sexual Contract*, Polity Press, 1988, pg. 27.

end.[49] On the contrary, the focus of the comparative research is mostly on institutional factors related to the legislation and recruitment of donors because they are considered important for enabling assisted reproduction for others and not for themselves.[50]

On the other hand, many sperm banks allow access to catalogs for choosing a donor that will fit personal preferences for a father. From medical and family histories to physical appearances and recorded tapes of how the possible father may look like, single women conceiving by sperm donation opt for the most father-like figure.[51] The possibility to choose (by some authors) is also being ethically condemned for its eugenic nature, eventually leading to human enhancement, as well as for the commercialization of the process of reproducing.[52] Nevertheless, the wish of the mother to choose the characteristics of the donor cannot be perceived solely in the light of reproducing a perfect baby. On the contrary, it could also be seen from a perspective of a wish to choose a person who looks like a proper father.[53] This illusion of choosing a father also changed the idea of the donations itself. Emphasizing the role of procreation of the sperm donations and introducing non-anonymous donations also elevated the responsibility of the donors.

Yet, many see the donor and the genetic contribution as irrelevant to the reproductive project since the role of being a father should not be confused with "the doing part" as a constitutive element of the concept of legal fatherhood. Therefore, many women opt for an anonymous donor who should never be personified with the idea of being a father and thus allowed to have a role in "the do-

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[49] An anthropological research on reproductive experiences found more than 150 volumes dedicated to women, and very few dedicated to men. See more in Inhorn M.C., "Defining Women's Health. A Dozen Messages from More than Ethnographies", *Medical Anthropology Quarterly*, Vol. 20, No. 3, 2006, pp. 345-378; la Cour Mosegaard M., "Stories of Fatherhood. Kinship in the Making", Inhorn M. C., Tjørnhøj-Thomsen T., Goldberg H., la Cour Mosegaard M. (eds.), *Reconceiving the Second Sex. Men, Masculinity and Reproduction*, Berghahn Books, 2009.

[50] Van den Broeck U., Vandermeeren M., Vanderschueren D., Enzlin P., Demyttenaere K., D'Hooghe T., "A Systematic Review of Sperm Donors. Demographic Characteristics, Attitudes, Motives and Experiences of the Process of Sperm Donation", *Human Reproduction Update*, Vol. 19, No. 1, pp. 37-51, 2012, pg. 50.

[51] Kirkman M., "Saviours and Satyrs. Ambivalence in Narrative Meanings of Sperm Provision", *Culture, Health & Sexuality*, Vol. 6, No. 4, 2004, pp. 319-335.

[52] Hanson F., "Donor Insemination. Eugenic and Feminist Implications", *Medical Anthropology Quarterly*, Vol. 15, No. 3, 2001, pp. 287-311; Pennings G., "The Right to Choose your Donor. A Step Towards Commercialization or a Step Towards Empowering the Patient?", *Human Reproduction*, Vol. 15, No. 3, 2000, pp. 508-514.

[53] Scheib J., Riordan M., Schaver P., "Choosing between Anonymous and Identity-release Sperm Donors. Recipient and Donor Characteristics", *Reproductive Technologies*, Vol. 10, 2000, pp. 50-58.

ing part" as well.[54] For these reasons (among the others), ever since non-anonymous donations were introduced in some (more recently in growing number) European countries, many women had Denmark as their destination for reproductive tourism. There, anonymity is still preserved for the anonymous donors, as considered for most of the donors very important for their contribution.[55] The newspapers keep on writing about the possibilities offered by the Danish clinics to women or couples worldwide. Denmark is even considered a mecca for foreign women who want to conceive by ART.[56] Out of the three most frequent categories of persons using the facilities of the Danish sperm banks – lesbian couples, heterosexual couples and single women – the last category is growing by far the fastest. The Danish *Department of Health* registered in 2008 2,694 and in 2010 4,665 foreign women undergoing medically assisted treatment in their clinics.[57] In addition, national beneficiaries use the sperm donations. Research has suggested that the biological father of approximately 5-8 of all Danish children is not the person stated on the official birth record.[58] The choice between anonymity and non-anonymity manifests the importance one grants to family relationships and actual parenting as opposed to the genetic link.[59]

4. Attributing Legal Parenthood

Contracts in the field of family law and reproduction are controversial in their nature.[60] The issue is related to the status that the law attributes to parts or products of the human body. If they are considered property, then the person owning and possessing them could easily dispose of them for a reasonable financial or other contribution in the exchange. If they are not considered property, then they are considered to be outside the commercial market (*res extra commercium*), and therefore impossible to be disposed of. There is a difference between the American (more market driven), and the European (less market driven and more driv-

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[54] Graham S.,"Choosing Single Motherhood? Single Women Negotiating the Nuclear Family Ideal", Cutas D., Chan S., (eds.) *Families – Beyond the Nuclear Ideal*, Bloomsbury Academic, 2012.

[55] Ernst E., Ingerslev H.J., Schou O., Stoltenberg M., "Attitudes Among Sperm Donors in 1992 and 2002. A Danish Questionnaire Survey", *Acta Obstetrica et Gynecologica Scandinavica*, Vol. 86, No. 3, 2007, pg. 332.

[56] Henley P., "Business Booms for Danish Sperm", *BBC News*, Copenhagen, 19 May, 2011. Available online: http://www.bbc.co.uk/news/world-europe-13460455.

[57] *Ibid.*

[58] *Op. cit.* Ernst E., Ingerslev H.J., Schou O., Stoltenberg M., 2007, pg. 327.

[59] Pennings G., "The 'Double Track' Policy for Donor Anonymity", *Human Reproduction*, Vol. 12, No. 12, 1997, pg. 2839. See also Haimes E., "Gamete Donation and the Social Management of Genetic Origins", Stacey M. (ed.), *Changing Human Reproduction*, Sage, pp. 119-147, 1992.

[60] See more in *op. cit.* Ignovska E.

en by altruistic reasons) approach regarding this issue. The European approach[61] promotes altruistic donations, in relation to which sole contribution to the expenses (in terms of efforts, time spent, costs and lost salary) is supported. This in reality is a bit more than just "fair expenses" or "pocket money", since if it was otherwise, the interest of the donors would have been drastically reduced. A line should be drawn to differentiate between donations of organs, tissues and cells,[62] and gametes that can be used for reproductive purposes.[63] While the first ones save lives and are extrapolated from one's already created body, and therefore are related to one's bodily integrity, the second ones create lives, are not part of one's body, but products of it. The donations are regulated with expression of free will in the form of consent,[64] which as such could fall under the domain of contracts that consequently produce rights and obligations for the contracting parties.[65] In the case of sperm donation, the obligation of the donor is beyond giving up of the possession of his sperm. He also gives up the consequent progeny and parental responsibilities that follow. His obligation correlates with the right of the commissioning parents. On the contrary, his rights are related to the material satisfaction of his expenses, and the preservation of his privacy (if he is anonymous), or disclosure of his identity and/or contact with the progeny (if he is not anonymous – this is not an option in the Republic of Macedonia). These premises are usually regulated in the mutual contract that follows the free disposition of the con-

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[61] As envisaged in the *Oviedo Convention, article 21* stipulating that "the human body and its parts shall not, as such, give rise to financial gain".

[62] In the Republic of Macedonia regulated by the *Law on Extracting and Transplanting Human Body Parts for Medical Treatment*, (Закон за земање и пресадување на делови од човечкото тело заради лекување, *Службен весник на Републикa Македонија*, бр. 47, 08.04.2011. *Article 2, paragraph 2* of the Law makes it clear-cut, stipulating that "the provisions of this law will not apply on reproductive organs and tissues, organs and tissues of embryos or fetuses, blood and blood derivatives". For more on this law, see Deanoska-Trendafilova A., Cadikovski V., "Legal and Medical Issues Concerning the Transplantation of Human Body Parts for Treatment in the Republic of Macedonia", Jansen B.C.S., Ignovska E.(eds.), *Law, Public Health Care System and Society.Macedonia – Social Policy, Legislation, Biomedicine and Ethics of Organ Transplantation, Fertilization and ART*, AVM, München, Academische Verlagsgemeinschaft, 2012, pp. 27-81.

[63] In the Republic of Macedonia regulated by the *op. cit. Law on Bio-Medically Assisted Fertilization*.

[64] *Article 15* of the *op. cit. Law on Bio-Medically Assisted Fertilizations* and *article 20* of the *Law on Obligations* Law on Obligations, *Official Gazette of the Republic of Macedonia,* No. 18, 05.03.2001.

[65] If sperm donations are considered altruistic and not tradable for financial or other gain, then they would be considered gifts. Again, gifts in law are related to property and possessions of things (*article 555* of the *Law on Obligations* stipulates that the contract for gift envisages an obligation of the giver (donor) to give (donate) to the receiver (recipient) a certain object, or to transfer a certain right, cease to exist certain debt or to take over a debt without contribution.

tracting parties.[66] The contracts in the field of reproduction, though, have been much more elaborated in the domain of surrogacies. There, the role of the surrogate mother is exhausted to her role of "renting" her uterus for the commissioning parents, making her just biologically (due to the gestation) and not necessarily also genetically related to the child she will give birth to.

Binding commitments in contracts in reproductive matters negotiate parenthood and are difficult to enforce. Some authors argue that parenthood is central to human experience and that the feelings accompanying it are rather unpredictable and uncontrollable, that any binding commitments should not be enforced.[67] Moreover, the Europe's largest sperm bank Cryos emphasizes their policy on their web-site: "parents and donors have signed an agreement never to try and contact the other part, but we have no agreement with the children and cannot influence their behavior".[68]

The reasons for difficulties in enforcing such contracts can be located in the changing circumstances. This has been confirmed in surrogacy cases. The first and therefore, corner-stone case on surrogacy was the case in front of the New Jersey Supreme Court *In re Baby M.*[69] The case emphasized precisely the impossibility of anticipating human behaviors when it comes to making decisions to reproduce for others, since the surrogate mother withheld her contracting obligation to give the child to the commissioning parents after giving birth.

One may condemn the analogy between surrogacy and sperm donation participation contracts. Nevertheless, in both cases women and men give their genetic and biological or just genetic contribution respectively. While in the first case, women usually have the possibility to withdraw their decisions some short peri-

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[66] *Op. cit. Law on Obligations*. A*rticle 3* regards the freedom of regulating mutual obligations in concordance with the Constitution, the law and good customs, and *article 14* regulates the dispositive character of the law.

[67] Schultz M.M., "Reproductive Technology and Intent-Based Parenthood. An Opportunity for Gender Neutrality", *Wisconsin Law Review*, Vol. 297, 1990, pg. 348. See also Suh. M.M., "Surrogate Motherhood. An Argument for Denial of Specific Performance", *Columbia Journal of Law and Social Problems*, Vol. 22, 1989, pp. 357-396.

[68] https://www.cryosinternational.com/

[69] *In re Baby M,* 537 A.2d 1227, 109 *N.J.* 396 (02.03.1988).

od after childbirth,[70] in the second case, donors do not have that option.[71] Schultz describes this as an "underlying nature of the decision that confronts a prospective father as compared to a prospective mother".[72] Therefore, it emphasizes the social compromise that the "physical and emotional connections between a prospective child and a mother up to the time of birth are different from those of a father in ways that make differentiation in the abidingness of their decisions appropriate".[73] Therefore, Schultz argues that there is a natural gender difference in the underlying essence of the decisions that confront a prospective father as compared to a prospective mother related to the physical and emotional connections between a prospective child up to the time of birth, thus related to the gestation period in the woman's body.[74] Since men and women have biologically different parts to play in the process of reproduction, both burdens and benefits out of it are not proportional.[75]

On the other hand, contracts in reproductive matters grant a dose of legal certainty and appreciation of informed consent, autonomy to decide, individual responsibility, privacy and confidentiality for all parties prior the treatment that are foundations of the intent-based parenthood.

A Dutch case of a known sperm donor (88-90)[76] challenged the provisions that the donors are not to be considered as parents. In this case, the applicant

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[70] This is differently regulated in different countries that regulate surrogacies. One modus of regulation is to treat women which give birth as mothers, and only afterwards to transfer the motherhood through court orders to the intended mothers. This is the case in the UK, making it similar to the procedure for giving the child up for adoption, which also allows a possibility for the surrogate mother to change her intention and not surrender the child for adoption. The other modus of regulation is through binding agreements authorized by the court before the transfer of a fertilized ova into the body of another woman (*art. 1458* of the *Greek Civil Code*), thus granting the commissioning parents the legal parenthood right after the birth of the child (as an exception to the rule *mater semper certa est*) in Greece (*art. 1464* of the *Greek Civil Code*). A similar solution is also provided in the Family Code of Ukraine. See more in Natzis N.A., "The Regulation of Surrogate Motherhood in Greece", *Social Science and Research Network*, 2010, pp. 3 and 6. Available online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1689774. Since the amendments in the Law on Bio-medically Assisted Fertilization in 2014, this concept is also accepted in the Republic of Macedonia.

[71] In most of the international documents regarding the establishment of the legal paternity in cases of sperm donor-assisted conceptions, it is explicitly emphasized that donors are not to be considered parents. See, for instance, in the Draft Report CJ-FA, 2011, RAP 5, pg. 20, *article 17*, *paragraph 1 (a)*. This excludes their possibility to withdraw their decision to be only donors in the child's life after the birth of the child.

[72] *Op. cit.* Schultz M.M., 1990, pg. 351.

[73] *Ibid.* pg. 352.

[74] *Ibid.* pg. 352.

[75] *Ibid.* pg. 384.

[76] *J.R.M. v. the Netherlands*, European Commission of Human Rights, No. 16944/90, decision of 08.02.1993.

agreed to donate his sperm in order to enable a lesbian couple to become parents. The couple preferred a known donor, so that they could afford to the child the right to know the biological father's identity. The applicant regularly visited the couple and the child during the pregnancy and after the birth of the child. After a while, he expressed his wish to establish certain visiting arrangements which was unacceptable for the couple. Consequently, he requested that the Dutch courts determine an arrangement concerning contact with and access to the child. The application was considered admissible due to a combination of biological connection and weekly contact with the child. Nevertheless, the Courts refused the applicant's request considering that agreements on rights and duties concerning the child are null and void, that "donorship" does not entail parental responsibilities, and that apart from biological fatherhood "family life" also requires the existence of additional circumstances.

The Dutch Courts' rationale was confirmed by the ECtHR (93) which reiterated that: (1) Family life implies close personal ties in addition to biology, (2) "Donorship" in and of itself does not give the donor a right to respect for family life with the child, (3) Access to a fair trial was provided (as an opportunity to have his claim examined by a national authority), (4) Effective remedy does not mean that the applicant must win, (5) There is no comparison between the donor and a father, and (6) There is no question of discrimination.

What if a case like the *J.R.M. v. the Netherlands* happened in the Republic of Macedonia? There are two possible scenarios: (1) if the treatment is performed in a licensed clinic and (2) if the treatment is performed at home in a private setting. In the first scenario, the clinic could either reject the request for sperm donation because of the rules of anonymity of donors and the ban on attributing parenthood to same-sex couples; or the clinic could accept the request to inseminate one woman from the couple. In the second case, parenthood cannot be established for the other woman, the donor's identity cannot be revealed, and no parental proceedings can be considered admissible in front of the Court. In the second scenario, the case will be considered as if the conception occurred naturally and not with the assistance of sperm donation. Therefore, the child's father will be considered the person who will recognize the child (if there is such a person), or if the case reaches the court, the child's father will be considered the biological/genetic father, i.e. the donor. Parenthood cannot possibly be established to the other woman. Nevertheless, the difference is that if it is considered that the child is conceived in an "artificial" setting, then there is no possibility for challenging fatherhood in a paternal proceeding, while this will not be the case if it is considered that the child is conceived outside of the "artificial" setting.

What is problematic about having such results if we put aside the question of accessibility to ART for same-sex couples?

First of all, the national legislation will turn out to be incoherent from within, treating donors differently as non-existent or legal fathers depending on the different contexts. Consequently, the role of biology/genes in the attribution of paternal status will be different depending on if the child is conceived with the assistance or naturally. This makes the examination of the fact of family life either non-existent or only of secondary importance.

Secondly, the child's right to know his/hers genetic origins will be fully neglected in contrast to the implied by the ratification of the CRC.

Thirdly, the participants of such a reproductive project will be discriminated against in terms of their right to a fair trial and effective remedy in front of the national courts.

These facts will show that the State legislation is internally incoherent and furthermore that it fails to respect international documents such as the CRC and the ECHR.

From this analysis it becomes evident that several problems exist with the regulation of sperm donations to single women in the Republic of Macedonia:

1. ARTs primarily serve to realize the reproductive right of prospective parents;
2. Children's right to genetic identity and family life is neglected;
3. The fragmentation of the affiliation caused by ART's application in reality is not synchronized with the law affording status in family matters. The law lacks mechanisms to assess both aspects of parenthood: social and biological/genetic.
4. The impossibility of launching a proceeding to establish parenthood of children conceived by sperm donation. is discriminatory on a national level, violates the international documents and is not harmonized with the practice of the European Court of Human Rights.

Therefore, legal changes should be introduced.

The rationale for forbidding parental proceedings for children conceived by assisted reproduction could be traced to the non-allowance of changed circumstances that imposed the conflict of rights in the first place. Namely, only conflicting rights can be discussed in front of a civil court. If all parties agree (the known sperm donor, the mother and the child), there is no conflict of rights and interests among them. In order to achieve the same consequences, they always have the possibility to allow administrative recognition of the child. Besides, the application for access to legal proceedings for establishing fatherhood in relation to a child conceived by sperm donation to a single woman may not come from the donor. It could also be possible that another man (for instance, the future factual partner of the mother) on grounds of factual family life with the child (not genetics) would like to claim paternal responsibilities towards the child, against the mother's will.[77]

It is a matter of weight conflicting rights, interests and responsibilities in determining if the decision will be constitutional (in terms of constituting a new right – i.e. parental right/responsibility) or not.

5. Conclusion

As a brief summary of the general conclusions, it should be emphasized that the recent legislative trends give precedence to truth over fiction regarding conception. The concept of donations is shifting from anonymous to non-anonymous. Consequently, donors are becoming aware of the possibility of being identified and of meeting and establishing contact with the child in the future.

If sperm donations are allowed to single women, then the sperm donors and children's positions should also be enhanced.

Sperm donors should be informed about the birth of their genetically related children.

Children should enjoy two aspects of their private and family life.

Firstly, they should enjoy the informational aspect envisaged in the right to know their family origins.

Secondly, they should enjoy the legal and functional aspect of having parental care as established on grounds of intention.

Parental proceedings should be available for every parent and child under equal conditions.

Once the case is considered admissible, the merits of the claim should be evaluated based on the interaction between three facts: (1) biology/genes, (2) social and factual family life, and (3) intention of the parties, as additionally perceived through the prism of the best interest of the child in each particular case.

If these facts are accepted and integrated into the legal system, there will be no reason to ban parental proceedings for a group of misfortunate children born after gamete donation without their choice. Additionally, the national legal sys-

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[77] This is also consistent with the *op. cit.* Draft Report CJ-FA, 2011, RAP 5, pg. 37, article 14, regarding the establishment of paternal affiliation by voluntary recognition, suggesting that the person that can recognize the child as his does not have to be necessarily the biological father, but could also be the partner of the mother (who is not genetically related to the child). It follows (as in the other cases of paternal recognition) that if the consent of the mother is not gained, then her partner could refer to a competent authority to establish paternal affiliation (*article 15*, pg.38).

tems will not compromise the accessibility to justice and the internationally accepted conventions, and thus, will be more coherent.

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Original scientific paper/Изворна научна статија

THE ‘RIGHT TO DIE’ REVISITED

Abstract

In this short paper I will discuss the ambiguous and, even, controversial term ‘right to die’ in the context of the euthanasia debate and, in particular, in the case of passive euthanasia. First I will present the major objections towards the moral legitimacy of a right to die, most of which I also endorse myself; then I will investigate whether the right to die could acquire adequate moral justification in the case of passive euthanasia. In the light of the Kantian tradition I will argue that since rights are understood as based upon duties, the right to die should also presuppose a corresponding duty, which to me could be either an imperfect, solidarity-related duty, or an autonomy-related one, at least as far as the unwanted prolongation of life is concerned. I will conclude with the view that the right to die could actually be considered a legitimate one in the case of passive euthanasia, when the application of life-supporting techniques is against the wishes and the best interests of the patient.

Key words: right to die; euthanasia; passive euthanasia; positive and negative rights; perfect duties; imperfect duties; Kantian ethics

I. Introduction

The discussion concerning the right to die lies at the core of the moral debate on euthanasia regardless of types and variants; nevertheless it is in respect of voluntary passive euthanasia that it is usually considered the most decisive moral determinant. The right to die among all rights is the most controversial, because it necessarily implies that life may on occasion be not worth living[79], or that death may be preferable to life; while the first implication most of the times is chal-

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[79] See Suzan Beryl Chetwynd, “Right to Life, Right to Die and Assisted Suicide”, *Journal of Applied Philosophy* 21, no. 2 (2004): 173-182; also David A. J. Richards, “Constitutional Privacy, the Right to Die and the Meaning of Life: A Moral Analysis”, *William & Mary Law Review* 22, no. 3 (1981): 327-419, 382 ff.

lenged as violating common sense, being contrary to common experience and constituting a slippery slope[80], the latter is typically rejected as a common logical fallacy, since there is no common scale on which life and death may be compared: non-existence is simply inaccessible to human experience[81]. Next to the concerns I already outlined, there is also extensive ambiguity with regard to the classification of such a right, assuming it could be admitted: it is a matter of controversy whether it could be considered a claim- or a liberty-right, as well as a positive or a negative one. The right to die in general poses major challenges for Ethics, Law Ethics and Bioethics, literally driving human intellect to its limits: to paraphrase Kant’s argument against suicide, the right to die puts to challenge the intrinsic value of life “through the same [faculty] whose vocation is to impel the furtherance of life.[82]” It is not surprising at all that the endeavor to establish a moral or/and legal right to die has been vigorously rejected as undocumented, unsound, barren and meaningless.

While the right to life[83] corresponds to concepts that more or less tend to be readily accepted as suitable to either the human condition, or to our moral intuitions or sentiments, so as it requires much effort to be challenged or questioned,[84]

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[80] Relevant literature is vast; see among others John D. Arras, “The Right to Die on the Slippery Slope”, *Social Theory and Practice* 8, no. 3 (1982): 285-328; D. Benatar, “A Legal Right to Die: Responding to Slippery Slope and Abuse Arguments”, *Current Oncology* 18, no. 5 (2011): 206-207; Danny Scoccia, “Slippery-Slope Objections to Legalizing Physician-Assisted Suicide and Voluntary Euthanasia”, *Public Affairs Quarterly* 19, no. 2 (2005): 143-161; Daniel Callahan, “When Self-Determination Runs Amok”, *The Hastings Center Report* 22, no. 2 (1992): 52-55.

[81] For a discussion of the ‘incommensurability’ or ‘lack of contrast’ argument see mine “Epictetus’ Smoky Chamber: A Study on Rational Suicide as a Moral Choice”, in *Antiquity and Modern World: Religion and Culture*, ed. K. M. Gadjanski, 279-292 (Belgrade: The Serbian Society for Ancient Studies, 2011), 289 ff.

[82] Immanuel Kant, *Groundwork for the Metaphysics of Morals*, ed. Allen W. Wood (New Haven & London: Yale University Press, 2002), 4:422. By ‘faculty’ I replace ‘feeling’ in the original text.

[83] Expressly declared already since 1948 in the *Universal Declaration of Human Rights* (article 3): “Everyone has the right to life, liberty and security of person”; again in the 1950 *Convention for the Protection of Human Rights and Fundamental Freedoms* (article 2): “1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary: a. in defence of any person from unlawful violence; b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; c. in action lawfully taken for the purpose of quelling a riot or insurrection”; the right to life is mentioned in all relevant constitutional texts henceforth.

[84] See, among others, Hans Jonas, “The Right to Die”, *Hastings Center Report* 8, no. 4 (1978): 31-36, 31. Jonas considers the right to life as the most plausible and fundamental one, but also as the basis of every other right – quite surprisingly, but not without adequate justification, of the right to die as well: “It is thus ultimately the concept of life, not the concept of death, which rules the question of the ‘right to die’. We have come back to the beginning, where we found the right to life standing as the basis of all rights. Fully understood, it also includes the right to death.”

at least *prima facie*, the situation is quite the opposite with regard to the right to die. This is only expected, since the notion of life and the concept of rights seem to harmoniously interlock, while death seems to be in direct juxtaposition with both. But this couldn’t be otherwise: death is by definition a scandal to reason, and scandals can be resolved only by faith, religious or other. The concept of moral rights, on the contrary, is the crest of rational moral humanity[85]. Therefore, the term ‘right to die’ seems to be an exemplary *contradictio in terminis* case[86], since it makes appeal to an impossible connection: it aspires to combine what is by definition irrational with what is the most remarkable offspring of rationality. Contrary to the above, in this short paper I will argue that the right to die could be justified in the case of passive euthanasia as an autonomy-related negative – or, liberty – right on the one hand, or as a solidarity-based positive – or, claim – right on the other.

II. The right to die

Rights, regardless of their nature, to wit whether they are discussed as legal, moral, human or other, are either permissions or entitlements acknowledged to the right-holder to do (or, to be done unto) or not to do something (or, to be left alone). In the light of the above the debate concerning the ‘right to die’ obviously could never be about *the fact* or *the event* of death *per se*; instead, what is actually debated is whether moral agents are entitled (or, should be anyway allowed) to decide the time, the fashion after, and the circumstances in which they will experience their inevitable death. In other words, the proponents of the right to die claim that in their view moral agents should be permitted – or even assisted – to die on the one hand when the continuation of their life would be against their will and their best interests, and on the other in the most humane and less agonizing way possible, if this is what they wish. Suggesting a right to secure the above doesn’t seem unreasonable at all; after all, we are all mortals, and it is only expected that we would have a strong interest in being allowed as much control as possible on our death.

The establishment of a right to die would be uncontroversial if the debate was on suicide, and not on euthanasia. But, of course, no such debate could be on suicide; suicide has no need of rights to remain an option for moral agents: the deci-

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[85] By “humanity” I am refer to the German term “Menschlichkeit” Immanuel Kant uses to denote, among others, rational nature. See Wood’s relevant comment in Immanuel Kant, *Groundwork*, 47, n. 63.

[86] On the contradiction that underlies the assumption of a right to die see among others David J. Velleman, “Against the Right to Die”, *The Journal of Medicine and Philosophy* 17, no. 6 (1992): 665-681, as well as David J. Velleman, “A Right of Self-Termination?” *Ethics* 109, no. 3 (1999): 606-628.

sion to commit suicide rests with the person concerned, and nobody has the power to prevent one from taking his life, at least under normal circumstances. With regard to euthanasia, however, the establishment of the right to die is of pivotal importance[87]. The most morally significant difference between euthanasia and suicide is that the former, very much unlike the latter, requires the direct intervention of another moral agent. Therefore, in the case of euthanasia to accept a right to die might only mean that moral agents on the one hand are perfectly justified to ask for our direct actions to see their life terminated, and on the other that their request should be fully met by any other moral agent, since all others would acknowledge a corresponding duty of theirs to respect such request and respond to it. In other words, the right to die in the case of euthanasia appears to be a claim-right[88]. This is what sparks controversy among the proponents and the opponents of the right to die.

In particular, and this *par excellence* applies to bioethicists who are under the influence of the Kantian tradition in ethics, any particular right could be seen as the offspring of a previously established[89] corresponding duty[90], on which the right in discussion is founded or based[91]. Or, according to Raz, I have a right iff some aspect of my interests is sufficient reason to hold another person to be under a duty[92]. In Kantian terms any duty is a voluntary, self-imposed and mandated by reason[93] absolute obligation: in brief, if I have the duty to (do or abstain from doing) something, there would be no rational justification if I decided to opt for any other choice among those provided as alternatives in the given situation, except for what duty commands me to opt for. If I acknowledge a perfect duty of mine towards others to keep promises, there is no other rational alternative for me except to keep the certain promise I have given, although this might be against my

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[87] Tom L. Beauchamp, "The Right to Die as the Triumph of Autonomy", *Journal of Medicine and Philosophy* 31, no. 6 (2006): 643-654, 645.

[88] See Leif Wenar, "The Nature of Claim-Rights", *Ethics* 123, no. 2 (2013): 202-229.

[89] Matthew Kramer, "Rights without Trimmings", in *A Debater Over Rights*, ed. Matthew Kramer, Nigel Simmonds, and Hillel Steiner (Oxford: Clarendon, 1998), 26.

[90] See James A. Sherman, *Renewing Liberalism* (Dordrecht: Springer, 2016), especially chapter "From Moral Duties to Moral Rights", 383-434; also Richard Tuck, *Natural Rights Theories: Their Origin and Development* (New York: Cambridge University Press, 1979), 159-61; and Knud Haakonssen, *Natural Law and Moral Philosophy* (Cambridge, Mass.: Cambridge University Press, 1996), 41.

[91] Pierfrancesco Biasetti, "Rights, Duties, and Moral Conflicts", *Ethics & Politics* 25, no. 2 (2014): 1042-1062, 1042, where Biasetti quotes Mahatma Gandhi suggesting to Herbert George Wells to "…begin with a charter of Duties of Man and I promise the rights will follow as spring follows winter".

[92] Jozef Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1988), 166.

[93] "For the rest, I understand by a perfect duty that which permits no exception to the advantage of inclination." Immanuel Kant, *Groundwork for the Metaphysics of Morals*, ed. and trans. Allen W. Wood (New Haven and London: Yale University Press, 2002), § 4:421, note.

best interests at the moment, or contrary to what I desire[94]. Duty, on this account, is a self-imposed restriction of my instinctive nature; my rational nature simply allows for nothing else save to do as duty compels me to, as far as I make my decisions as a rational moral agent.

Any right, on the contrary, is an absolute permission, entitlement or freedom to do – or to be done unto – what it refers to. The moral right to my property, for example, means that I am allowed to dispose of my property as I wish: I am free to retain it, to quit it in favor of any beneficiary I chose to, or even to destroy it. Since the right to property is acknowledged as a legitimate moral one by the moral community I live in, other moral agents are obliged to abstain from any action that would disallow me deal with my property according to my will.

When it comes to moral rights[95] – contrary to how it is with legal rights, concerning which there is unanimous consensus that they are bestowed onto persons by legal systems – the major issue of dispute regards their foundation; it is usually assumed that moral rights are based either upon God’s will, or human nature, broad social consensus, utility, or pure reason. To me the only proper foundation of rights may be reason, since every other basis may only be dependent either on the idiosyncratic ontological or metaphysical views one adopts, or on individual taste: people should be acknowledged specific rights because God wants them to be, or as bearers of an immortal soul, or on grounds of an evanescent social consensus, or just because it is much more useful to be acknowledged rights than not to. But since fundamental ontological and metaphysical premises are not unanimously accepted, while at the same time utility is not being agreed upon by everybody, nothing but pure reason in my view may serve as the proper ground for asserting rights for moral agents. But rights can have only indirect foundation on reason, as based upon – or, better, as deriving from – corresponding duties that are mandated by reason, so as to challenge or reject duties would be to challenge or reject reason, which is self-defeating, since one should make use of a reasonable argument to do so. In short, as far as the Kantian tradition in ethics is concerned, duties come first and rights follow. In that sense, I have a right to my property because – and only because – all other moral agents have beforehand already acknowledged it as a perfect moral duty of theirs to respect property in general, since not respecting it would imply that one assumes a world in which the notion of property at the same time exists and doesn’t exist: if moral agents decided to act according to the maxim ‘property shouldn’t be respected’, the notion of

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[94] Concerning perfect duties towards others see ibidem, § 4:422.

[95] I use the term here literally and as opposed to legal rights, and not in the legal sense the term is usually understood; I also deliberately avoid the term ‘natural rights’ as misleading, since in my view moral rights is the *species* and natural rights are the *genus*, as I explain above.

property would instantly vanish into thin air, but moral agents would still strive to conform their actions to the maxim 'not to respect property' – which is utterly irrational, since property would exist as an idea in the intellect, but wouldn't correspond to anything existing in the real world. To sum up, any particular right that has no foundation upon a certain moral duty can be nothing else than *flatus vocis*[96]. The right to life, in that sense, is based upon the morally binding duty not to threaten, harm or take one's life no matter what. It is more than obvious that this duty is a negative one[97]; it doesn't demand that moral agents should proceed to certain actions, but that they should abstain from any action instead: it disallows me, for example, to shoot a guy to kill him, but it doesn't mandate that I should do something to save him from a hungry lion that has chosen him as its pray[98]. Negative duties produce negative rights, and the right to life is an exemplary case, a right purposed to protect my life against the contrary disposition of anybody else.

Next to negative rights that are based upon negative duties – or, to use Kantian terminology, upon *perfect* or *strict* duties – there are also positive rights[99], and these are based upon positive duties, the ones Kant refers to as *imperfect* or *praiseworthy*. Positive duties compel moral agents to act accordingly in order to respect these duties, and this allows individuals to raise certain claims towards others to act in such a way as the right-holder is subjected to the actions that would facilitate him to exercise his particular right[100]. A positive, imperfect duty like the one to solidarity Kant mentions as an example of imperfect duties towards others, seems capable of supporting a positive right to solidarity; as a matter of fact, utilitarian ethicists currently argue in favor of the *right to safe-rescue*, which is a solidarity-based right.

Moving to the right to die debate, it is obvious that any right to die could only be a positive, and never a negative one, since one who asks for euthanasia demands that the doctor or one's relatives act in such a way as to terminate one's life; moreover, one who makes that claim actually claims as his right to be put to death. But if the right to die were to be seen as a positive right, this would mean that it should be based upon a previously established and agreed upon positive duty. However, this sounds absurd: assuming a particular moral duty of the kind

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[96] The term is attributed to Roscelin of Compiègne by Anselm of Canterbury. See Frederick Copleston, *A History of Philosophy*, vol. II (London: Continuum, 2003), 143.

[97] On negative duties – and how they interweave with positive ones – see Raymond A. Belliotti, "Negative and Positive Duties", *Theoria* 47, no. 2 (1981): 82-92; also James Rachels, "Killing and Starving to Death", *Philosophy* 54 (1979): 159-171.

[98] Onora O'Neill, *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge: Cambridge University Press, 1989), 230.

[99] See Richard L. Lippke, "The Elusive Distinction between Negative and Positive Rights", *The Southern Journal of Philosophy* 33 (1995): 335-346.

[100] See Jack Donnelly, *International Human Rights* (Boulder: Westview Press, 2007), 25 ff.

“I ought to put to death anyone upon his request” sounds like an extremely demanding project; even if we consider such a duty a solidarity-based one, it would remain extremely controversial, since actively terminating one’s life could never count as a proper means to express solidarity, at least not under the light of the Kantian tradition in ethics: it would violate the second formula of the categorical imperative that compels moral agents not to treat humanity whether in their own person or in the person of any other solely as a means, but always at the same time as an end[101].

All the above imply that in the case we accept the right to die as a legitimate moral right, this right couldn’t be based upon any – either negative or positive – duty, therefore it would be just *flatus vocis*. Even if, for the sake of the discussion, we considered the right to die as a solidarity-related right, this would be futile, since the duty of solidarity, as long as it is an imperfect one, is not morally binding. To sum up: to admit the right to die to proper – or, typical – moral rights, we should either consider it a positive, or a negative one, to wit based upon a corresponding positive or negative duty. But the right to die cannot be a negative right, since it doesn’t correspond to any negative duty, therefore it may only be a positive right; yet it is not a positive right since it doesn’t derive from a positive duty (even if it was, this would be morally irrelevant for the reasons I previously explained). *Sequitur*, the right to die cannot be admitted to proper moral rights, unless moral rights are considered *in vacuum*, and not as necessarily imposing duties – or, better, dependent on previously acknowledged moral duties – owed to right-holders.

III. Rethinking the right to die

All the above would apply in a world much simpler than the one we to live in. In our world, however, the situation is since several decades much more complicated: we might no more be allowed the luxury of unqualified claims and categorical imperatives; it seems that we probably have to be more modest and flexible concerning issues such as euthanasia. For instance, the plea for euthanasia nowadays mostly concerns comatose patients in persistent, irreversible vegetative state, therefore most of the times it is not being submitted by the patient, but by his relatives[102]; the cases in which a competent and conscious patient asks for euthanasia are much more rare, and this is primarily due to the advances in palliative care and pain management that have been made during the last decades. But even when a competent patient himself asks for euthanasia, he is usually in a con-

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[101] Kant, *Groundwork*, 4:429.

[102] See J. Pereira, “Legalizing Euthanasia or Assisted Suicide: The Illusion of Safeguards and Controls”, *Current Oncology* 18, no. 2 (2011): e38-e45.

dition very much unlike the one Kant seems to have in mind when he altogether rejects suicide[103] as “debasing of humanity in one’s person”:

> *“...duty, hence as long as he lives; and it is a contradiction that he should be authorized to withdraw from all obligation, that is, freely to act as if no authorization were needed for this action. To annihilate the subject of morality in one’s own person is to root out the existence of morality itself from the world, as far as one can, even though morality is an end in itself. Consequently, disposing of oneself as a mere means to some discretionary end is debasing humanity in one’s person (homo noumenon), to which man (homo phaenomenon) was nevertheless entrusted for preservation.*[104]*”*

Contrary to what Kant argues, one might claim that today “annihilating the subject of morality in one’s own person and rooting out the existence of morality itself of the world” would be rejecting rather than granting the patient’s request for euthanasia; you see, such a patient has been probably kept against his will to a burdensome, humiliating and unnaturally prolonged life, one that would have naturally long ended if it weren’t for the marvelous – but in his case, unwanted – achievements of medical technology, medicine and biomedicine, due to which life – or, something resembling a “life” – can be supported beyond Kant’s imagination: any comatose patient may be kept in existence – I intentionally avoid here the term “life” – for decades, and even outlive his perfectly healthy children[105]. On the other hand, a terminally-ill – but not comatose – patient’s life may be supported as long as it is needed so as he experiences the unimagined creativity and the skills nature manifests when it comes to torment, agony and humiliation. As the situation is, the request for euthanasia seems to be less about inflicting death, and more about not prolonging life, which is a totally different issue.

I have already argued that when it comes to bringing about – or assisting – the death of another person upon his explicit request, it seems to me almost impossible to consider this a right of the person involved; with regard to not prolonging life against one’s will, however, the case seems to be quite the opposite. In other words, while it is at least far fetching for anyone to invoke a right to be killed, in my view it is much sounder – better, absolutely sound – to claim it as his right to be left to die. This is because in such a case the right to die might be considered a *negative right*, something that would be unthinkable fifty years ago: back then

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[103] Kant, *Groundwork*, § 4:421-422.

[104] I. Kant, *The Metaphysics of Morals*, ed. Mary Gregor (Cambridge: Cambridge University Press, 1991), § 6:422–423.

[105] Theresa Marie Schiavo was kept in a comatose state for 15 years with no prospect of recovery whatsoever. For the moral aspect of the debate on Schiavo’s case see T. Koch, “The Challenge of Terri Schiavo: Lessons for Bioethics”, *Journal of Medical Ethics* 31 (2005): 376-378.

when one’s time had come, nothing could be done to postpone the inevitable; in our times, however, I may be denied my natural, in time – and, in some cases, even wished-for – death, and this against my will and my best interests, at least the way I perceive them. If this is true, which is, and if the right to death as a negative right has any meaning indeed, this could only be because it is based upon some corresponding duty of others towards me not to prolong my life by artificial means against my will, a duty which makes it a valid moral claim. But what kind of a moral duty would this be?

In the unique, fascinating universe of Kantian Bioethics the duty not to prolong the life of a patient against his will and to his detriment is usually perceived either as a solidarity-related duty, to wit as an *imperfect duty* owed to others according to Kant’s classification, or as not a duty at all, but rather as a supererogatory act, one that goes beyond duty; neither imperfect duties, however, nor supererogatory acts are suitable to support derivative rights, either liberty- or claim-rights. Contrary to this view, allow me to support a totally different case here: as I see it one’s right to be left to die a natural and unhindered death if this is what one wishes, is an autonomy-related right, one that is based upon – or necessitated by – a *perfect duty* towards others, directly connected to the very core of Kant’s ethical system and interlocking with its key moral imperative: respect for positive freedom, autonomy and thus dignity of rational moral humanity.

When a person is forced to keep on to a debasing life prolonged by artificial means, this person seems to be under some kind of heteronomy totally alien to rational moral humanity in the Kantian sense; moreover, such heteronomy has nothing in common with inevitable and inescapable *natural heteronomy* – on the contrary, it is entirely man-made and man-imposed. In other words, acting in such a way as to prolong one’s agonizing life against his will on the one hand looks like tormenting him, and on the other is totally disregarding and disrespecting his autonomy. Treating rational moral humanity in such a manner, however, might by no means become a universal law of nature, since such a law could only be applicable in a world where the will of the moral agent would and, at the same time, wouldn’t be a ruler to itself.

To sum up, not every request for euthanasia is necessarily one that is in accordance with a maxim that reason would approve of. When, however, such a request concerns *not prolonging* burdensome, agonizing and desperate life, it might be a rational one. Such a request may only be rejected on very good reasons; if not, the autonomy – and, hence, the dignity – of the moral agent would be compromised. This, however, is unacceptable.

IV. Conclusion

In the light of the above, in the case of active euthanasia the patient is not entitled to request the termination of his life by invoking a claim-right to be killed, since such a right could by no means be based upon any corresponding perfect duty of others towards him to terminate his life on his serious and persistent request. To accede to such a request would at best be complying with an imperfect solidarity-related duty towards others; even so, as I have already argued, imperfect duties are not suitable to support derivative claim-rights. Quite on the contrary, in the case of passive euthanasia, when the patient asks to be left to die a natural death according to his own free will, proper respect for his autonomy and dignity might imply that his request should be granted[106]. *Sequitur*, accepting the request for passive euthanasia seems to correspond to an autonomy-related perfect duty towards others deriving directly from Kant’s categorical imperative: any rational will who decides according to maxims through which it can at the same time will that they become universal laws[107] should be respected, unless the will is not a ruler to itself. Respect for autonomy in the case of passive euthanasia in my view seems to be a quite adequate justification for establishing a right to die – or, better, for the right of the patient to be left to die unhindered by actions undertaken by others on purpose of prolonging his life by artificial means against his own free will. The key question is whether a rational will may under the circumstances of a particular situation set as its maxim to cease existing. It sounds like a paradox indeed, but even Kant himself – in one of these rare instances he allows his Stoic influence become manifest – seems to entertain some slight shadow of doubt now and again, namely when he discusses the moral assessment of suicide in the rare occasions that adhering to life might – or, even better, is expected to – threaten the autonomy and the dignity of the moral agent. He asks in *The Metaphysics of Morals*:

> *“A man who had been bitten by a mad dog already felt hydrophobia coming on. He explained, in a letter he left, that, since as far as he knew the disease was incurable, he was taking his life lest he harm others as well in his madness (the onset of which he already felt). Did he do wrong[108]?”*

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[106] Jonas, “The Right to Die”, 36: “To defend the right to die, therefore, the real vocation of medicine must be reaffirmed, so as to free both patient and physician from their present bondage. The novel condition of the patient’s impotence coupled with the power of life-prolonging technologies prompts such a reaffirmation. I suggest that the trust of medicine is the wholeness of life. Its commitment is to keep the flame of life burning, not its embers glimmering. Least of all is it the infliction of suffering and indignity.”

[107] Kant, *Groundwork*, 4:421.

[108] Kant, *The Metaphysics of Morals*, § 423-424.

And again in his *Lectures on Ethics*:

> *“In the cases where a man is liable to dishonour, he is duty bound to give up his life, rather than dishonour the humanity in his own person. For does he do honour to it, if it is to be dishonoured by others? If a man can preserve his life no otherwise than by dishonouring his humanity, he ought rather to sacrifice it. He then, indeed, puts his animal life in danger, yet he feels that, so long as he has lived, he has lived honourably. It matters not that a man lives long (for it is not his life that he loses by the event, but only the prolongation of the years of his life, since nature has already decreed that he will some day die); what matters is, that so long as he lives, he should live honourably, and not dishonour the dignity of humanity. If he can now no longer live in that fashion, he cannot live at all; his moral life is then at an end. But moral life is at an end if it no longer accords with the dignity of humanity. This moral life is determined through its evil and hardships. Amid all torments, I can still live morally, and must endure them all, even death itself, before ever I perform a disreputable act. At the moment when I can no longer live with honour, and become by such an action unworthy of life, I cannot live at all. It is therefore far better to die with honour and reputation, than to prolong one’s life by a few years through a discreditable action. If somebody, for example, can preserve life no longer save by surrendering their person to the will of another, they are bound rather to sacrifice their life, than to dishonour the dignity of humanity in their person, which is what they do by giving themselves up as a thing to the will of someone else*[109]*.”*

In my view there can be only few – if any – occasions more dishonoring and humiliating than being forced to a life of agony and torment against my will, a life unnaturally prolonged far beyond its limits. As far as I am concerned, and if fate holds for me such an end, I wish this short paper has adequately proven the right to die as a valid one in the case of passive euthanasia, so as I will be allowed a natural death, one no more agonizing than death has to be anyway – and this even if the doctor who treats me during the last days of my life happens to be a devoted Kantian. Under the circumstances it would be the best possible consolation to know that my doctor would be determined to do what it takes to respect my autonomy and preserve my dignity at least, since it would be beyond his power to save my life.

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[109] I. Kant, *Lectures on Ethics*, ed. Peter Heath and J. B. Schneewind, trans. Peter Heath (Cambridge: Cambridge University Press, 1997), § 377.

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Hans-Martin Sass[110]

UDK:602.6:316.32
004.738.5:316.32
316.7:577.3
Professional paper/Стручна статија

THE TOWER OF BABEL – SYMBOL OF CULTURE, HYBRIS OR DESTRUCTION?

We humans are builders and cultivators. Since we left the trees of the African jungles we have walked all over the world, changed nature by building farms and houses, villages and castles, walls and networks of commerce and communication. 5000-year-old Sumerian mythology describes the permanent dialectical interaction between the liquid water giant Leviathan and the land animal Behemoth, shaping Mesopotamian culture via water-nets as we now build inter-nets of all kind. Hobbes' Leviathan describes the human community as a living bios, a body similar to a human body, its cells and organs made out of people[111]. Axes, knives, hammers, drills, swords, firearms are enhanced properties of human hands; letters and books are enhanced forms of information and memory. Farm animals and crops are cultivated species for human use. Risks today are rarely related to natural disasters, but much more to our new social, technical, economic, cultural interconnected way of life, - they may come naturally or man-made by individuals, groups, corporations, states, as suggested by Richard Alexander: 'Unique among all living beings … humans have so controlled the environments that virtually the only significant hostile force of nature now is other humans'[112].

We have changed our biotopes, but did we also change our human nature? The Tower of Babel has become a symbol of human achievement in technology and culture and of human hubris reaching beyond our limits, a symbol for risks associated with our buildings, technologies, and diversities in languages and cultures. The Israelites burned the ancient city of Jericho, ransacking gold, silver and bronze (Deut. 20:16, Joshua 6:24); the Nazis burned millions of Jews and others in Concentration Camps and stole their belongings; Mafiosi, state and non-state

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[111] Particularly impressive is the sketch by Abraham Bosse on the title of the 1651 edition of the 'Leviathan or the Matter, Former and Power of Common Wealth, Ecclesiastical and Civil'.

[112] Alexander RD The Biology of Moral Systems, New York: de Gruyter 1987, p. 261

sponsored bad people continue to kill, torture, extort, rape, manipulate their fellow humans. Two recent scientific developments – building cyberspace territories and re-manufacturing the DNA code of bios – challenge the health and stability of our cultural and social bodies. Both biotopes are built on electricity, which collapses if essential networks are manipulated or destroyed. - *1. How do we protect health, love and community in geos against unhealthy infiltration from cyberspace and from bios manipulation? 2. Can we build and sustain networks of families and neighbors separated from integrated geo-cyber-spaces?*

Internets of people, things, everythings

Hobbes' nation-state Leviathan had political/military and by spiritual/religious powers, which ruled the 8 C's of his bios/body/biotope: communication and cooperation, competence and competition, contemplation and calculation, compassion and culture. Today social networks of people and of things undermine traditional geopowers; Facebook with 1.7 billion people has more inhabitants than China with 1.4. Annual budgets of FAANG corporations such as Amazon and Alibaba are higher than those of most nation states and their informational knowledge and power based on algorithm memory surpasses all political state intelligence. Today, it is not good or bad states or individuals and clans interacting with each other; similar to religions in the past new non-stare powers such as corporations have increasingly enlarged their power and interaction with biological, social, cultural biotopes. An article in the 'Harvard Business Review' recently described corporations as living being with an internal metabolism and integrated in their specific biotope[113]; this definition would be suitable for individual humans, other species and all integrated biotopes.- *1. Will these new internets replace traditional non-geospace powers of religion and narratives? 2. Will they be used to form new global or local networks of eccentric or bad people for fake news? 3. Will they be destroyed or manipulated by state or non-state players. 4. Will they replace friendship and lovemaking in geospace by new adventures and cultures in cyberspace?*

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[113] Reeves M, Levin S, Ueda D 'The Biology of Corporate Survival. Natural Ecosysems hold surprising Lessions for Business, in: Harvard Business Review, 2016, (Jan/Febr), p. 49: 'Complex adaptive systems are often nested in broader systems. A population is a CAS [complex adaptive system] nested in a naturel ecosystem, which in itself is nested in the broader biological environment. A company is a CAS nested in a business ecosystem, which is nested in the broad societal environment. Complexity therefore exists at multiple levels, not just within the organizational boundaries; and at each level there is tension between what is good for an individual agent and what is good for the larger system.'

Health and happiness of individuals and integrated bios

Medical arts and sciences have improved health, happiness, and life expectancy. Breeding of crops and animals over the millennia indirectly modified the genetic code of cultivated plants, animals and microbiomes. But some new agricultural microbiomes and city pollution threaten stability and health of humans and biotopes, endanger species such as bees essential for functioning biotopes and even might change climates. Health and happiness of modern human societies and and the biotopes we/they created are threatened by our own products and achievements; they include our 100% dependency from electricity, which is threatened by electro-magnetic pulses EMP, coming from the sun or deliberately from evil gangs or states, also by new diseases spreading easily in an closely integrated global world, and not at least from individuals and groups confusing geo-bio and virtual-bios.[114] - 1. *How must we translate 'informed consent' and 'informed contract' of individuals, families, societies into CRISP-CAS9 engineering? 2. Can we long-term predict influence of indirect or direct genetic manufacturing of different forms of bios on the individual human, on following generations, on our attitude towards repair, health, and suffering of fellow humans and biotopes?*

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[114] See for those and other threats Sass HM 'Cultures in Bioethics', Zuerich: Lit: 235-245.

Are there any solutions in the new era?

I have no suggestions or solution of my own to prevent future catastrophes to our bodies politics and our cultures in the new era. But I find a recipe in the 2500-year-old Daoist wisdom which might help: I must start with myself! Lao Zi once said: ‘Cultivate the self and virtue will be true; cultivate the family and virtue will be complete; cultivate the village and virtue will grow; cultivate the country and virtue will be rich; cultivate the world and virtue will be wide.’[115] So, I translate Lao Zi’s insight into a Bioethical Imperative for the New Era: ‘Cultivate yourself and life and virtue becomes true; cultivate individual and corporate persons and virtue will be great; cultivate social and natural environments and virtue will be full; cultivate communication and cooperation and life will grow; cultivate compassion and competence and life will be rich; cultivate life, and world and virtue will be wide.

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[115] Dao te Ching 54.

Ivica Kelam[116]

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Review article/Прегледна научна статија

CELEBRITY PHILANTHROPY – PRODUCT (RED) CASE STUDY

Abstract

The celebrity philanthropy as a phenomenon occurs at the end of the 20th century. Bono Vox, Bob Geldof, Angelina Jolie, Oprah Winfrey are global celebrity stars, but they are also the leading names in the world of celebrity philanthropy. In the analysis of their philanthropic activities, it is apparent that there is an uncritical glorification of their actions, while at the same time, critics point out that their philanthropic activity primarily serves as a means to repair their public image and promote neoliberal capitalism. In this paper, we will investigate the phenomenon of celebrity philanthropy through an integrative-bioethical analysis of the activities of Bono Vox using the example of his product (RED) campaign, and show that celebrity philanthropy, despite the often unquestionably noble motives of celebrities, is not the answer to problems that torment society such as poverty, hunger, inequality and climate change.

Moreover, in the case of the product (RED) campaign, it is apparent that it operates on a surface, visible media level, solely solving consequences and not questioning the causes of inequality, the spread of AIDS and poverty, consumption becomes the mechanism for compassion and creates new forms of value. Celebrities like Bono Vox acting as emotional rulers, mitigating a threat to capitalist accumulation by profit, and at the same time encourage customers to consume branded products. In this way, the product (RED) exploits the myth of just capitalism by portraying itself as a workable alternative to “casino capitalism” and as a modality where consumption and cool can be channeled toward a good cause, and at the same time strengthens neoliberal capitalism and its harmful consequences.

Keywords: celebrity philanthropy, product (RED), Bono Vox, bioethics, brand, corporations

Introduction

According to 2005 Oxfam’s research on celebrity endorsement of charitable causes, 78 percent of the 1,200 respondents felt that celebrity-endorsed cam-

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paigns „get the message to people who might not otherwise care“ and 63 percent declared that celebrities could „raise awareness of important issues.“ According to the survey, today, not only do people appreciate celebrities“ actions, for causes seen as legitimate, but they also tend to understand such celebrities as powerful actors in the global political agenda, alongside „traditional politicians.” When asked who people thought could end global poverty, the top-ten list came out as follows: 1) Me 2) George Bush 3) Bob Geldof 4) Bono 5) Tony Blair 6) Gordon Brown 7) Nelson Mandela 8) Bill Gates 9) Pope Benedict XVI 10) Oprah Winfrey. The United Kingdom’s ex-prime minister Tony Blair came in at number five – behind Live8 and Make Poverty History ambassadors Bob Geldof and Bono – indicating a distinct change in the role of celebrities in contemporary political agenda-setting. These research results suggest that certain celebrities, especially Bono and Geldof, have established a unique position among UK citizens: they have become people’s representatives, truth-tellers, and moral guides. The answers reflect this trust in their authenticity: Bono and Geldof are often described as genuine, passionate, sincere, truthful people who represent people’s collective voices against politicians.[117] Oxfam’s research confirmed that the public has a very positive attitude towards celebrity philanthropists such as Bono Vox. It is indeed worrisome that the respondents really believe that Bono Vox can eradicate global poverty. Respondents’ hopes and faith in Bono Vox were not realized since global poverty has not been eliminated. We can conclude that the critics were right when they recognized Bono Vox as global promoter of neoliberal capitalism and the protector of the status quo of economic inequality in society. Bioethics is defined as the science of life, which emerged in response to the growing threat to the survival of life on planet Earth in the second half of the 20th century. The subject of bioethics research as science is life in all forms, phenomena, and phases. In this sense philanthropy, including celebrity philanthropy, as an activity to protect life, especially human life, should be the focus of bioethical research. But, through an analysis of Bono Vox product (RED) campaign, we will see that, in spite of noble rhetoric, the problems remain unsolved. Partly thanks to their merit, since their messages and efforts are mainly limited to treating symptoms (the distribution of drugs against AIDS or malaria) by encouraging conscientious consumerism to buy product (RED) products. At the same time systematically ignoring the causes of problem, and that is the neoliberal capitalist system that routinely generates economic inequality and systematic exploits African resources and people. In this paper, after a short introductory explanation of the term celebrity philanthropy in the central part of the paper, we will empha-

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[117] Yrjölä, R., *The Global Politics of Celebrity Humanitarianism*, http://www.hssaatio.fi/wp-content/uploads/2014/05/Riina-Yrjölä-väitöskirja.pdf 2014. Accessed: January 10, 2019.

size the humanitarian action of Bono Vox through analysis of his campaign product (RED). Our study will show that the primary purpose of product (RED) is to raise the brand value of corporations involved in it and to comfort the conscience of consumers who, by buying product (RED) are convinced that they are helping those who have AIDS in Africa.

Celebrity philanthropy - Definition

Scholars Boltanski and Thévenot define "celebrity" as a state of superiority in a world where opinion is the defining instrument for measuring different orders of "greatness." In their approach, being a celebrity is characterized by having a widespread reputation, being recognized in public, being visible, having success, being distinguished, and having opinion leaders, journalists, and media as your testimonials. The test of celebrity is the judgment of the public.[118] Furthermore, according to Marshall, celebrities are those select persons "who are given greater presence and a wider scope of activity and agency than are those who make up the rest of the population."[119] The term „celebrity philanthropy" refers to celebrity-affiliated charitable and philanthropic activities according to the definition. Celebrity philanthropy is a relatively new phenomenon and appears in the second half of the 20th century. Although charity and fame are not a new phenomenon, it was only in the 1990s that celebrities from sport and entertainment, mainly from the affluent countries of the global North, became involved with this particular type of philanthropy. By definition, celebrity philanthropy is not isolated only to large one-off monetary donations. It involves celebrities using their publicity, brand credibility and personal wealth to promote not-for-profit organizations, which are increasingly „business-like" in form. Rojek, term celebrity philanthropy replaced with the term „celanthropy" – the fusion of celebrity and cause as a representation of what the organization advocates.According to Rojek „celanthropy reinforces the media presentation of the world as a collection of disjointed episodes, incidents, and emergencies. Contributes to a non-holistic understanding of power that underscores the question of the structural issues in the construction of culture. Celanthropy is examined as reinforcing the power of invisible government because it neglects to address the main levers of global inequality. It encourages citizens in the affluent West to believe that they are making a real contribution to 'feed the world' or 'make poverty history.' This has therapeutic value in making ordinary people break from the everyday experience

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[118] Boltanski, L., Thévenot L., *De la justification: Les economies de la Grandeur*, Gallimard, Paris 1991., 222-30.

[119] Marshall, P. D., *Celebrity and Power: Fame in Contemporary Culture*, University of Minnesota Press, Minneapolis 1997., ix.

of powerlessness and helplessness in the face of the world's problems. However, it leaves the primary cultural, social and economic structures of invisible government intact.“[120] According to Rojek Bono Vox best fits the celanthropy definition. According to scholar Kapoor, the integration of celebrity philanthropy and branding has enabled the creation of a brand-identity (the 'humanitarian celebrity'), with widespread and instant recognition that sells not just a product but also a lifestyle, value and aspiration. Thus, just as Nike is associated not merely with shoes but „transcendence“, Benetton not just with clothing but „multicultural diversity“, and Starbucks not just with coffee but „community“, so stars such as Jolie or Bono are associated not just with entertainment but „caring“, „compassion“, or „generosity“.[121] According to some scholars, the rise of celebrity philanthropy demonstrates a wider shift in global governance in the neoliberal period, one „that brings northern governments, NGOs and global celebrities together.“ Celebrity politics, other scholars conclude, is part of a new „expert–celebrity“ axis, and function „to convince electorates that they are well-governed.“[122]

This new model of governance, in which celebrities act as „significant emotional proxies“,[123] the caring and friendly face of the global financial and technological oligarchy, but has become so entrenched that the public does not question the fundamental legitimacy of such celebrities as Bono, on what basis is he become a global spokesman for speaking on behalf of Africa. According to Easterly, Bono believes that global poverty can be solved by technical solutions, without confronting the vested, predatory interests that run the show. In general, he opts for 'painless solutions' to world poverty. Easterly points out that Bono was a prominent participant in *Live Aid* (1985) and *Live 8* (2005), which sought to raise funds and build consciousness not through civil unrest or revolution but through entertainment.[124] Celebrity philanthropy provokes a mixed reaction among scholars, for demonstrating the perceived advantages and disadvantages of advanced capitalism and western liberal democracy in action. According to supporters, celebrities, thanks to their fame and media visibility, help popularize humanitarian values and actions by raising public profile in the media and politics of a specific campaign of social issues and host organizations, bringing media coverage, attracting new audiences, demystifying campaign issues, fostering sponsorship

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[120] Rojek, C., „Big citizen” celanthropy and its discontents“, *International Journal of Cultural Studies*, 17 (2/2014), 127.

[121] Kapoor, I., *Celebrity Humanitarianism*, Rouledge, New York 2013., 20.

[122] Street, J., „Do Celebrity Politics and Celebrity Politicians Matter?“, *British Journal of Politics and International Relations*, 14 (3/2012), 346-356.

[123] Yrjölä, R., „From Street into the World: Towards a Politicised Reading of Celebrity Humanitarianism“, *British Journal of Politics and International Relations*, 14 (3/2012), 357-374.

[124] Easterly, W., „Lennon the rebel, Bono the wonk“, *The Washington Post*, 12 December 2010.

and raising public awareness.[125] On the contrary, critics emphasize that the celebrity backs the philanthropic initiative that promotes inequality, consumerism, and corporate capitalism because they are guided by the media's desire for the story and the imperatives of the industry to celebrate the public and conceals exploitative trade and business relations, economic inequality and unethical business practice.[126] Other critics such as Dieter and Kumar have expressed that „celebrities lack a mandate to become active in global politics." Because their legitimacy is derived from their personality, and this persona is a manufactured stage production, celebrities' actual dealings, their ethical actions, should be held to scrutiny. Thus, Bono's business practices, tax evasion, personal charitable contributions, and staffing of his organizations with mostly white men from the "Anglo-sphere" simply add insult to injury as his celebrity ensemble trivializes development challenges.[127] Critics have attacked the philosophy and practice of the celebrity campaign as fundamentally flawed. Jampolsky opposes to the idea that „we can shop our way out of misery" as complacent and fallacious.[128] According to Moyo fierce critics of international aid, the meaningful transformation of global poverty requires fundamental fiscal engineering and the routing of significant wealth from the Northern hemisphere to the South.[129]

Celebrity philanthropists also criticize some workers inside humanitarian NGOs, because they see the "cult of celebrity" as a threat to their own organizational identity. According to an officer of the UN's agency UNICEF, "when most people think of the UN now they think of Angelina Jolie on a crusade, not the work that goes on in the field . . . celebrity is at the heart of every UNICEF campaign these days, and the association is being sold incredibly cheaply."[130] Scholar Magubane writes that these "celebrity-fueled spectacles" are particularly damaging to representations of Africa in which "their suffering bears a direct correla-

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[125] See for example: Bishop, M., Green, M. *Philanthrocapitalism: How the Rich Can Save The World*, Bloomsbury Press, New York 2008.; UNICEF, *UNICEF People*, http://www.unicef.org/people/people_ambassadors.html. Accessed 12 January 2019.

[126] See fo example: Žižek, S., „The liberal communists of Porto Davos", *In These Times*, 11 April 2006, http://www.inthesetimes.com/site/main/article/2574/. Accessed 12 January 2019.; Rojek, C., „Big citizen" celanthropy and its discontents", *International Journal of Cultural Studies*, 17 (2/2014), 127.; Nickel, P.M., „Philanthromentality: Celebrity parables as technologies of transfer", *Celebrity Studies*, 3, (2/2012), 164–182.; Kapoor, I., *Celebrity Humanitarianism*, Rouledge, New York 2013.

[127] Dieter, H., Kumar R., "The Downside of Celebrity Diplomacy: The Neglected Complexity of Development", *Global Governance*, 14 (2008), 259–64.

[128] Jampolsky, J. A., „Activism is the new black!': Demonstrating the benefits of international celebrity activism through James Cameron's campaign against the Belo Monte Dam" *Colorado Journal of International Environmental Law and Policy*, 23 (1/2012), 227–256.

[129] Moyo, D., *Dead Aid*, Penguin, London 2010.

[130] McDougall, D., „Now Charity Staff Hit at Cult of Celebrity", *Observer,* 26 November 2006,

tion to their utility in helping a celebrity build his or her brand."[131] Furthermore, as Magubane points out, the cult of celebrity interest in Africa reinforces beliefs about the continent as a place that lacks its own systematized knowledge: "Africa created by the American celebrity machine, while not populated by spear chucking savages, is also completely bereft of doctors, politicians, musicians, or actors."[132] But, when we look at media reports about Bono Vox, we see that the mainstream media uncritically celebrate him as a saint. In 2002 TIME magazine had Bono on its cover page and posed the rhetorical question „Can Bono save the world?",[133] and couple years later, he reappeared on the cover of TIME magazine, this time together with Melinda and Bill Gates when he was declared Man of the Year.[134] Bono Vox carefully building its image in the media, presenting himself as the voice of those who cannot speak and have no power, as he wrote as guest editor of the special issue of *Vanity Fair* dedicated to his campaign product (RED): „I represent a lot of people [in Africa] who have no voice at all ... I now represent them. They haven't asked me either. It's cheeky, but I hope they're glad I do, and in God's order of things, they are the most important."[135] Bono's statement is explaining why he was involved in the Jubilee 2000 campaign. In his statement, we can see that Bono enjoys the role of a modern messiah who does everything to save the voiceless people of Africa, and themselves selflessly represent as their voice to the rich consumers of affluent countries. After the Jubilee 2000 campaign eventually failed, Bono changed the tactic, and instead of seeking help for the poor in Africa, he turned to commercializing aid for the poor through his product (RED) campaign as we will see below.

Brief history of product (red) campaign

Bono Vox established the Product (RED) in 2006. According to scholars Richey and Ponte only Bono, the quintessential celebrity ambassador, could have started product (RED) and this is confirmed by statements made by different scholars and commentators. "Bono is a bit unique, and in some ways, he is American just as French people think he's French, and Germans think he's German. That's how he manages his brand and gets away with it," according to DATA founder Jamie Drummond. [136] Bono is compelled to reconcile the "divides that separate Northern Ireland from the Irish republic, rich from poor, Catholic from Protestant, Democrat from Republican, aggressor from victim, Christian from

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[131] Magubane, Z., „Africa Script Needs Rewrite", *Zeleza Post,* 13 June 2007.

[132] Magubane, Z., „Africa and the New Cult of Celebrity", *African Affairs*, 20 April 2007.

[133] Tyrangiel, J., „Can Bono save the World", *TIME*, Marz 4, 2002.

[134] Tyrangiel, J., „The Constant Charmer", *TIME*, January 2, 2006.

[135] Bono, V., „Guest editor's letter", *Vanity Fair*, July 2007.

[136] Richey, L. A., Ponte, S., *Brand Aid*, A Quadrant Book, Minneapolis 2011., 37.

Muslim."[137] Now he has reconciled corporations and inequity, branding and disease. Rojek calls him a "rock shaman" who promotes a creed of living that "all you need is love," which is a "truism, but one that glosses over many difficulties and inconsistencies."[138] Bono, in his unique position of having moved from "celebrity" to "expert" to "aid celebrity," is taken quite seriously as an actor in the international arena. Cooper makes the analogy "As Henry Kissinger is to official diplomacy, Bono is to celebrity diplomacy."[139] Bono's appeal lies in his rock-star charisma and his "authenticity." U.S. Senator Richard Durbin refers to this saying "Many of these stars are counseled by their agents to show a human side . . . Bono's different. He's clearly committed, and he knows what he's talking about."[140]

The Product (RED) campaign was unveiled at the 2006 Davos World Economic Forum, and after that, it launched across the affluent countries of the global north. The campaign involves teaming up with corporations to sell (RED) products, with participating corporations donating part of the profit to the privately run foundation – The Global Fund to Fight AIDS, Tuberculosis, and Malaria. Four companies can claim the title of "founding member": AmEx, Armani, Converse, and Gap. Their (RED) product lines were launched soon after, in March and April 2006. Motorola launched its range of products in May 2006, followed by Apple in October 2006 and Hallmark in October 2007.[141] Soon licensing deals have been made with many of the most prominent brands, including, Bank of America, Starbucks, Nike, Penguin, Microsoft, and Dell. (RED) products range from iPhones and credit cards to T-shirts and fashion wares. Gap T-shirts, for example, have such mottos as 'INSPI(RED)' and 'ADMI(RED)' emblazoned on them, while the Apple iPhone and Belvedere vodka are colored red. According to Bono, „Product (RED) piggybacks the excitement and energy of the commercial world to buy lifesaving AIDS drugs for Africans who cannot afford them."[142] According to their interpretation on the product (RED) web site, (RED) sees itself as a 'win-win' campaign, with businesses making profits while doing 'good,' consumers buying what they 'need' for a worthy cause, and the Global Fund receiving sustainable funding. The Product (RED) 'manifesto' thus states: „Every two minutes a teenager is infected with HIV. It is preventable. AIDS is the leading cause of death among women worldwide. Yet it is treatable. Today 400 babies will be born with HIV. Same thing tomorrow. And the next day. AIDS no lon-

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[137] Huddart, S., *Do We Need Another Hero? Understanding Celebrities' Roles in Advancing Social Causes*, McGill University, Montreal 2005., 54.

[138] Rojek, C., *Celebrity*, Reaktion, London 2001., 70.

[139] Cooper, A. F., *Celebrity Diplomacy*, Paradigm, Boulder 2008., 119.

[140] DeLuka, D., „Being Hailed Here 'a Very Big Deal", *Philadelphia Inquirer,* 27 September 2007.

[141] Richey, L. A., Ponte, S., *Brand Aid*, 142.

[142] Bono, V., „Guest editor's letter", *Vanity Fair*, July, 2007.

ger has to be a death sentence. One pill a day. For just 30 cents can stop mothers from passing on the virus to their babies. This is where You come in. As Consumers, we have tremendous power. What You choose to buy, or not to buy, can impact someone else′s life. Every time You shop (RED), share (RED), dance (RED), eat (RED), a partner makes a donation to the fight against AIDS thanks to Your choice. Never before have our collective voices or our collective choices been so important. There is an end to AIDS. It's You."[143] The product (RED) campaign attributes symbolic meaning to its registered trademark, (RED), stating that the parentheses represent „embracing brothers and sisters dying of AIDS in Africa."[144] At its initial launch especially, (RED) carried out a massive media campaign, including TV commercials, promotions on YouTube and social media, charity art auctions, magazine advertisements, and a new song released by U2 and Elton John. How big is the product (RED) had media support confirms the fact that the 5 August 2006 issue of the internationally prestigious medical journal the *Lancet* was a co-branded product: *(The Lancet)* RED. This was the first time in its 183 year history, the journal had included advertisements, as product (RED) ads covered its pages in between cutting-edge articles on medicine. The *Lancet* wrote a compelling editorial *The business of HIV/AIDS* in favor of product RED campaign and also contributed $30,000 "in support of this important project."[145]

Bono made full use of his global celebrity for marketing purposes, appearing on *The Oprah Winfrey Show* and many others. Moreover, the whole episode of *The Oprah Winfrey Show* was devoted to the beginning of the (RED) campaign in the United States. The *Oprah* episode opened in its usual studio, with a duet sung by Bono and Alicia Keys. Oprah wore a Gap RED "INSPI(RED)" t-shirt that she credited with the power to save the world. Oprah explained: „You know clothes are usually not important or significant. They usually just cover your body, but I'm wearing the most important t-shirt I've ever worn in my life. I love this so much. I've bought one for every person in this audience. The t-shirts that we are all wearing today are from the Gap's new RED line, and the Gap gives half of the profits of their RED products to fight AIDS in Africa and that means that just the t-shirts that this audience is wearing today will provide enough medication to prevent transmission of HIV from mother to child [the camera cuts to two young, white, concerned women in the audience] for over fourteen thousand pregnant women [audience cheers]. This show today is about getting the medicine to the people who need it. So by just buying a t-shirt, a pair of jeans, even a

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[143] Product (RED), https://www.red.org/. Accessed: January 10, 2019.

[144] Ibid.

[145] Lancet editorial, „The Business of HIV/AIDS", *Lancet* 368, no. 9534 (2006), 423.

cell phone, you can actually begin to save lives.[146] Oprah's statement that buying t-shirts, jeans, even cell phones, can start saving lives trivializes a serious problem of AIDS in Africa. Since the salvation of AIDS patients in Africa is conditioned by the purchase of branded (RED) products.

Bono guest-edited an issue of *Vanity Fair* while garnering a host of celebrity endorsements for product (RED) from the likes of Oprah Winfrey, Bill Gates, Nelson Mandela, Kanye West, Julia Roberts, Penelope Cruz, and Scarlett Johansson. At the same time product (RED)'s corporate partners carried out their advertising campaigns, with companies such as Gap reportedly spending $58 million on its product (RED) operations, $7.8 million of which went on marketing.[147] Between 2006 and 2018, product (RED) claims to have raised over $600 million for the Global Fund. Product (RED)'s beneficiary, the Global Fund to Fight Aids, Tuberculosis and Malaria, is an independent, private foundation governed by an international board that works in partnership with governments, NGOs, civil society organizations, and the private sector established by the United Nations in 2002. It is an international mechanism to channel aid financing and not an implementing agency. Since the Global Fund was created in 2002, public sector contributions have constituted 95 percent of all Vanity raised; the remaining 5 percent comes from the private sector or other financing initiatives Within private sources, "traditional" philanthropy provided the bulk (the Gates Foundation provided 72 percent of all private funding alone).[148] The Global Fund states that from 2002 to 2018, more than 51 donor governments pledged a total of USD 48.7 billion and paid USD 43.8 billion. From 2002 through 2018, the most significant contributor by far has been the United States, followed by France, the United Kingdom, Germany, and Japan.[149]

According to product (RED), the Global Fund grants that product (RED) supports have impacted nearly 140 million people with prevention, treatment, counseling, HIV testing, and care services.[150] It should be noted though that this dollar figure represents a little more than 1 percent of the Global Fund's total grant signed to date.[151] Despite such a small share in the overall Global Fund budget, (RED) has created the impression that the Global Fund is funded to a greater extent thanks to private consumers. Besides, there have been accusations that product (RED) and its corporate partners have spent more on advertising than they

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[146] Richey, L. A., Ponte, S., *Brand Aid*, 2-3.

[147] Frazier, M., „Costly RED campaign reaps meager $18 Million", *Advertising Age*, 5 March 2007.

[148] Richey, L. A., Ponte, S., *Brand Aid*, 109.

[149] The Global Fund, *Grant overview*, https://www.theglobalfund.org/en/portfolio/. Accessed: January 10, 2019.

[150] Product (RED), https://www.red.org/. Accessed: January 10, 2019.

[151] The Global Fund, https://www.theglobalfund.org/en/. Accessed: January 10, 2019.

have taken in from sales, although determining the veracity of such allegations is hard to prove given the noteworthy lack of transparency from all corporations involved about net sales, profits, and advertising budgets.[152] In its March 2007 issue, Advertising Age magazine reported that (RED) companies had collectively spent as much as $100 million in advertising and raised only $18 million. Officials of the campaign said then that the companies had spent $50 million on advertising and that the amount raised was $25 million.[153] Below we analyze this campaign and its conversion of philanthropy into another means of strengthening consumerism and neoliberal capitalism, such as enhancing corporate brands, providing the possibility that everyday people can engage in low- cost heroism and offer market solutions for the socio-economic problems of society.

Analysis of product (red) campaign

YOUR ACTIONS. YOUR VOICE. YOUR CHOICE. SHOP (RED) SAVE LIVES

This sentence is on the front page of the product (RED) website perfectly defines the philosophy of the product (RED).[154] Bono Vox, who, when launching product (RED) at the 2006 World Economic Forum in Davos, referred to the attendees as „fat cats in the snow [or] I should say winners in the snow.“[155] Bono explains to the world economic elite gathered at 2006 World Economic Forum in Davos, that the war against poverty was not going to be won with traditional philanthropy, but rather through commercial ventures. Philanthropy, as Bono insisted, was „like hippy music, holding hands,“ while Product Red was „more like punk rock, hip hop … [which] should feel like hard commerce“.[156] According to Bono, traditional philanthropy is simply ridiculous and frivolous, because it does not solve problems; on the other hand, the concept of product (RED) is a serious attempt to help poor and sick people in Africa through the purchasing power of wealthy consumers. According to Bono, we will not help the poor and the sick in Africa by requiring the correction of economic inequality, but in a much more common way, through the buying of branded items from global corporations, which will, in turn, redirect part of profits to help those who are in need. Bono explicitly recognizes this strategy for product (RED) campaign stating: “In

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[152] Rimmer, M., „The Lazarus Effect: the (RED) campaign and creative capitalism“, in Pogge, T., Rimmer, M., Rubenstein, K., (eds) *Incentives for Global Public Health*, Cambridge University Press, Cambridge 2010., 323-324.

[153] Nixon, R. „Botton Line for (Red)“, *The New York Times*, 6 February 2008.

[154] Product (RED), https://www.red.org/. Accessed: January 10, 2019.

[155] Weber, T., „Bono bets on Red to battle Aids“, *BBC News*, 26. January 2006. http://news.bbc.co.uk/2/hi/business/4650024.stm. Accessed: January 10, 2019.

[156] Ibid.

the 21st century, commerce is the catalyst of change, good and bad. Marketing people, marketing brilliance, marketing budgets; we wanted to work with them. We wanted to make the fight against HIV/AIDS sexy and smart."[157]

Mark Rosenman brilliantly sums up what's wrong with the product (RED) campaign. He claims that the Product (RED) campaign tells us that by shopping, we can help Africa cope with HIV/AIDS. In reality, it's just one more example of the corporate world aligning its operations with its central purpose of increasing shareholder profit, except this time it is being cloaked in the patina of philanthropy. Buy a (RED) product, and a portion of the purchase price goes to charity.[158] Other critics argue that a retail middleman between donor and charity is unnecessary, donors should just give. For example, Michelle Amazeen argued that Gap's website encouraged consumption of the products, thus, encouraging companies to use the product for publicity, rather than social responsibility.[159] Charles Kernaghan, director of the anti-sweatshop National Labor Committee for Worker and Human Rights criticized product (RED) for its links with Gap, "It's absurd, weird, really," says. "The thought of using consumer dollars made off the backs of workers held in sweatshops to help fund Bono's causes is really hypocritical—that's not the way to go."[160] While product (RED) has helped give funds and attention to the problem, it does not form a relationship between the donors and recipients. Scholar Jessica Wirgau argue that this sacrifices the purpose of movements such as product (RED), „We contend that (RED) illegitimately argues that benevolence is linked to consumption and erases the object of the campaign's charitable efforts, the African citizen, in favor of a discourse solely focused on the consumer. (RED) mediates the relationship between the giver as consumer and the eventual beneficiary of the funds allowing traditional notions of philanthropy, such as concern with mankind, creation of social capital, and responsibility to give back to be colonized by a market discourse that promotes consumption as the only effective, practical, and sustainable way to solve social ills. As a result, (RED) not only misses the opportunity to promote civic engagement with its audience but actively discourages that engagement in favor of strategies that lessen transparency and give corporations the power to decide which causes should be supported and to what degree."[161]

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[157] Sunday Times, „Shop with Bono", *Sunday Times*, 26 February 2006.

[158] Rosenman, M., *The Patina of Philanthropy Stanford Social Innovation Review*, https://ssir.org/articles/entry/the_patina_of_philanthropy#. Accessed: January 10, 2019.

[159] Amazeen, M., „Gap (RED): Social Responsibility Campaign or Window Dressing?", *Journal of Business Ethics*, 99 (2/2011), 167-182.

[160] Gray, G., *Achtung, Bono! Activist See Red*, http://nymag.com/news/intelligencer/23175/. Accessed: January 10, 2019.

[161] Wirgau, J. S., Webb Farley, K., Jensen, C., „Is Business Discourse Colonizing Philanthropy? A Critical Discourse Analysis of (PRODUCT) RED", *Voluntas: International Journal of Volun-*

In essence, product (RED) turns consumers into the causumer. Causumer and causumerism simply stated means shopping for a better world, and in that way effecting change through the marketplace.The term seems to have been first coined by Ben Davis, cofounder of “buylesscrap,” a Web site critical of the (RED) campaign that promotes direct donations to the Global Fund in place of purchasing (RED) products.[162] In case of product (RED), consumers can become causumers without knowing much of the social and environmental relations behind the products on offer. They do so just by knowing more about the legitimate beneficiaries that they help by buying the “good cause products” (and services). Here we see the resemblance between product (RED) campaign and traditional discourses of philanthropy in which there is a fundamental “assumption that quick, convenient, and relatively inexpensive acts of giving have nonetheless powerful effects and deep spiritual meaning.”[163] (RED) products ride on the double guarantee that they are “good” both for consumers and recipients of help. Product (RED) campaign may be the start of a new phase in which the contradictions of capitalism are resolved through shifting focus from products onto the “people with the problem.” Within the emerging realm of causumerism, product (RED) campaign shift the focus from conscious consumption to compassionate consumption.[164]

Consequently, product (RED) ideally fits in a new paradigm that both aid and trade are central to development. This paradigm is removed from former leftist charges against trade, which is embodied in the motto aid and not trade. On the other hand, this paradigm is also opposing a pure neoliberal stance against aid, which is also embodied in the motto trade and not aid.[165]

So, finally, in the end, the paradigm of product (RED) would be trade and aid, or more precisely consumption and aid. Richey and Ponte point out that product (RED) sits well with the subtle relationship between consumption and citizenship that characterizes „stakeholder capitalism.“ In stakeholder capitalism, rather than relying on the state or the market, consumer rights are exercised through consumer organizations. These rights are exercised not only to obtain „value for money,“ but also to demand social and environmental change. Action takes place via engagement of the consumer organization with the state and corporations, and (increasingly) via individual acts of „conscious consumption“ – backed up by systems of certification, labeling, and codes of conduct. In this operating environ-

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tary and Nonprofit Organizations, 21 (4/2010), 614.

[162] Kingston, A., „The trouble with buying for a cause“, *Maclean's Magazine,* 26 March 2007.

[163] King, S., *Pink Ribbons, Inc.: Breast Cancer and the Politics of Philanthropy*, University of Minnesota Press, Minneapolis 2006., 73.

[164] Richey, L. A., Ponte, S., *Brand Aid*, 182.

[165] Richey, L. A., Ponte, S., „Better (Red)™ than Dead? Celebrities, consumption and international aid“, *Third World Quarterly*, 29 (4/2008), 713.

ment, consumer-citizens are portrayed as ever more informed, reflexive, active, (sometimes) socially and environmentally conscious, and able to make a difference with their purchasing power. Depictions of product (RED) consumers as fashion-conscious yet actively engaged, reflexive, able to personally customize their purchases, and therefore inspi(RED) are part and parcel of this trend.[166] Essential problem with product (RED) initiatives, according to Ponte and Richey is that they teach people how to give from a narrowly individualistic and consumption-oriented perspective. Products are manufactured and then linked to „needs" identified in the developing world, primarily Africa, which supplies a convenient trope for „needy." In this process, „charity" itself is sold as a commodity transfer: development interventions equal donations of commodities, things that needy people need. Companies that both produce these necessary goods and sacrifice their corporate profit to share them with the global poor invite consumers to „partner" with them through the purchase of product (RED) products. Through real-time and virtual events, where people come together to share experiences with others who share their framework of values, these companies not only provide commodities themselves, but also construct an entire realm in which these products become meaningful – commodities regimes of value.[167] Colleen O'Manique and Ronald Labonte, in their article 'Rethinking (Product) RED,' published in the medical journal *The Lancet*, offer a devastating critique of the product (RED) campaign. The authors note that the (RED) website features an „impact calculator" to measure how your purchase helps in Africa. But they wonder where you'll find a deeper analysis of the role of global capitalism and its built-in inequalities: „There is no impact calculator tabulating the relational injustice of the economic institutions that privilege some (largely middle and upper class, and in developed countries) consumers able to buy (RED) while increasing risk and vulnerability to HIV and other diseases among those unable to afford even life's necessities. The implacable logic of this injustice is hidden in high-gloss advertisements in which looking good (fashion), making good (profit), and doing good (charity) become a feelgood endorsement of an unhealthy status quo. The seemingly just consumer supplants the just citizen, and social justice itself is commodified."[168] The authors correctly conclude that we should „be wary of the 21st century's new noblesse oblige that replaces the efficiency of tax-funded programmes and transfers in improving health equity with a consumption-driven "charitainment" model whose appearances can be as deceptive as they are appealing."[169]

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[166] Richey, L. A., Ponte, S., *Brand Aid*, 156.

[167] Ponte, S., Richey, L. A., „Buying into development? Brand Aid forms of cause-related marketing", *Third World Quarterly*, 35(1/2014), 82.

[168] O'Manique, C., Labonte, R., „Rethinking (Product) RED", *Lancet* 371, no. 9624 (2008), 1562.

[169] ibid

Product (RED) is impossible to understand without taking into account the importance of brands and corporations involved in the entire campaign. Moreover, much of the success of causumerism is based on the visibility and wide recognition of brands that tell the consumer how a good or service has been produced or traded, and on the increased importance of consuming signs and experiences. Branding is essential for causumerism and ethical trade on a global scale. Causumerism targets mainly branded products because it is based on the vulnerability of brands to negative media exposure that consumer action is possible. According to Conroy branding is about leaving „an indelible mark in . . . the corner of a 'consumer's mind". A brand is a promise to deliver satisfaction and quality. It is a collection of perceptions in the mind of the consumer. „The brand tells us first about the standard qualities of a product: how well it will work and how long it will last. . . . The purpose of branding is to create a name or symbol that consumers associate positively with products and services." Famous brands have some common characteristics: they are visually distinctive, create an "indelible impression" on consumers that allows them to "shop with confidence," and carry with them "underlying appeals," incorporating specific lifestyles and values.[170] Brands are becoming very important because it is through the power and importance of brand corporations that differentiate from competition. The value of the brand is often the main contributor to the market value of the corporation, as we shall see below. Take, for example, the five corporations that are involved in the product (RED) campaign, namely: American Express, Nike, Coca-Cola, Apple, and Starbucks. According to Interbrand's 2018 ranking, *Best Global Brands 2018 Rankings*, estimates the value of the Apple brand, at $ 214 billion.[171] According to the same ranking Coca-Cola is on the fifth place with a brand value of $ 66 billion, Nike is on the seventeenth place with a brand value of $ 30 billion, American Express is on twenty-fourth place with a brand value of $ 19 billion, and Starbucks is on fifty-seventh place with a brand value of $ 9 billion.[172] Significant brand value besides being the source of power and strength is also the largest vulnerable point of any corporation since it is enough to harm the image of the brand, with some scandal, unethical action of the corporation management (for example Dieselgate) or otherwise. When we take all this into account, product (RED) becomes an attractive vector for building the ethical component of brand reputation and for turning brands into icons. (RED) does not question the fundamentals of "hard commerce" and at the same time can help increase sales, visibility, and

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[170] Conroy, M. E., *Branded! How the "Certification Revolution" Is Transforming Global Corporations*, New Society, Gabriola Island 2007., 6-7.

[171] Interbrand, *Best Global Brands 2018 Rankings*, https://www.interbrand.com/best-brands/best-global-brands/2018/ranking/. Accessed: January 10, 2019.

[172] Ibid.

brand equity. It also helps to shift attention from the product to a cause by enacting the myth of just capitalism, which can fix the social and economic contradictions of capitalism at large. Finally, the fact that (RED) is a co-branding exercise helps manage individual brand risk by spreading the risk of failure or negative repercussions among several brands and especially externalize it to the nonproduct brand, (RED) itself.[173]

It is important to point out that the product (RED) itself has become a brand. Moreover, it is designed as a brand that brings an ethical dimension to the buying process and additionally raises the value of the brands involved in the campaign. Richey and Ponte claim that the product (RED) is an iconic brand in the sense that it seeks to enact the global myth of "just capitalism." According to them such a myth tries to reconcile the contradictions of global wealth and poverty by portraying the idea that capitalism can be fixed to rein in its excesses and target its creativity and resources to help groups of "deserving others" (in the case of (RED), these are women and children, Africans, and affected by AIDS). The rise of the antiglobalization movements from the late 1990s and of social and environmental labeling earlier in that decade opened new possibilities for the myth of just capitalism to be exploited by the time (RED) was launched in the mid- 2000s. With (RED), unlimited consumption, the harnessing of viral marketing, and the hunting of "cool" is used to save Africa with technology (ARVs)— a new missionary, civilizing myth. The charismatic performances of Bono are embedded in the iconic (RED) brand— salvation and excess are reconciled. The co-branding modality can be seen as a "marriage," providing the brands under the (RED) umbrella with a new beginning, bringing salvation not only to Africans but also to some of the brands' past sins of exploitation and environmental damage. And in a period of crisis such as last one, (RED) can still exploit the myth of "just capitalism" by portraying itself as a workable alternative to "casino capitalism," and as a modality where consumption and cool can be channeled toward a good cause.[174] Why is the product (RED) so appealing to corporations? Because product (RED) does not challenge their "normal" business practices, brand risk management is also assured. Product (RED) switches attention from the possible negative social and environmental impact of production and trade toward solving the problems of poor and sick people of Africa. This way, brand vulnerability to negative exposure is minimized. What we are witnessing with product (RED) is the subtle passage, within causumer culture, from conscious consumption (making choices based on information embedded in labels, for example) to compassionate consumption (making choices based on emotional appeal). Celebrities manage and

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[173] Richey, L. A., Ponte, S., *Brand Aid*, 171.

[174] Ibid., 170-171.

negotiate this affective element of international development and thus link consumers with their causes through iconic brands.[175] We will emphasize another important difference between conscious consumption and compassionate consumption. Ethical labels and certifications are key elements of conscious consumption — they are instruments to guide consumers to make better decisions, taking into account ethics, care for the environment, human rights and so on, but not necessarily to consume more. In product (RED), the consumer is implicitly asked to consume more, not differently. The point is to consume more because, as beautifully expressed by the (RED) "impact calculator," the more (RED) products you buy, the more life-saving drugs you provide for free to Africa. In some cases, the impact becomes the totem worn by the causumer: the Gap's (RED) "two-week" t-shirt indicates that its purchase enables the provision of two weeks of antiretroviral (ARV) medication.[176] Lost is the irony that two weeks are indeed a very short time. It would purchase twenty- seven t-shirts to ensure the survival of one AIDS patient for only one year. It would take many more to provide the necessary drugs every day for the rest of that patient's life. Not to mention that in this way it completely banalizes the value of the life of a person who has AIDS in Africa, and keeping his life depends on the number of shirts bought.

Conclusion

What's wrong with this concept of humanitarian aid by purchasing branded products in the product (RED) campaign, can be seen perfectly from the following examples. Product (RED) brings the most benefit to the corporations, and the example of an Apple corporation can best illustrate this if we compare the total profits and donations for product (RED) in the specified period. In the period from 2006 to 2018, Apple's total profit was a staggering $ 410,94 billion.[177] In this period of 410.94 billion US dollars profit, only 200 million has been donated to product (RED) campaign or 0.048% of the total Apple's profits. Let's not forget that Apple's $ 200 million donation represents a third of the $ 600 million so far collected in the product (RED) campaign. It is clear from these numbers that such a way of helping AIDS patients in Africa brings immense financial benefits to corporations, not only in terms of increased sales of their branded products or profits but also increases the value of the brand of the corporation included in the product (RED) campaign. If we analyze the rise in the value of the Apple brand

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[175] Ibid., 174-75.

[176] Sarna-Wojcicki, M., "Refigu(red): Talking Africa and Aids in 'Causumer' Culture", *Journal of Pan African Studies* 2 (6/2008), 14–31.

[177] statista.com, Apple's net income in the company's fiscal years from 2005 to 2018 (in billion U.S. dollars), https://www.statista.com/statistics/267728/apples-net-income-since-2005/. Accessed: January 10, 2019.

in the stated period from 2006 to 2018 according to Interbrand's ranking, *Best Global Brands Rankings* in 2006 Apple was at 39 places, and brand value is estimated at $ 9,130 million.[178] After 12 years, the value of the Apple brand in 2018 years was estimated at $ 214 billion and held the number one position as a corporation with the most valuable brand in the world.[179] Instead of changing power relations and correcting and removing the causes of inequality in the world, product (RED), through its cleverly devised message, reinforces the neoliberal system and increases inequality and at the same time strengthens the power and wealth of corporations, as we have seen in the example of the Apple corporation. The success of the concept of product (RED) lies in the perfect simplicity and ease with which wealthy consumers can „help" and be part of „change'" that will lead to the elimination of poverty and ultimately lead to a just society. The only thing causumers need is to buy the expensive branded products and wait for the magic of the market to do its work. In that sense, celebrity philanthropy is used as a perfect means to uphold the economic and social status quo. It may well provide some limited funds as we have seen for treatment of AIDS patients in Africa, but as we have seen, it fails to tackle the broader politics of inequality – a wider politics that would bring out the antagonism between the rich and the poor, implicating the celebrities themselves in the production of some form of social apartheid. Celebrity work may well bring media attention to humanitarian crises, but as we have underlined in our analysis of product (RED), the media tends to focus only on the celebrities who carefully build their public image, and at the same time, systematically ignore the poor, the disenfranchised, AIDS patients. They become nameless faces at the scene where celebrities appear for the public. In that context, celebrity philanthropy plays a role not in saving the sick and poor, so much as the neoliberal capitalism system itself. It aims to stabilize, if not advance, the global neoliberal capitalist order, helping to deflect attention from the latter's inherent structural violence – inequality, dispossession and neo-colonialism to the underdeveloped countries of the global South. Celebrity philanthropy as we have seen on an example of product (RED) campaign attempts to naturalize capitalism, presenting it as the only solution for all social ills, and showing its neoliberal variant as neutral, pragmatic, and non-ideological. For example Bono explicitly stated at the (RED) launch that labor issues are of secondary importance to people dying with AIDS: "We do not think that trade is bad. We are for labor issues. Labor issues are severe but six and a half thousand Africans dying is more seri-

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[178] Interbrand, *Best Global Brands 2006 Rankings*, https://www.interbrand.com/best-brands/best-global-brands/2006/ranking/. Accessed: January 10, 2019.

[179] Interbrand, *Best Global Brands 2018 Rankings*, https://www.interbrand.com/best-brands/best-global-brands/2018/ranking/. Accessed: January 10, 2019.

ous”.[180] According Bono we do not have the luxury to worry about labor rights of exploited workers throughout the global south, but we need to consume and do not worry about the exploitation of workers. Our task as a causumers is simple, buy as many as you can. In this way, we help those who have AIDS in Africa. Our act of (celebrity-endorsed) charity shopping enables us to do our bit for the „poor“ and become humanitarians-for-a-day and look very good in our own eyes, yet at the same time, it further binds us to consumer capitalism. In the bioethical discourse, celebrity philanthropy at first appears attractive, since through media visibility it is trying to help and protect life that is threatened by disease, poverty, inequality, exclusion and so on. However, when we analyze celebrity philanthropy in greater depth, we see that critics reasonably suggest that celebrity philanthropy is not and cannot be a response to the problems facing humanity. That does not mean that we need to completely discard the philanthropic activity associated with celebrity philanthropy since many of their activities truly help people on the ground, but we need to be aware of the limitations and potential dangers posed by over-reliance on celebrity philanthropy.

We will conclude the paper with Harry Browne’s harsh words on Bono Vox’s philanthropy: „But for anyone serious about global affairs, (RED) is clearly just another example of corporate-social-responsibility whitewashing (RED)washing?), whereby not only do particular companies get injected with the purifying Bono medicine, but transnational consumer capitalism as a whole is furnished with conspicuous evidence of its vital role in making the world a better place, at a cost of peanuts.“[181]

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[181] Browne H., *The Frontman – Bono (in the name of power)*, Verso, London 2013., 91.

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ΦΡΟΝΗΣΙΣ И МЕДИЦИНСКАТА ЕТИКА

Апстракт

Со сè поголемото влијание на етиката на доблеста во рамки на професионалните етики (право, социјална работа, бизнис и менаџмент, воспитание и образование, медицинска нега, медицина) φρόνησις станува особено клучен аспект во конципирањето на принципите на овие етички системи. Поширокото неоаристотеловското толкување на φρόνησις, остава простор φρόνησις да се дефинира како интелектуален капацитет за мудро спроведување на моралните доблести на партикуларните ситуации. Тоа дозволува φρόνησις да фрли ново светло и на етичкото клиничко одлучување. И покрај тоа што Аристотел за медицината реферира во рамки на τέχνη, а не на φρόνησις, истовремената перспектива на општите принципи и специфичноста на ситуацијата која ја има φρόνησις, одлично се вклопува во барањата на практичарите соочени со строго регулирани правила и кодекси или апстрактни деонтолошки принципи.

Во овој текст ќе се разгледа концептот на φρόνησις во медицинската етика низ два аспекти на медицинско-етичкиот дискурс: наративното сфаќање на болеста и медицинско-етичкото расудување. Имајќи ја предвид теориската и практичката плодност на φρόνησις во клинички контекст, во овој текст ќе се постави прашањето за т.н. аристотеловски пристап кон интерпретацијата на φρόνησις во современата етика.

Клучни зборови: φρόνησις, медицинска етика, наративно сфаќање на болеста, медицинско-етичко расудување

ΦΡΟΝΗΣΙΣ AND THE MEDICAL ETHICS

Abstract

With the increasing influence of virtue ethics in the professional ethics (law, social work, business and management, education, medical care, medicine) φρόνησις is becom-

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ing key aspect in conceptualizing these ethical systems. The wider neoaristotelian interpretation of φρόνησις, leaves space φρόνησις to be defined as intellectual disposition for wisely conduct of moral virtues in light of particular cases. That allows φρόνησις to bring new reading of the concepts of moral clinical deliberation. Although Aristotle speaks of medicine in terms of τέχνη, and not of φρόνησις, the both perspectives of considering general principles and the specificity of particular cases that φρόνησις has, fits perfectly in practitioners' needs faced with rigorous rules and codes or abstract deontological principles.

In this article the concept of φρόνησις in medical ethics will be examined through two aspects of the medical-ethical discourse: the narrative understanding of the illness and medical-ethical reasoning. Considering the theoretical and the practical fruitfulness of φρόνησις in the clinical context, this text will question, the so-called, Aristotelian exegetical approach towards φρόνησις in contemporary ethics.

Key words: φρόνησις, medical ethics, narrative understanding of the illness, medical-ethical reasoning

Аристотел и φρόνησις

Посистематична обработка на концептот φρόνησις во една етичка теорија обично му се припишува на Аристотел, иако овој концепт во филозофски контекст и претходно е во употреба. На македонски, φρόνησις се преведува со разумност (и умереност), разборитост и практичка мудрост[183]. Од многуте навестувања за смислата на φρόνησις ја наведуваме оваа дефиниција (ако може да се смета за дефиниција) која Аристотел ја дава во „Никомахова етика“: „да [се] просуди за работите кои се добри и полезни за него [практички мудриот, φρόνιμος Ј.П.], но не делумно, на пример, - за здравје или за телесна сила, туку за работи кои воопшто се однесуваат на доброто живеење“ (*NE* 1140a23-27). Накратко, практичката мудрост е доблест со која индивидуата се оспособува во секој поединечен случај да го најде оптималниот избор за дејствување која во заднината ја има генералната слика за среќен, евдајмоничен живот, која е крајната цел на човековото дејствување. Практичката мудрост Аристотел ја вбројува во т.н. интелектуални или дијаноетички доблести заедно со знаењето (ἐπιστήμη), мислењето (νοῦς), мудроста (σοφία) и вештината (τέχνη), наспроти т.н. морални доблести, какви што се храброста, умереноста, вистинољубивоста, великодушноста (гордоста), штедливоста, итн. Аристотел дополнително ги групира интелектуалните доблести врз основа на тоа што се однесуваат, имено дали се однесу-

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[183] Од филозофски аспект, вообичаената конструкција на овој концепт „практична мудрост“ е несоодветна затоа што тука не станува збор за мудрост која самата по себе е практична, туку е мудрост која се однесува на практиката.

ваат на спознавањето, дејствувањето или на творењето. Во чисто теориската сфера влегуваат знаењето (ἐπιστήμη), мислењето (νοῦς), мудроста (σοφία), додека φρόνησις се однесува на дејствувањето, а τέχνη на творењето. Поради специфичната положба на φρόνησις во рамки на интелектуалните доблести, имено да биде интелектуална доблест која се однесува на дејствувањето, Аристотел ѝ дава и специфична функција: да претставува диспозиција на разумот да биде предуслов и дополнување на моралните доблести. Аристотел ја следи традицијата на Сократ дека етичката сфера треба да има одреден вид на интелектуална контрола. Врз односот меѓу интелектуалните и моралните вредности се основа неговата теорија за единството на доблестите, уште едно сократовско етичко наследство. Имено, една личност не може да биде доблесна без притоа да биде практички мудра, но исто така и дека не може да биде мудра без моралните доблести. Практички мудрата диспозиција на разумот Аристотел ја споредува со вештината на стрелецот, кој треба прецизно да процени *шшо е нужно, како шреба* и *кога шреба* при стрелањето, односно тоа е диспозицијата која треба да ги препознае одговорите на овие прашања во секоја дадена ситуација, притоа имајќи ги предвид далекусежните животни цели.

Неоаристотеловската φρόνησις

Етиката на доблеста, етичка теорија главно инспирирана од Аристотел, од средината на минатиот век станува вистински етички пандан на современите теории. Како и во античкиот контекст, така и во неоаристотеловскиот современ дискурс, φρόνησις станува клучен аспект во конципирањето на принципите на современите етички теории. Приспособувањето на φρόνησις на новиот контекст значи приспособување на современите расцепкани етички домени, особено во рамки на потесно специфицираните професионални етики. Ваквата современа расцепкана перспектива нужно води кон редефиниција на φρόνησις. Така, неоаристотеловската интерпретација, особено онаа на Мекинтајер (MacIntyre, 2007), остава простор φρόνησις да се дефинира како интелектуална диспозиција за мудро спроведување на моралните доблести на партикуларните ситуации, во секоја партикуларна сфера на дејствување, а не нужно на целокупното етичко дејствување. Така, може да се зборува за φρόνησις на правната етика, φρόνησις на етиката на социјална работа, φρόνησις на бизнис и менаџмент етиката, φρόνησις на воспитната и образовната етика, φρόνησις на етиката на медицинската нега и на медицинската етика (Cf. Dunne, 1993, 1999; Flaming, 2001; Frank, 2004; Kinsella&Pitman, 2012; Montgomery, 2006; Polkinghorne, 2004).

Дикутабилна е теориската можност за φρόνησις да се зборува од аспект на различни сфери на дејствување, имајќи предвид дека крајната цел на φρόνησις-дејствувањето е постигнувањето среќен живот, но животот земен во целина, а не како збир на поединечни цели (Cf. Waring, 2001). Оттука, очигледна е несовмесноста на оригиналниот Аристотеловски, со современиот концепт на φρόνησις. Но, како што Кристјансон (Kristjánsson, 2015) ги нарекува, аристотеловските реконструктивисти, оние кои сметаат дека φρόνησις може одново да се реконструира во рамки на современиот контекст, наспроти аристотеловските егзегети, оние кои верно ја следат оригиналната Аристотелова мисла, успешно го воведуваат φρόνησις во современата етичка практичка реалност. Тоа го отвора прашањето дали φρόνησις може да се реконтекстуализира и да биде успешна етичка регулатива во партикуларните сфери на дејствувањето? Во продолжение ќе биде дискутиран ваквиот реконтруктивистички потфат во сферата на медицинската етика.

Φρόνησις и медицинската етика

Аристотел за медицината реферира во рамки на τέχνη, а не на φρόνησις. Τέχνη-расудувањето произлегува од поединечната цел, додека φρόνησις-расудувањето произлегува од крајната животна цел за евдајмонија. Сепак, и покрај тоа што оваа дистинкција е особено важна, современата реконструкционистичка тенденција смета дека φρόνησις поседува една многу позначајна карактеристика која одлично се вклопува во барањата на современата медицина, и на практично и на теориско рамниште. Тоа е потенцирањето на постоењето перспектива како на општите принципи, така и на специфичноста на ситуацијата. На првото, практичното рамниште, φρόνησις е потребна како одговор на сè позачестената присутност на строго регулирани правила и кодекси или деонтолошки принципи со кои се соочуваат медицинските практичари. Ваквата регулаторност и авторитарност на апстрактните правила во медицинското дејствување ја изземаат од вид медицинската реалност, која често не може да се подведе под нив. На второто, теориското рамниште, φρόνησις е потребна да се амортизира строго сциентистичко сфаќање на медицината и да се акцентира практичната димензија на медицината како дејност чија цел е да обезбеди соодветно и добро лекување на секој поединечен пациент. Затоа, според Дејвис, φρόνησις е најсоодветниот концепт со кој медицината може да си го најде местото помеѓу науката (ἐπιστήμη) и вештината (τέχνη), кој ја претставува рационалноста и на знаењето и на дејствувањето во клиничкото искуство на докторот со пациентот (Davis, 1997). За Пелегрино и Томасма φρόνησις е врската која ги спојува медицинското ἐπιστήμη и τέχνη, сметајќи ја φρόνησις за медицинската основна и кардинална доблест (Pellegrino&Thomasma, 1981, 1993).

Φρόνησις во медицинската етика ќе го разгледаме низ два аспекти на медицинско-етичкиот дискурс: *наративното сфаќање на болеста* и *медицинско-етичкото расудување*.

Концептот на φρόνησις во медицинската етика многу често се поврзува со концептот за *интерпретативно и наративно сфаќање на болеста*. Клучната врска на φρόνησις со наративот е во еден аспект кој го споделуваат и двата концепта – искуството. Основите на наративниот концепт на болеста може да се најдат во херменевтичките и постмодернистичките огледи на клиничкиот процес. Тој потекнува од сфаќањето дека човечката активност и искуство не се само атомистички факти, туку настани кои се случуваат во рамки на живиот говор и дискурс и чие значење не може да биде разбрано надвор од наративниот контекст (Ricoeur, 1981; Carr, 1986, 1997). Според овој концепт, клиничкиот φρόνησις се состои од интерпретативниот наратив на болеста, наспроти објективистичкиот т.н. просветителски наратив на болеста според кој болеста е вредносно неутрален податок – „анализа на случај“ или „извештај“ – кој непристрасно обезбедува запис на фактите за болеста. За просветителскиот наратив, разновидноста на значења и неизвесноста на исходот кои се поврзуваат со клиничкиот јазик и искуството на болеста се пречки, а не извори за терапевтска и одговорна нега, со што се избегнува искуството на пациентот на сметка на приказната, предрасудите и плановите на лекарот.

Според овој дискурс, наратологијата игра исклучително важна улога во клиничката комуникација, особено во процесот на дијагностиката, каде „вистинитите“ приказни на биохемиските анализи не се поверодостојни од „вистинитите“ приказни на пациентите. За справувањето со болеста, значајно е како е артикулирана приказната за болеста. Според тоа, клиничкиот φρόνησις се состои во истовременото поврзување на фактите на болеста со динамиката на доживеаното патење, загуба и болка на конкретниот пациент преку високо рефлективна форма на клинички разговори. Клиничкиот φρόνιμος го разбира не само текстот на болеста на пациентот, туку и субтекстот, контекстот и преттекстот на неговата болест.

Шулц и Флешер сметаат дека кличничкиот φρόνησις е особено близок до концептот за радикална реевалуација на Тејлор и неговата идеја за перформативноста на јазикот и дискурсот, имено дека тие не само што ги *изразуваат* социјалните и искуствени реалности, туку, исто така, го *конституираат* значењето на овие реалности (Schultz&Flasher, 2011). Според Тејлор, радикалната евалуација „е повторно разгледување на нашите фундаментални формулации и на она што тие всушност треба да го артикулираат, во смисла на отвореност кога сме подготвени да прифатиме каква било радикална промена, колку и да е радикална...“ (Taylor, 85, 41), со цел да се дојде до „нова јасност“. Ваквата реевалуација се случува низ специфицирање на артикулацијата и вербализирање на искуството со цел да се постигне понатамошна интерпретација. Тејлор се противи на прецизните начини за евалуација кои ги вклучуваат деонтолошките процедурални принципи (како што е Кантовата етика). Клиничкиот φρόνησις претпоставува разговор кој вклучува сложена мрежа од заемно условени интерпретации кои го градат наративот на болеста. Резултатот на радикалната реевалуација не ја изразува само волјата на пациентот, ниту само волјата на лекарот, туку е израз на реципрочната врска која ја балансира нивната улога во клиничкото искуство (Schultz&Flasher, 2011, 403). Одговорноста за дејствувањето во φρόνησις-комуникацијата ја носат двајцата учесници, низ дијалошкото самоиспитување, заедничкото толкување, а потоа и делиберирање. Медицинскиот јазик и нарација го овозможуваат најзначајниот сегмент на φρόνησις – изведување значења и толкувања кои се исклучиво поврзани со *ова* конкретно искуство на *овој* конкретен пациент.

Сепак, мора да се истакне дека клиничкиот φρόνησις не значи дека се става поголем акцент и значење на приказната на болеста, отколку останатите аспекти на клиничката комуникација. Преголемото инсистирање на приказната може да има несакани резултати. Клиничкиот φρόνιμος низ внимателна и проникилива рефлексија одлучува кои фактори во секој поединечен случај треба да се земат предвид.

Φρόνησις во однос на *медицинско-етичкото расудување*[184] се недоврзува на наративната парадигма за болеста, и врз основа на тоа, се спротивставува на чисто сциентистичко-статистичките методи на одлучување. Елстејн ги дели пристапите во кличничкото расудување на сциентистичко-статистички и техне-интуитивни модели на расудување (Elstein, 1976), а φρόνησις често се поврзува со вториот модел. На ваквото гледиште се поврзува и Пе-

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[184] Во духот на Аристотеловата филозофија, имено дека етичкото расудување и дејствување не претставуваат два различни и одделни процеса, може да се зборува и за медицинското етичко расудување и дејствување. Според Аристотел, за разлика од теорискиот силогизам, кај практичкиот силогизам конклузијата има природа на императив и резултира со дејствување. Кога се расудува, и врз основа на одредени премиси се носи конклузија за еден практичен случај, самата конклузија мора да резултира со дејствување. Така практичкиот силогизам во едно ги поврзува расудувањето и дејствувањето. Имајќи го предвид контекстот на медицинската практика, каде процесот на делиберација мора да се одвива брзо и нужно мора да резултира со дејствување, може да се каже дека често медицинското расудување и дејствување се одвиваат според механизмот на Аристотеловиот практички силогизам.

легрино (Pellegrino, 1979) кој смета дека клиничкото расудување се доближува повеќе до техне-интуитивниот начин на расудување, наспроти хипотетичко-дедуктивниот и индуктивниот начин на расудување. Според него, клиничкото расудување поминува процес на одговарање на три прашања: дијагностичкото прашање - што не е во ред со овој пациент? (да се постави дијагноза); терапевтското прашање - што *може* да биде направено за овој пациент? (да се формулираат можи терапии); и φρόνησις-прашањето[185]: што *треба* да се направи за овој пациент? (како е најдобро да се постапи во дадената конкретна ситуација). Стандардната медицинска процедура ги спојува терапевтското и φρόνησις прашањето и со тоа ја изоставува дистинкцијата меѓу „може“ и „треба“. Лекарската пракса, според Пелегрино, не застанува само на одговорот на првото прашање, туку останатите ги одговара во пракса приспособени на конкретниот пациент, еден, како што го нарекува тој, индивидуален праксис на лечење. „Што треба да се направи за овој пациент?“ е φρόνησις прашање затоа што прави разлика меѓу терапевтското „што може“ и φρόνησις „што треба“. Категориите „не мора“, „мора“, „треба“, и „може“ може да се менуваат во зависност од безброј фактори од животните ситуации на пациентот и неговиот поим за тоа што е значајно. Ова прашање во вид го има вистинското и добро дејствување во насока на лекување, а кое, притоа, ги зема предвид истовремено и вредностите на конкретниот пациент, и вредностите на конкретниот лекар. Во таа смисла, клиничкото расудување е истовремено дијалектичко, етичко и реторичко расудување (Pellegrino, 1979, 181). Клиничкото расудување е дијалектичко во смисла дека има предвид различни гледишта кои претендираат да бидат крајни. Со помош на φρόνησις-прашањето овие гледишта се подвргнуваат не само на научните и клиничките докази, туку и на етичките параметри на лекарот и пациентот во една реторичка размена. Крајната цел на клиничкото расудување е избор и реализација на одреден тек на терапевтско дејствување во една конкретна ситуација која е проникната со несигурност (која, впрочем, го карактеризира секое етичко дејствување). Основата на комплексноста и несигурноста во медицинската практика се наоѓа во тежнеењето на лекарот да го разбере партикуларното под светлото на генералното.

Сепак, постојат и одредени напори да се формализира медицинското расудување пошироко од стандардните индуктивно-дедуктивни методи, а сепак да се реферира на φρόνησις и покрај тоа што за φρόνησις не може да се

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[185] Пелегрино во овој текст не реферира директно на терминот φρόνησις и покрај тоа што во содржинска смисла неговите тези целосно коинцидираат со терминот. Дејвис ги класифицира прашањата на Пелегрино на дијагностичко, терапевтско и φρόνησις-прашање (Davis, 1997).

зборува во смисла на универзална систематичност и прецизаност. Шлаифер и Ваната (Schleifer&Vannatta, 2013) ја сметаат абдукцијата (заклучување кон најдоброто објаснување)[186] за „логиката на дијагнозата“, логика која го *открива* правилото, одошто го *поседува*, и сметаат дека ваквиот вид на заклучување најмногу соодветствува на Аристотеловиот практички силогизам. Тие се повикуваат на Нусбаум кога ги поврзуваат абдукцијата и Аристотеловиот практички силогизам низ воведувањето на „хипотетичкото“: „како што Аристотел често нѐ потсетува, телеолошкото објаснување има потреба од воведување на специфичен поим за нужноста, имено ‘хипотетичкото’“ (Nussbaum, 177) Поради тоа што абдукцијата се поврзува со хипотетичкото, во медицинското расудување таа е најблиску поврзана со наративното разбирање, наспроти дедукцијата која е поврзана со логичкото, а индукцијата со емпириското разбирање. Само наративот може да ја конструира „целината која има значење“ (meaningful whole) на медицинската ситуација, имено да го открие медицинскиот „факт“ кој директно не може да се опсервира низ хипотези, а кој всушност претставува причина за болеста. Всушност, наративниот импулс на абдукцијата го конституира φρόνησις-расудувањето – да се одбере најдоброто објаснување преку партикуларизирање на правилото врз основа на искуството на пациентот за да се дојде до најдобар можен исход.

Генерално, изворот на потребата за φρόνησις-клиничко расудување лежи во тоа што дијагнозата, прогнозата и третирањето на болеста се наоѓаат во доменот на хипотетичкото и интрепретацијата, а не, како што многу често се сфаќаат, во доменот на директната апликација на медицинската наука. Дури и да се откријат најфините механизми на функционирање на клетките, болестите и сл., индивидуалниот пациент повторно ќе има потреба од клиничка интерпретација. Луѓето се менуваат, болестите се манифестираат на различни начини во корелација со различни состојби, а негата на болните луѓе никогаш нема да претставува апликација на „чиста“ наука. Во таа смисла, лекарите мора да бидат образувани да развиваат практичко расудување кое се темели на поединечните случаи, да трагаат по т.н. знаење од „втор ред“ (она кое лежи под дадените феномени), да бидат флексибилни, чувствителни на детали и секогаш подготвени за можноста за реинтерпретација на случајот.

Предизвиците на медицинскиот φρόνησις

Секој концепт, кој нема конечно поставени граници и дефиниција, особено кога се однесува на одлучувањето и дејствувањето, носи опасност

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[186] За улогата на абдукцијата во медицинското заклучување види кај Димишковска, 2018.

од можни погрешни толкувања и негови погрешни аплицирања. Покрај перспективите кои ги нуди за подобро лекувачко искуство, медицинскиот φρόνησις сепак се соочува со бројни недостатоци. Дел од овие недостатоци се однесуваат конкретно на природата на медицинскиот φρόνησις, но многу голем дел од нив се однесува воопшто на природата на φρόνησις во сите сфери на човековото дејствување.

Професионализацијата и строгата специјализација носи успешни резултати во современата медицинска практика. Ова се одразува и кај ставовите на пациентите кои очекуваат егзактен и очекуван резултат, притоа не надевајќи се на комплексна и медицинска ситуација на интерпретативен и наративен дискурс, чиј резултат е неизвесен. Така кај пациентот се формира став кој може да се артикулира со следнава често повторувана фраза: „I'd rather have a competent bastard do my surgery, than a bumbling humanist". Овој став се темели врз впечатокот дека φρόνησις-искуството е долго, бавно и непродуктивно искуство, со лекар кој ги фаворизира неаналитичките методи на лекување. Тука ќе споменеме два значајни аспекта кои се спротивставуваат на ваквата заблуда. Прво, целта на φρόνησις во секое поединечно дејствување е обезбедување оптимален резултат кој оди во прилог на здравјето и благосостојбата на пациентот. Медицинскиот φρόνιμος внимателно одлучува на што треба да се стави акцент во секој поединечен случај, имајќи предвид дека секоја ситуација и пациент се уникатни и неповторливи. Второ, во концептот за φρόνησις клучен аспект има концептот за καιρός (згодниот/совршен миг, одлучувачки/решавачки/критичен/пресуден миг, добар/вистински час, благовременост, навременост, оптимално дејствување, успех). Во таа смисла, медицинскиот φρόνιμος треба да има развиен усет за рамномерно и навремено дејствување, каде тој проникливо одлучува кога е правилниот момент за преземање на чекорите во насока на излекување.

Поради φρόνησις-тенденцијата за намалување на стандардни процедури и протоколи во медицинската пракса, многумина ја посочуваат можноста од медицински патернализам. Голема е можноста да се инсистира на приказната, предрасудите и плановите на лекарот како оној кој раководи со медицинската ситуација и во чии раце е одлуката во кои граници ќе се води медицинската процедура како врвен авторитет. Меѓутоа, вистинското спроведување на φρόνησις, како што беше елаборирано, е земањето предвид на искуството на пациентот како клучен фактор во медицинското искуство и развивање на заедничка и избалансирана пациент-лекар медицинска процедура. Исто така, за да се избегне оваа можност мора да се води грижа за етичкото образование на лекарите, не само во рамки на медицинскиот контекст и Хипократовата заклетва, туку воопшто, за образование кое ќе гради етички дејствители кои, поради нивниот специфичен статус, треба да претставуваат етичка општествена парадигма.

Но, проблемот на образованието на медицинскиот φρόνησις, имено создавањето на медицински φρόνιμος (медицинскиот практички мудрец), неизоставно се поставува кога станува збор воопшто за образованието и стекнувањето на φρόνησις во секоја сфера на дејствување. Генерално, Аристотел смета дека φρόνησις се гради низ две категории: времето и искуството. Постигнувањето φρόνησις е долготраен искуствен процес и затоа вистински φρόνησις не може да постои кај луѓе во нивната рана возраст. Практичката мудрост се поврзува со долго искуство и макотрпен процес на градење на етички карактер, а не усвојување веќе воспоставени етички норми. Ова правило важи и за медицинскиот практичар кој својата φρόνησις може да ја стекне низ долго медицинско искуство, во прво време со соодветен ментор, а потоа и самостојно. Единствено така тој ќе може да се испита себеси во медицинската практика, прилагодувајќи ги своите способности и афинитети со општите принципи на медицинската наука, практикувајќи ги во конкретен случај, со цел да се добијат оптимални резултати во целокупниот медицински контекст.

Заклучок

Медицинско-етичкиот процес и концептот за φρόνησις се допираат во многу клучни точки: истакнување на доживеаното искуство, а не само на фактите, разбирање на клиничкиот контекст (Cf. Zaner, 1988), перформативната улога на јазикот во артикулацијата на болеста, улогата на пациентот како партнер во клиничко-етичката практика (Cf. Veatch, 1991), динамичната размена меѓу искуството и знаењето, истакнување на партикуларното искуство на конкретниот пациент, изборот на најдобрата и најсоодветната можност за лекување, насоченост кон крајната медицинска цел која истовремено е ефективна и добра и постојаното себеиспитување низ клиничкото искуство. И покрај егзегетската несовмесност на неоаристотеловскиот медицински φρόνησις со Аристотеловата парадигма за φρόνησις, овој концепт не само што има теориска плодност во реевалуацијата на основите на медицината, туку носи и практична плодност во самата медицинска реалност. Имајќи го предвид значењето на успешноста на медицинската практика се чини дека историско-филозофскиот пуританизам треба да се стави во втор план, освен ако се покаже дека враќањето на основите може да донесе поголема конзистентност со сегашноста.

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Essay/Популарна статија

BEYOND THE ONTOLOGY OF THE HUMAN PERSON: THE EMERGENCE OF A NOVEL BIO-TECHNO-IDENTITY (BTI)

Abstract

The *intuitions* and *imagination* of human visionaries about the infinite possibilities of scientific research and technology are creatively haunting the quest of our species to expand knowledge in the micro-cosmos and the vast space. Since 19th century French writer Jules Verne (1828-1905) and English writer Mary Shelley (1797-1851) had already traced the path to our days and beyond. They were followed by an infinite series of great *intuitionists*, who were not mere futurists like H.G. Wells, Ray Bradbury, Aldous Huxley, George Orwell, Isaac Asimov, Arthur Clarke, John Brunner and many more. Scientific endeavors and achievements transform the qualities of life and foster social institutions in various ways. The paper deals with a prevailing technological phenomenon, the *scientific capacity of gene-editing*, promoting thus the emergence of *a virtual novel identity*. The new achievements in sciences encourage the expression of human free-will allowing for physical and other enhancements or alterations, in reference to biological and technological features that may lead to a *new* bio-techno-identity (let us call it BTI). The paper reflects on the issue of "enhancing" the established concepts for defining a human being and a human person; it also puts forward the possibility of conducting a theoretical and field research examining -and evaluating- the issue and the mechanisms of BTI formation, reassessing all traditional qualities and novel characteristics attributed to humans by the applications of Biotechnology. The issue is eventually approached under the standpoints of Ethical Philosophy, Sociology, Biology, Orthodox Theology and Law. The analysis discusses intuitions in sci-fi literature and cinematography in comparison to reality i.e. the multitude of assisted reproduction technologies, embryonic and genetic labs, implants and even cloning in Western Societies.

Key-words: identity, biotechnology, intuition, humans, person, legal status

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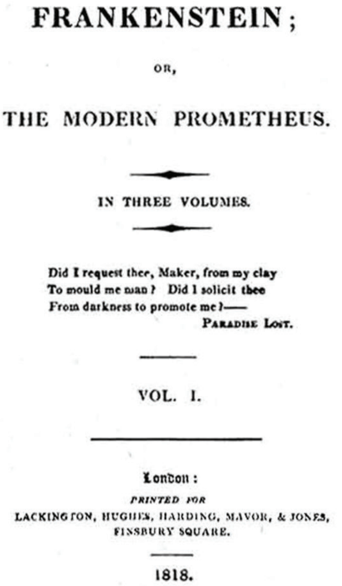

FRANKENSTEIN;

OR,

THE MODERN PROMETHEUS.

IN THREE VOLUMES.

Did I request thee, Maker, from my clay
To mould me man? Did I solicit thee
From darkness to promote me?—
PARADISE LOST.

VOL. I.

London:
PRINTED FOR
LACKINGTON, HUGHES, HARDING, MAVOR, & JONES,
FINSBURY SQUARE.

1818.

Mary Shelley (1797-1851)

Since the epoch of Alchemy and alchemist doctor *Victor Frankenstein*, Mary Shelley's tragic hero in her eponymous book (1818/1823)[188] two centuries have gone by however the anxious curiosity and quest of the scientific research to conquer life's secrets forges ahead relentlessly. British film director Ridley Scott (1937-) dramatizes wonderfully this successful and multifarious quest in his cyberpunk/tech film-noir *Blade Runner* (1982) that takes place in a futuristic dystopia of Los Angeles; in doing this he adapted American writer's Philip K. Dick's (1928-1982) novel *Do Androids Dream of Electric Sheep?* (1968). Scott's epic cinematography also takes us to outer galaxies in *Prometheus* (2012) while seeking the genetic origins of human kind. Technology enhances the liquidity of modernity, of postmodernity, of late modernity or its ending.

It is rather surprising to see how many of these then-absurd notions have become acknowledged truths, and is equally disheartening to realize that many of the most optimistic appraisals of our future civilization are still very far from being realized. Technology is but a product and sibling of the uncontrollable, unrestrained and unaccountable scientific research, as research should be, without barriers and with no limits, this technology forwards the likely possibilities for alternative versions in everyday life, in life-style, in *identities* acquired by individ-

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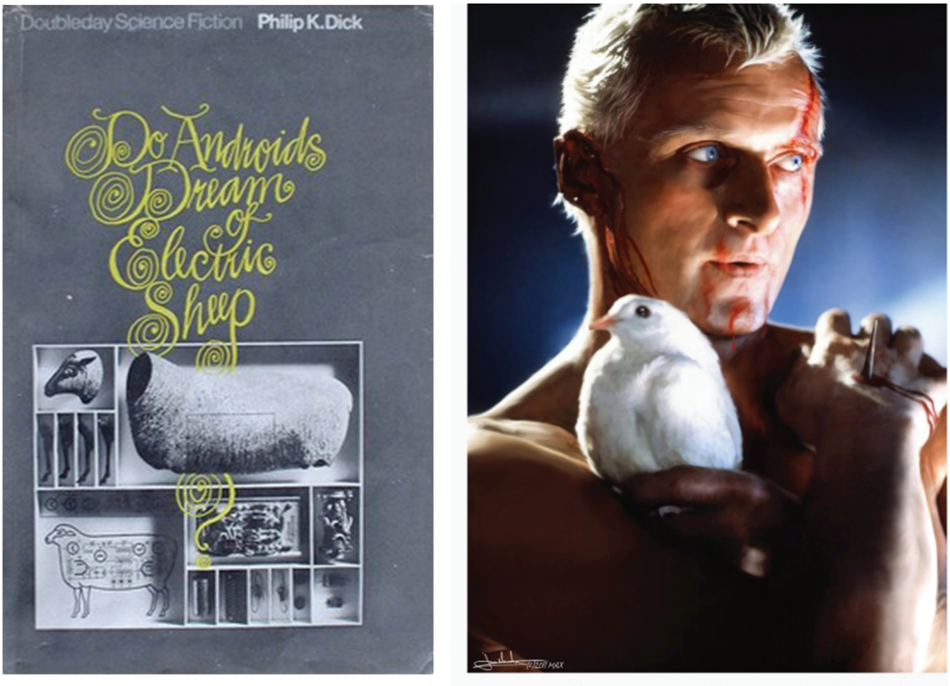
[188] *Frankenstein or the Modern Prometheus's* first edition (1818) did not appear the name of the writer (Mary Shelley) which was shown in a posterior edition of 1823.

uals or by specific collectivities; these identities are being chosen virtually, intuitively, temporarily or merely impulsively.



Actor Rutger Hauer as Roy Batty, Nexus-6 Replicant, merciless android -killer

Despite the fact that scientific research is *limitless,* still the technological applications are not eagerly accepted as equally limitless, and thus applied ethics emerges to shape the field of morality in reference to criteria and the potential use of scientific research. When research is conducted in genetics and biomedicine, generates biotechnological products and in the same time configures social, political and cultural arrangements in order to collectively adjust ourselves in these novel data, bioethics as an applied branch of philosophy stands always alert, so that it attracts our moral attention and modifies our institutional and legal framework. These are almost self-understood by the *suspicious* society groups and even more by the scientific and philosophical *avant-garde*. Since, there is a specific area of research, in Biomedicine and Biotechnology, dealing with the *interference* to human genetics (*gene editing*) and this entire domain of research is comprehensively called as *cell intervention*.[189] This interfering can modify chro-

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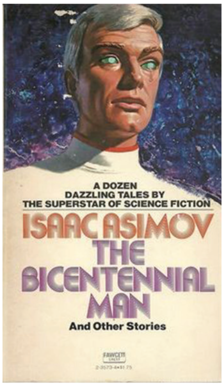
[189] Nield David, “Chinese scientists proceeded to a genetic modification of a human embryo again”, 2016, in: http://www.sciencealert.com/scientists-genetically-modify-an-embryo-for-only-the-second-time-ever (accessed in May, 4 2017).

mosomal qualities, in order to rectify or simply change the genetic code of an embryo or configure the conditions for giving birth to children from more than two, three or more parents or by unknown parents under the technological instruction of a highly skilled lab scientist. Nevertheless, *gene editing* consists of a Siamese sibling of technological interference that can entice operations of particulate, bionic, positron or of any other kind, meaning in brief any biotechnological alternative interfering.

In my practical reasoning I put forward the *premise* that in a *society of persons* there are individuals with various and different characteristics. A multitude is made up by individuals, but every single individual is also a person. Individual as a term is used in the sense of attributing singular characteristics to a person. By these conceptual meanings of *individual* and *person* one can identify the rest of their features, i.e. those attributing rights and obligations and render them into legal, social or subjects of another kind. When gene editing is ascertained, aiming to modify gene qualities (chromosomal or other), this editing also effects the physical making of the human being both as a person and as an individual. Is an individual produced by technological interference or operation a *natural person*? To what extent is it really a natural person, under which criteria should we admit it as such and, what might be the direct sociological perspective of such an operation? Do implants of technical or bionic "parts" alter a human being and its natural identity features?



Isaac Asimov, 1920-1992

Now is the appropriate time to think of the possibility to broaden the ontological, theological, sociological and legal meaning of the human person, and the identity features of all beings produced by procreation out of physical intercourse, i.e. assisted in a in a small or greater degree of biological reproduction. In this line of thinking one may detect organizations such as the IEET (*Institute for*

Ethics and Emerging Technologies)[190] focusing on the idea that some non-human animals are eligible for being a legal entity or person and consequently they are entitled to specific right and thus to legal *protection*. Examples of non-human animals and non-human beings are plenty in the imaginative intuitions of literature and science fiction; first there is a Lieutenant with an unrivalled positron brain,[191] named *Data;* he was born in 1987,[192] in the televised world of youth culture, titled *Star Trek: The Next Generation* series. Another example is *The Bicentennial Man* (1976) a novel by a Russian born American writer and Biochemistry professor in Boston University Isaac Asimov (1920-1992); the novel was dramatized as a movie in 1999, (*The Bicentennial Man*) with starring actor Robin Williams as an android, wishing for …mortality in order to be human; another exemplary android is the child robot of Mecha Co., in *Artificial Intelligence* (A.I., 2001) by Stanley Kubrick and Steven Spielberg, based on the novel *Super-Toys Last All Summer Long* (1969) by English writer Brian Aldiss (1925); in this case the *super-toy* android *child* wishes to attain maternal love, since his *mother* detests him for being a *machine*!

Besides our ID data and our legal identity status it seems rather appropriate to cite our bio-tech characteristics or *parts*, so that we don't get completely lost or even be assimilated either *partly* or *entirely* as products of a society that transmutes us either *eagerly* or *reluctantly* in reference to our values or identity; and society itself is equally being altered and transmuted either eagerly or reluctantly in a vast *mutual-perichoresis*,[193] of the relatively brief and -in the same time- lifelong marital *congress* with technology.

Let's pay some tribute to certain pioneers like William Ford Gibson (1948-) an American-Canadian speculative fiction writer and essayist, who pioneered the science fiction subgenre known as *cyberpunk;* Gibson also notably coined the term *cyberspace* in his short story *Burning Chrome* (1982) and later popularized the concept in his acclaimed debut novel *Neuromancer* (1984). In 1993 New

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[190] https://ieet.org/ (accessed on May, 3 2017)

[191] Positron (Ps) was discovered by MIT Physics professor Martin Deutsch (1917–2002) and was awarded the Nobel Prize in 1956.

[192] Data has self-conscience, is wise, sensitive, and anatomically fully functional android serving as a second in rank officer and chief of operations in the Starfleet of the Confederation, in USS Enterprise-D και USS Enterprise-E; his positron brain offers him impressive calculating abilities and skills. During his early life-years he had experienced various difficulties in reference to understanding the multifaceted human behavior and he was incompetent of having emotions or comprehend human idiosyncrasy, something that urged him to seek for his own humanness. He was incarnated by American actor Brent Spiner (1949-) who also declared that Data was expressing the *Chaplinesque characteristics* of a sad, tragic clown.

[193] The attempt of one to exist inside the other, without the first losing his personal characteristics, his idiosyncrasy and without being assimilated by the latter. It is a rather *tough* concept on the relation between technology and society, a relationship found in the core of our civilization.

Yorker writer, columnist, lecturer, graphic novelist, and documentarian Douglas Rushkoff (1961-) published his novel *Cyberia*[194] offering an early survival guide in cyberspace that was then under …construction. He claims that *Cyberia* is about a very special moment in our recent history, a moment when anything seemed possible". In the early 90s cyberspace[195] was shaping an entirely new subculture and made all of us look like *novices* at a rave trying virtual reality for the first time. Rushkoff responded to the challenge of potentially marrying the latest computer technologies with the most intimately held dreams and the most ancient spiritual truths. Already since then, technological revolution was an all-promising universe. Rushkoff referred to an *invisible sovereignty* of which only one side is identified with *physical* reality; he also referred to the need for a *neologism* that could express this invisible sovereignty, this new world: in his novel he calls it *Cyberia*, while we name it *Bio-techno-identity* (BIT).

From the 2001 science fiction movie (A.I.)

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[194] Karouzakis George, "Trans-human is our own continuity", Terra-papers, 2010, in: http://diolkos.blogspot.gr/2010/02/blog-post_7702.html (accessed on 26.10.2016)

[195] William Ford Gibson (1948-) is an American-Canadian speculative fiction writer and essayist, who pioneered the science fiction subgenre known as *cyberpunk;* Gibson also notably coined the term "cyberspace" in his short story *Burning Chrome* (1982) and later popularized the concept in his acclaimed debut novel *Neuromancer* (1984).

Technology never ceased developing and constantly transforming our lives. In that novel we learned about *strange attractors*, individuals in a state of reverie who could access the broad network of artificial worlds, about metaphysical hackers drawing illegally, exotic or unapproachable data and about cyborgs, cyber-creatures and man-machines. This sovereignty consists of an innovative filed of intuition. A research in Bioethics about the issues mentioned above might focus on the emergence of bio-techno-identity (BTI), of all new qualities potentially offered to humans by the scientific applications, e.g. in Biotechnology (gene-editing) and Orthopedics (artificial implants); these applications either offered as a prenatal interference or as prosthetic work make part of the entire identity characteristics of us humans: the biotechnological together with biometrics and civic identity features are part of our accomplished identity. Ethics, Social Sciences, Medicine, Biology and Law may collaborate in a fruitful analytical research.

In first place, the research will collect the historical and scientific intuitions about the concept of merging humans with robots (nature with artificial or technical equipment) as performed in literature and the movies. The trailhead for this quest might be *Frankenstein, or the Modern Prometheus* (1818/1823) by Mary Shelley and some of these exemplary dramatizations of such intuitions are already cited above. Secondly, the research will map the contemporary reality in a western country (e.g. in Greece) through a bibliographical review and statistical data (e.g. from Greece and other countries for comparative reasons); quality research is also a must, therefore, interviews should with biologists, geneticists, doctors and a random population sample should frame the statistics. The case studies/applications under examination are potentially the following:

Genetic interference

- *Of preventive or therapeutic cause*
- *Of perfection or enhancement of various characteristics (eugenics)*
- *Of cloning and small or large scale assisted reproduction*

The knowledge schemes to be examined in reference to their ethical or sociological substance contain -and are also being contained by- the manifold endeavors of Biotechnology. More specifically, in these intuitions Bio-robotics holds a prevailing part; Bio-robotics as a subfield of Robotics by equally combining the physical body with the machine examines the way robots may copy, imitate or mechanically assimilate the intelligence of biological organisms and the way biological organisms may either *be* or consist part of a robot. In this framework *Bionics* is about applying biological methods and natural systems in studying and designing ultra-modern mechanical systems. In this field of contemporary reality Genetic Engineering and its research ramifications seem as the major field of *ac-*

tion, enhancing, in other words, the direct interference in an organism's genome- or in a set of genes- by use of biotechnological advancements.

Most people understand the implications of modern technologies on our civilizations and socio-cultural phenomena, on our intellectual and thought systems, on our spiritual or other beliefs, and even on our biological evolution or the ontology of being human. These implications stand as optimistic and forward-thinking appraisers of the entire civilization's fate. Scientific research is limitless but the findings of lab research are not to be applied as technological products worldwide or without a prior ethical assessment. In order to do so we have already called on Applied Ethics. As we draw ever nearer to the consensually hallucinatory reality for which science, technology, visionaries and intuitionists drew the blueprints we clearly realize that their perceptions and impressions of life *on the edge* become even more relevant for the entire humankind, since they make more sense. Let us then see the scope of questions indicatively entangled in a BTI research:

a) Is the individual or being produced by technological interference a natural person? In what extent, on what basis we might accept as such, and what is the direct socio-political future of this *novel* ontology?
b) Artificial or bionic implants to a human body alter the physical-biometric or other identity characteristics?
c) Which are the challenges of these processes in everyday life against Ethics and which is the virtual future of humankind on philosophical, sociological, political and legal basis?
d) Is a kind of BTI sub-culture being created, with a classification of the proportion of physical and technological parts of humans?
e) Does gene-editing, in reference to genome or chromosomal modifications effects the *physical features* of human being as a *person*? Which are these serious ontological issues?
f) An individual or en "entity" produced by technological interference may still physically be a *natural person*? If not what is the impact and the repercussions to the *homogeneity* of humanity?
g) Does trans-human feel any pain? When does a neuron network begins having consciousness, when do we consider such a neuron network as a brain, when is it entitled to legal or moral rights, and consequently we are restrained by ethical questions? Which is the limit of our interference and connection of computers to a human brain so that the perception of his *ego* and his consciousness are not irreparably altered? When must computers connected to us be considered as parts of ourselves and thus should be legally protected like our physical self? In brief, do we have to constitute a chart of rights and restrictions in reference to virtual connection of our physical self to computers? What about the possibility of inflicting pain to a large and complicated neuron network?

Trans-human is nothing but the realistic «incarnation» of merging humans with machines and it will *somehow advance,* if not merely continue, the human being as an *inevitable hybrid* generated by technological evolutions; probably this already fledging hybrid will be much different than the human individuals we have known so far.

He might be living much longer, will be smarter and virtually happier. An extreme version of this hybrid might be the possibility of transferring our *personality* to an advance and highly resilient software, being able for various connections with the outer world. Trans-human himself is of course aware about the eventual conflict of such a perspective with the global problems afflicting Earth, e.g. overpopulation, climate change, and exhaustion of the natural resources. Is there any right for establishing a legitimate connection -or merge- of humans with computers and which are the restrictions? *Which life is appropriate to us humans? What does being-human means?* By posing these questions even in the virtual perspective of becoming tremendously resilient in diseases and spectacularly skillful and intelligent, not being helplessly aged and old etc. we try to prevent the fact of allowing the creation of a cosmos utterly constructed by uncontrollable super-institutions, enhancing and scaling up *novel social discriminations*.

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Maria Sinaci[196]

UDK: 602.4:159.922.07
Review article/Прегледна научна статија

ETHICAL PERSPECTIVES ON CONGNITIVE ENHANCEMENT

Abstract

The development of biotechnologies in recent decades has brought new possibilities for their use for purposes other than the treatment of diseases, namely the improvement of the human being in terms of physical appearance, emotional regulation, physical performance, cognition, etc. The theme of human improvement has generated intense debate, both in the scientific environment, especially between transhumanists and bioconservers, as well as in public opinion. A particular interest is given to neurotechnologies because they are directed to the brain. Cognitive enhancement refers to increasing cognitive ability by stimulating the brain and / or using pharmaceutical agents. Some substances (eg. Modafinil) can improve the memory and strength of human concentration, and others may have certain effects in terms of knowledge. Typically, the purpose of prescribing these products is to improve the quality of life of people with neuropsychiatric disorders or brain injuries. However, studies show that these products can has cognitive enhancement effects in healthy people, being used by students and various professional categories. In this context, the concepts of health and illness are discussed, and the advocates of the non-therapeutic approach consider necessary the distinction between enhancement and therapies. In the first part of this study we focus on conceptual clarifications such as human improvement, health, illness, and in the second part we analyze some ethical aspects related to the application of cognitive improvement technologies through pharmaceutical agents.

Key words: ethics, brain, cognitive enhancement, health, neurotechnologies

Introduction

The progress made in recent years in the field of medical biotechnologies has contributed to the shift of emphasis in bioethical debates on the most challenging contemporary bioethical theme - human improvement. As an imperfect being, man has always had the desire to improve his condition: to be healthier, more beautiful, with better, smarter physical abilities and, if possible, even better as a

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person, more moral. These aspirations of the human being can become a reality, at least a partial one for the time being.

Particular attention is paid to neurosciences and, implicitly, to the brain. If the 20th century is called "the century of DNA" by deploying the Human Genome Project, it seems that the 21st century is the century of the brain. In Europe, work began in 2013 on the Human Brain Project, a € 1 billion project, co-funded by the EU, over a 10-year period. The project brings together 856 researchers from 19 states to try to map parts of the human brain using computer simulations[197]. The intersection of medical biotechnology, research on brain, psychology, and pharmacology has opened up the cognitive enhancement perspective, with a widespread social use potential, from academia to workplace for various professional categories, to the most common activities of everyday life. The methods used for cognitive enhancement are varied and have far-reaching implications in the ethical and social dimension. In this context, ethical issues and how society should respond to new challenges have generated intense debates that have gone beyond cognitive enhancement[198]. In the first part of the paper some terminological specifications are made and a discussion framework is presented, whereas in the second part are examined the methods of cognitive enhancement with the help of pharmaceuticals and the results obtained with regard to healthy human subjects. In the final part, we deal with ethical issues related to the use of cognitive enhancers that we consider relevant in the context of the paper.

What is cognitive enhancement?

People have tried over time by various methods to improve cognitive functions by acting on the brain to modify its properties. Cognitive enhancement is generally thought to be memory and attention focused, but cognitive functioning also includes thinking, reasoning, planning, problem solving, decision-making, judgment, and evaluation. They are also included when referring to cognition and mental activities such as self-awareness and imagination. In order to have a successful completion of some tasks at work and generally in everyday life, are essential cognitive functions, such as attention, planning and problem solving, decision-making, materializing in organizing and prioritizing activities, or remembering important information. Although there may be the temptation to believe that cognitive enhancement means increasing, intensifying cognitive abilities, or stimulating individual abilities associated with some of the components already

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[197] *The Human Brain Project*. Accessed December 10, 2018. https://sos-ch-dk-2.exo.io/public-website-production/filer_public/6f/6f/6f6f21de-4f60-492c-b646-0000e48b5cf1/hbp_overview_november_2017.pdf.

[198] A. Saniotis, "Present and future developments in cognitive enhancement technologies", *Journal of Future Studies* 14, no. 1 (August 2009): 27-38.

mentioned, things are a little different. In contemporary approaches three ways of intervening on cognitive enhancement have emerged: (1) increase; (2) decrease; (3) optimization of the cognitive functions. The first approach refers to interventions that improve cognitive functions by increasing the ability to do what is normal. Eric Juengst considers that these interventions are "designed to improve human form or functioning beyond what is necessary to sustain or restore good health"[199]. For N. Bostrom cognitive enhancement is "amplifying or expanding the core capabilities of the mind by improving or augmenting internal or external information processing systems"[200]. The second approach is to improve some functions by diminishing them and their already produced effects, as highlighted in the welfaristic vision of enhancement: "Sometimes the diminishment of a capacity or function, under the right set of circumstances, could plausibly contribute to an individual's overall well-being: more is not always better, and sometimes less is more."[201] The third type of intervention is designed to optimize a certain class of cognitive information processing functions.[202] Optimizing levels of cognitive functions can be achieved by increasing or decreasing them, but there are limitations to the extent that they can be improved.[203]

Thus, through cognitive enhancement, we understand interventions on the brain that cause a change in cognitive functions to increase or decrease them, to achieve optimal levels, improving the performance of certain tasks and promoting flexible social behaviour.

Enhancement or therapy?

Traditionally, medicine aims at preventing, diagnosing and curing diseases, or reducing suffering. If we choose a functional approach, treating pathologies with the aim of healing patients means re-establishing the functions of the human body almost or even at normal, health-specific parameters. But what do we mean by enhancing?

The term "enhancement" is sometimes used with a social approach, sometimes referring to interventions that increase or enhance some capabilities, and

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[199] Eric Juengst, "What does enhancement mean?", in *Enhancing human traits: Ethical and Social Implications*, ed. E. Parens (Washington DC: Georgetown University Press, 1998), 29.

[200] Nick Bostrom, Rebecca Roache, "Smart Policy: Cognitive Enhancement and the Public Interest", in *Enhancing Human Capabilities,* eds. J. Savulescu, R.ter Meulen, G. Kahane (Oxford: Wiley-Blackwell, 2011), 138.

[201] B. D. Earp et al.,"When is diminishment a form of enhancement? Rethinking the enhancement debate in biomedical ethics", *Frontiers in Systems Neuroscience* 8 (2014):1-8.

[202] T. Metzinger, E. Hildt, "Cognitive Enhancement", in *Oxford Handbook of Neuroethics*, eds. J. Illes and B. Sahakian (Oxford: Oxford University Press, 2011), 245.

[203] N. Agar, *Truly Human Enhancement: A Philosophical Defense of Limits*, Cambridge, MA: MIT Press, 2014.

the most restrictive specialists draw a line between improvement and therapy and use it only for interventions that pass beyond the medical area. There are several defintions for enhancement but there is no generally accepted definition for this term; enhancement would mean increasing the performance against the current state in a healthy person using non-medical methods, or improving the status of patients with recognized clinical disorders through treatment. J. Savulescu, for example, defines enhancement from the perspective of increasing human functions that go beyond what would be necessary for medical treatment: "Normal species-functioning of enhancement: Any change in the biology or psychology of a person which increases species-typical normal functioning above some statistically defined level."[204] A welfarist definition of human enhancement expressed by J. Savulescu argues that enhancement is "any change in the biology or psychology of a person which increases the chances of leading a good life in the relevant set of circumstances"[205]. Often, the enhancement is seen as a benefit, an addition to human capabilities/functions, and less as a necessity. Buchanan has defined enhancement as: "an intervention... that improves some capacity (or characteristic) that normal beings ordinarily have or, more radically, that produce a new one"[206].

As noted in the above paragraphs, Juengst states that enhancements are not meant to maintain health or to restore it, to work in connection with a medical practice, but to increase the capacities, performances or moods of a healthy person. David DeGrazia explicitly states that the enhancements are interventions that improve human form or function and do not respond to authentic medical needs when these needs are defined:

1. in terms of disease, disorder, damage;
2. alterations to normal functions;
3. by referring to the predominant medical ideology. [207]

We find that the distinction between enhancement and therapy is based on the distinction between health and disease. This distinction can prove useful especially when it comes to discussing how to use new biotechnologies. In addition, the non-therapeutic approach that highlights the difference between therapy and

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[204] Julian Savulescu, Anders Sandberg, Guy Kahane, "Well-Being and Enhancement", in *Enhancing Human Capabilities,* eds. J. Savulescu, R.ter Meulen, G. Kahane (Oxford: Wiley-Blackwell, 2011), 5.

[205] Julian Savulescu, Anders Sandberg, Guy Kahane, "Well-Being and Enhancement", 7.

[206] A. E. Buchanan, *Beyond Humanity?: The Ethics of Biomedical Enhancement* (Oxford: Oxford University Press, 2011), 5.

[207] David DeGrazia, "Enhancement Technologies and Human Identity", *Journal of Medicine and Philosophy* 30, (2005): 262–263.

enhancement is one which the Chair of the Council of Bioethics agrees with. He also defined the two concepts in *Beyond Therapy*:

“Therapy,” on this view as in common understanding, is the use of biotechnical power to treat individuals with known diseases, disabilities, or impairments, in an attempt to restore them to a normal state of health and fitness.

“Enhancement,” by contrast, is the directed use of biotechnical power to alter, by direct intervention, not disease processes but the “normal” workings of the human body and psyche, to augment or improve their native capacities and performances.[208]

There are opinions, which disagree with the above-mentioned distinction, the argument being that “scientists cannot draw a clear line between healing and enchancement.”[209] In this situation, if a line separating the two interventions cannot be drawn, a different moral status cannot be granted. Therefore, if there is a right to healthcare for therapy, it should also be ensured without restrictions for interventions that can improve healthy bodies.

An idea supported by Steven E. Hyman says that drawing a line between therapy and enhancement with reference to health/illness seems problematic also because of the relativity of how the concept of illness is defined.[210] The problem of disease definitions is that they are made up of a scientific component that specifies the characteristic pathology, the affected function, and a component of the method that sets the thresholds for diagnosis and intervention. The set thresholds may be changed or may vary from one country / region to another. For example, in the case of ADHD, studies have shown that there are significant variations in the recognition of the disease and hence in the threshold for treatment.[211] As a result, a condition that can be considered a disease in a region, with the specification of a therapy, can be framed in normal parameters elsewhere in the world. Other reference points are normality, standard human capacities, and the normal functioning of the species.

However, if a person has been diagnosed with a disease that clearly affects his/her cognitive ability, treatment-based intervention for the correction / cure of the disease can be called as therapy. But if a person who does not have a cognitive problem and works on a medium or higher level of knowledge chooses to in-

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[208] The President’s Council on Bioethics, *Beyond Therapy: Biotechnology and the Pursuit of Happiness,* (Washington D.C., 2003): 13. Accessed January 02, 2019. https://bioethicsarchive.georgetown.edu/pcbe/reports/beyondtherapy/index.html.

[209] Ramez Naam, *More Than Human* (New York: Broadway Books, 2005), 5.

[210] Steven E. Hyman, “Cognitive Enhancement: Promises and Perils”, *Neuron* 69 (2011): 595-598.

[211] A. Angold, A. Erkanli, H.L. Egger, E.J. Costello, “Stimulant treatment for children: a community perspective”, *Journal of the American Academy of Child & Adolescent Psychiatry* 39(8) (2000): 975-982.

crease, for example, the power of concentration or memory by consuming medication, then it is clearly enhancement. The situations are not always so clear. We can have the following situation: a genius with a particularly high intelligence rate, far above what is considered to be average at the species level, suffers from a condition where IQ is reduced below the species average. Would the intervention by which IQ increase at the initial genius level be called amelioration or therapy?

Other authors have also leaned on this issue and expressed opinions that highlighted the enhancement-therapy distinction from a welfaristic perspective [212]. This approach, centered on increasing the person's chances of having a better life, does not provide any benchmarks that will allow an assessment of the level of improvement achieved. Also, if, as a result of the improvement, the person thinks she/he does not live the good life expected, it means that the improvement has not reached its goal, so the person cannot be considered as being enhanced. That is why we believe that reference points are needed, in the sense of where we can say that improvement starts. The lack of consensus on how to understand enhancement has been seen as a factor that hinders ethical debate on improvement technologies.

Concerned about the prospects of new biotechnologies for human improvement, in the absence of the consensus mentioned above, the European Parliament called for a study in 2005 aimed at overcoming the gap between the concepts of human improvement and the technical- relevant scientific data. The Working Group, composed of ITAS, Research Center Karlsruhe and Rathenau Institute as members of the European Technology Assessment Group (ETAG), proposed that the European Parliament set up a European body to contribute to the development of a normative framework for human improvement and guide the formulation of EU policies in this field of research.[213] In formulating the definition, the authors do not resort to the traditional conceptual distinction between therapy and amelioration, but adopt a notion of human amelioration that includes both therapeutic and non-therapeutic measures. Thus, human enhancement is considered to be any "modification aimed at improving individual human performance and is brought

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[212] To be seen: P. H. Schwartz, "Defending the distinction between treatment and enhancement", *American Journal of Bioethics* 5 (2005):17-19; J. Savulescu et al. "Well-Being and Enhancement", in *Enhancing Human Capacities* eds. J. Savulescu, et al.,West Sussex, Blackwell Publishing, 2011; J. Harris, *Enhancing evolution : the ethical case for making better people,* Princeton, NJ: Princeton University Press, 2007; B. D. Earp et al. "When is diminishment a form of enhancement? Rethinking the enhancement debate in biomedical ethics", *Frontiers in Systems Neuroscience* 8 (2014):1-8.

[213] ***"Human Enhancement", *Science and Technology Options Assessment (STOA)* (Belgium: European Parliament, 2009). https://www.itas.kit.edu/downloads/etag_coua09a.pdf. Accessed August 30 2018.

about by science or technology-based interventions in the human body."[214] The goal of the enhancement is either to improve our natural abilities (for example, by making us stronger or happier) or to give us the characteristics or abilities that no human being has ever had before.

From the conventional method to the modern cognitive enhancement method

Methods through which cognitive enhancement is generally carried out are varied, from conventional ones, such as education, mental techniques, etc. to the least conventional, such as pharmacological, implants (also called mechanical) and genetic manipulations.[215] Contemporary debates are mostly focused on less conventional means, because they are quite controversial and raise the most ethical issues. Genetic cognitive enhancement involves manipulation at the level of genes involved in cognitive processes and is not yet proven at human level, although there has been speculation about the possibility of improving mental functions. Instead, an experiment conducted at Princeton University on genetically engineered mice to produce more N-methyl-D-aspartate (NMDA) (receptors) to form and maintain memories has shown that they have managed to learn tasks faster than those which were not genetically engineered.[216] Non-invasive mechanical manipulation methods such as transcranial magnetic stimulation and transcranial direct current stimulation have led to some performance enhancement in a small number of healthy subjects, only on certain cognitive tasks. The most common method and closer to consumers to improve cognitive functions remains pharmacological cognitive enhancement involving the use of drugs and chemicals. Pharmaceutical products typically prescribed for the treatment of psychiatric disorders may improve attention, concentration or memory. Thus, the use of stimulants such as Modafinil (marketed as Provigil on the US and UK markets), Methylphenidate (known as Ritalin or Concerta in Canada) or Adderall has become a widespread practice among adults and young people.

Modafinil is a pharmaceutical product that has been originally authorized for the treatment of narcolepsy, but studies on healthy subjects have shown that it improves short-term memory and planning skills.[217] It has also been found that

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[214] "Human Enhancement", 6.

[215] N. Bostrom, "Smart Policy: Cognitive Enhancement in the Public Interest", in *Reshaping the Human Condition: Exploring Human Enhancement,* eds. Zonneveld, L., H. Dijstelbloem, D. Ringoir (The Hague: Rathenau Institute, in collaboration with the British Embassy, Science and Innovation Network and the Parliamentary Office of Science & Technology, 2008): 29-36.

[216] R. Bailey, *Liberation Biology: The Scientific and Moral Case for the Biotech Revolution* (New York: Prometheus Books, 2005): 223-238.

[217] D.C. Turner, T.W. Robbins, L. Clark, A.R. Aron, J. Dowson, B.J. Sahakian, "Cognitive enhancing effects of modafinil in healthy volunteers", *Psychopharmacology* 165(2003): 260–269.

doses of 100 to 200 mg of *modafinil* have improved attention, vigilance and spatial planning.[218] It is worth mentioning that the same study revealed that the effects of modafinil in improving memory and attention are more pronounced in people with inferior but above average IQ and a lower baseline of working memory. Memory or attention in people with higher IQ and better working memory were not influenced by enhancement or worsening. The mechanism of action of *modafinil* is not known for the time being[219] and its efficacy for cognitive enhancement is questioned by some specialists who assert that the effects are limited to some cognitive functions. *Methylphenidate* has been studied from the perspective of the effects produced by varying doses. From Jong and his teams' studies on healthy subjects the following conclusion can be drawn[220]: (1) moderate-dose administration improves performance on mental tasks; (2) administration of higher doses may or may not weaken performance. Therefore, *methylphenidate* appears to reverse the dose/response curve through its effects in the experiments performed. From another perspective, studies have indicated that people with an initial low memory value on an absolute scale, benefit more from the effects of this drug than those with a higher initial value.[221] Enhanced functions of *methylphenidate* are the executive ones in terms of new tasks but weaken these functions on the tasks that have already been learned. Neuroimaging technologies confirm in healthy volunteers that *methylphenidate* makes more efficient the activity of neural networks in areas involving executive positions.[222] It has also been confirmed by research that this product improves the educational activity of children with attention deficit compared to those who suffer from the same disorder but do not take *methylphenidate*[223]. There are no confirmed improvements in cognitive children who do not suffer from these conditions.

By systematising the above data, we observe that *modafinil* and *methylphenidate* have limited effects and only on certain cognitive functions, especial-

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[218] U. Muller, N. Steffenhagen, R. Regenthal, P. Bublak, "Effects of Modafinil on Working Memory Processes in Humans", *Psychopharmacology* 171 (2004): 161–169.

[219] R. de Jongh, I. Bolt, M. Schermer, B. Olivier, "Botox for the brain: enhancement of cognition, mood and pro-social behavior and blunting of unwanted memories", *Neurosci Biobehav Rev* 32(4) (2008):760–776.

[220] R. de Jongh et al., "Botox for the brain: enhancement of cognition, mood and pro-social behavior and blunting of unwanted memories", 760–776.

[221] M. J. Farah et al. "Neurocognitive Enhancement: What Can We Do and What Should We Do?", *Nature Reviews Neuroscience* 5 (2004): 421–425.

[222] M.A. Mehta, A.M. Owen, B.J. Sahakian, N. Mavaddat, J.D. Pickard, T.W. Robbins, "Methylphenidate enhances working memory by modulating discrete frontal and parietal lobe regions in the human brain", *Journal of Neuroscience* 20, (2000): RC 65, 1–6.

[223] R.M. Scheffler, T.T. Brown, B.D. Fulton, S.P. Hinshaw, P. Levine, S. Stone, "Positive Association between Attention-Deficit/Hyperactivity Disorder Medication Use and Academic Achievement during Elementary School", *Pediatrics* 123 (2009): 1273–1279.

ly executive functions. In addition, people with a higher IQ and better working memory are not affected by the product. Moreover, these enhancers can both improve some cognitive capabilities by effects, but also diminish others. A study by Repantis et al. on healthy subjects in relation to the effects of the two pharmaceuticals led to some scepticism regarding the effectiveness of *methylphenidate*: "We have not been able to provide sufficient evidence of positive effects in healthy individuals from objective tests"[224]. Regarding the *modafinil* the scientists acknowledged: "The aggregated results show a clear enhancing effect, especially on people undergoing sleep deprivation". Beyond the more or less safe efficacy of *methylphenidate* and *modafinil*, there is a certainty of increasing consumption among young people and adults for cognitive enhancement. Thus, studies by Wilens and his team conclude that about 25% of US secondary school students use *methylphenidate* and *modafinil* for non-therapeutic purposes.[225] In Germany, about 5% of the active population uses psychotropic products to improve cognitive function.[226] Consumers' interest in cognitive enhancers is about increasing efficiency in preparing for exams for students, and improving performance in the workplace for employees. Of course we could ask why these products are used if the beneficial effects are questioned. On the one hand, we believe that people are more sensitive to the subjective area than the objective results achieved. We can also consider the placebo effect in some cases. On the other hand, the lack of evidence of efficacy is not the same as evidence of lack of efficacy, and it is possible that these agents may be useful cognitive enhancers"[227]. People's increased interest in cognitive enhancement, at school or at work, the fairly easy purchase of these products, including the Internet, and the increased consumption through self-management require the application of an ethical perspective.

Ethical Perspectives

The complexity of the ethical issues that "smart pills" or other brain stimulation technologies may generate, although the clear outcomes about their effects on healthy subjects are poorly mixed, has led ethics to engage in approach-

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[224] D. Repantis, P. Schlattmann, O. Laisney, I. Heuser, "Modafinil and methylphenidate for neuroenhancement in healthy individuals: a systematic review", *Pharmacological Research* 62 (2010): 205.

[225] T. E. Wilens et al., "Misuse and Diversion of Stimulants Prescribed for ADHD: A Systematic Review of the Literature", *Journal of the American Academy of Child & Adolescent Psychiatry* 47 (2008): 21–31.

[226] A. Heinz, R. Kipke, H. Heimann, U. Wiesing, "Cognitive Neuroenhancement: False Assumptions in the Ethical Debate", *Journal of Medical Ethics* 38 (2012): 372–375.

[227] Veljko Dubljević, Christopher James Ryan, "Cognitive enhancement with methylphenidate and modafinil: conceptual advances and societal implications", *Neuroscience and Neuroeconomics* 4 (2015): 22-33.

es to using new technologies for cognitive enhancement. Below we will highlight some of the ethical issues we consider to be the use of cognitive enhancers, starting from the data we mentioned in the paper, without claiming that we covered everything in this study.

Unequal access to resources

A problem may be linked to increasing the level of cognitive performance through these pills/technologies, but access to resources is unequal in the sense that it can be accessed only by the rich. This could lead in time to a social hierarchy given by improved cognitive capabilities not through their own efforts but through financial status. On the other hand, it can be argued that even access to education is not equal, so we should not think that cognitive enhancement would be a problem, a point highlighted by M. Farah[228]**.** Recent research has shown that in the US, many rich parents choose to give *modafinil* or *methylphenidate* to their children to have better behaviour, to improve their attention in the classroom, even if they have low performances.[229]

Competitiveness

The widespread use of cognitive enhancing pills/technologies can generate some pressure and orientation towards objectivity-free competition, for example in various admission exams (faculty or for employment) or between employees at the workplace. An employee can use pills to be more effective in performing work tasks than a colleague who does not uses pills and who, in a staff selection based on the efficiency criterion, would be kicked out. Is this competition between employees ethical? We believe that it would be but only if the consumer informs their colleagues and boss about the pills consumption, which is unlikely. T. Fuchs draws attention to the fact that increased brain doping can lead to regular controls on the consumption of these products in competitive situations, as it happens in sports[230].

Consumer's Safety

Cognitive enhancement with pills, especially *modafinil* and *methylphenidate*, which we refer to in the paper, has implications for consumers which are not well-known for the time being. In addition, as mentioned in the first part

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[228] M.J. Farah, "Emerging ethical issues in neuroscience", *Nature Neuroscience* 5 (11) (2002):1123–1129.

[229] J. Butcher, "Cognitive enhancement raises ethical concerns: Academics urge pre-emptive debate on neurotechnologies", *The Lancet* 362 (2003):132–133.

[230] Thomas Fuchs, "Ethical issues in neuroscience", *Current Opinions in Psychiatry* 19 (2006): 600-607.

of the paper, the way *modafinil* works, is not known. Cognitive enhancers can have unpredictable hidden effects in the medium and long term. For example, the natural balance between memory and forgetfulness could be disturbed, so memory improvement could ultimately affect memory recovery[231]. On the other hand, Volkow et al. draws attention to the fact that increasing the concentration of some neurotransmitters can cause disturbances. This example is *methylphenidate,* which can lead to increased dopamine concentration, which would disrupt the reward system, making the consumer become addictive, such as gambling or hypersexuality.[232] Chronic use of these pills can even lead to death. There has been reported the case of a US student who died due to complications associated with Adderall's chronic consumption to increase the ability to concentrate during the study.[233] Therefore, the consumption of cognitive enhancers raises safety issues due to immediate or long-term side effects that are not yet known. This does not mean that in the future these fears will not be removed from the results of the research being carried out.

Personal Identity

A concern often expressed in relation to the consumption of pills for the purpose of cognitive improvement is related to interventions designed to alter the healthy brain that control components of the personality, individual characteristics, as well as the fact that it has the potential to change the personality or to create a dependence on them. People's interest in cognitive enhancement has been present throughout the ages, proof being the conventional methods and preoccupation for education, the goal of which is precisely that. One thing that is known is that personality and aspects of identity can undergo changes and improvements through experience, education and study. We can ask ourselves, if these changes are accepted, could not also be accepted those caused by pharmaceuticals/biotechnology, provided they do not pose risks and can improve the decision-making process? According to J. Harris "what matters surely is the ethics of altering our nature, not the means that we adopt. If it's right to alter our nature, we should choose the best and most reliable, not to mention the most efficient and economical, methods of so doing"[234]. Our desire for cognitive improvement is normal,

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[231] Walter Glannon, "Neuroethics", *Bioethics* 20 (2006): 37–52.

[232] N. D. Volkow et al., "Effects of Modafinil on Dopamine and Dopamine Transporters in the Male Human Brain: Clinical Implications", *Journal of the American Medical Association* 301 (2009): 1148–1154.

[233] A. Schwarz, "Drowned in a Sea of Prescriptions", *New York Times* (February 2013) http://www.nytimes.com/2013/02/03/us/concerns-about-drug-practicesandamphetamine-addiction.html. (accessed april 10 2013).

[234] J. Harris, *Enhancing Evolution. The ethical case for making better people* (Oxford: Princeton University Press, 2007), 125.

but it does not justify the use of any means to achieve this goal, even with all the risks accepted.

Conclusion

Cognitive enhancement is a central theme in contemporary bioethical debates and cognitive sciences. Obviously, a great deal of research and clarifications need to be done, including the use of terms or concepts. Knowing the importance of clarifying the meaning of the use of key terms and concepts to avoid ambiguity, in the first part of the paper we discussed the concept of cognitive enhancement and the enhancement/therapy distinction. Frequently, when referring to cognitive enhancement, it is believed that some cognitive capacities are intensified and the given definitions are focused in this direction. We have argued that cognitive improvement is not just about enhancing capacities, it can also mean diminishing some of them. As a result, we have opted for a definition centered on optimizing cognitive functions by intensifying or diminishing, improving their performance, welfare, and promoting flexible social behaviour.

In relation to the enhancement/therapy distinction we have argued in favour of its achievement because it contributes to clearer approaches and is particularly useful when reference is made to new biotechnologies. The concepts of health and illness are discussed in this approach.

Of all the methods used for cognitive enhancement, the most common is the pharmacological method. In the present study we specifically referred to pharmacological cognitive enhancers and we had in mind *Modafinil* and *Methylphenidate* because they are used most frequently, as it is shown in the research. The results of the research published until now and the neuroimaging technologies confirm that drugs and non-invasive brain stimulation can increase certain cognitive skills in normal healthy individuals. Replicability and possible hidden effects are unknown. On the other hand, some researchers have argued that people with higher IQ are less affected or even at all affected by the use of cognitive stimulants. Therefore, the theme of cognitive enhancement has many unknown facets and questions that are looking for answers. Applying an ethical perspective to the problems posed by the use of pharmacological enhancers by healthy people is necessary, even before rejecting them unwarrantedly or sustaining their unlimited consumption.

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IMPAIRMENT AND DISABILITY: CONCEPTS AND MODELS

Abstract

The paper briefly examines some of the major issues in defining disability, through the differences between impairment and disability (biological origins of dysfunction and social circumstances of limitation), the different approaches to disability (various treatments of disability depending on context, the scope of the treatment of disability, etc.), and the main models of disability (the medical model and the social model, some variations of the social model, such as the minority group model and human variation model, etc). The basic characteristics and implications of the medical and of the social model of disability are shown, along with several other problems of understanding, accommodating, and discussing disability.

Key words: disability, social model, medical model, impairment, variation

Framing disability

Disability may be defined as a lack of function, or a biological dysfunction, or an impairment that may be physical, developmental, cognitive, intellectual, mental, psychological, sensory, or combined, and as a societal disadvantage connected to (or arising from) the biological impairment(s). In this text some concepts about disability will be briefly outlined, and the question of the different models of disability will be tackled mostly through the differences between the medical and the social model.

According to the so-called medical model of disability, the lack of function (or dysfunction) is caused by some health impairment; according to the so-called social model of disability, the lack of function is caused by the social environment of the person with impairment(s). It seems common to view the medical model (with the belief that disability is caused by physical impairments), and the social model (with the belief that disability is caused by and exteriorised in social circumstances), as in a relation of exclusive disjunction. Of course, an integrative (but not necessarily neutral) position would allow for disability to be caused

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by both biological and societal causes, and could also include some other factors. According to the medical model, disability is a problem typical for (and limited to) the disabled person, and according to the social model, disability is not merely a physical issue pertaining to the individual who has that issue, for it is society that makes the individual disabled. In very simplified terms, while the medical model, through the efforts of medicine, biotechnology etc. aims to improve the condition and well-being of the disabled person, but is not concerned with much beyond these aspects, the social model highlights the ways in which society disadvantages persons with disabilities, and works on ways to reduce and even eliminate disabling obstacles. The biomedical perception of disability, as part of the medical model, links disability to the physical body (or the mind and the body) of the disabled individual, which reduces that individual's quality of life, and aims to medically intervene in order to correct or diminish the (effects of the) disability, it focuses on the medical management or cure of the disability (or illness), by striving to increase, expand and improve the functionality and quality of life of the disabled person. The social model of disability has started as a response to the dominant medical model, and identifies society as a main factor in disabling people with impairments, though negligence, systemic barriers, various negative attitudes and obstacles, exclusion and stigmatisation of disabled persons. The physical variations (developmental, cognitive, intellectual, sensory, etc.) which are considered impairments, would not constitute disability on their own, they only lead to disability within society that underachieves in accommodating people with disabilities.[236]

Disability is an umbrella term, covering impairments (problems in body function or structure), activity limitations (difficulties and obstacles experienced by an individual while attempting to execute some action/task), participation restrictions (problems encountered during the involvement in life situations), and various combinations of these categories. Disability is not just a health problem, according to the World Health Organisation (WHO), but a complex phenomenon, reflecting the interaction between features of a person's body and features of the society in which that person lives (WHO, n. d.).

Disability is a contested concept, whose meanings (and approaches to whom) vary in different communities (Linton, 1998) and disciplines. The *International*

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[236] As basic as this illustration seems – if a person is in a wheelchair, and cannot climb the stairs at the entrance of a building because of the physical handicap, the medical model would point out that they cannot climb stairs because of the medical condition (due to *X* reasons, and manageable with *X* means), and the use of a wheelchair, and the social model will focus not on the physical lack of function, but on the fact that the building is inaccessible, which should be remedied by constructing other ways to enter it, fit to accommodate the needs of disabled individuals unable to climb stairs.

Classification of Functioning, Disability and Health (ICF), is WHO's framework for measuring health and disability on individual and population levels. This framework has been developed through a collaborative international approach towards a generic instrument for assessing health status and disability across various settings, different cultures and contexts. Within it, disability is defined as a condition or function judged to be significantly impaired, relative to the usual standard of an individual or group. Therefore, the term may refer to individual functioning, including physical, sensory, cognitive or intellectual impairment, mental illness, and various types of chronic disease.[237] Disability is a universal human condition (Zola, 1989) which means that there is a probability that anyone might acquire familiar disabilities in the course of a lifetime, or at least that the specific physical and mental characteristics (variations) in humans might, at some point, be a source of vulnerability in certain contexts; it is a shared human identity (Davis, 2002, Ch. 1), in the sense that disadvantages and impediments are possible for anyone in a certain setting.

Disability is a multidimensional experience for the person involved, and the ICF recognises three dimensions: body structure and function (and impairment thereof), activity (and activity restrictions), and participation (and participation restrictions). People with disability experience "restrictions of activity", as obstacles affecting what people can do (like the inability to go places, participate in activities, partake in the world of discourse etc.), and suffer the psycho-emotional dimensions of who they can be (these are often in a reciprocal causal relation – what a person can do affects who they can be; who they are influences the range of things they can do etc.).

As a concept, or a term referring to the shared experience by a specific class of people, *disability* is a fairly recent construct (if it is suitable to call it so). Before the beginning of the last century, *disability* stood for *inability*, or to denote exertion of legal limitation on rights and powers. The previous classification of disability was in terms of physical, sensory or cognitive conditions, and got replaced by the idea that people with such conditions and impairments all form the category of the disabled. The fairly recent occurrence of acknowledgment and, therefore, the emergence of different approaches to disability might account for the lack of much philosophical interest into the field and meaning of disability, and of philosophical interpretations offered to a more interdisciplinary study of impairment and disability. The facts we now consider constituents of impairment

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[237] The relationship between disability and illness is problematic, as there are people disabled by means of chronic illnesses, many people with disabilities not caused by illness have chronic health problems as results of their disabilities, and there are many other permutations of these problems as well - for an account on modern movements for the rights of people with disabilities against the identification of disability with illness see Wendell 2001.

and disability were in ways present in philosophical discussions throughout the ages, as both biological traits and instances of unjust exclusion or downright cruelty towards people with disabilities[238] were matter-of-factly conspicuous in life, and surely impossible to completely overlook. Problems of impairment and disease, however, along with (un/just) suffering and its implications were often mentioned in discussions of evil, retribution, theodicy, divine justice etc. As a topic for philosophical research, disability is in some ways similar to race or sex, in that it applies to a classification of people on the basis of perceived or supposed attributes, also concerning questions whether the classification is founded (more) on biological traits or social constructs. Disability decreases the overall content of well-being in a person affected, though, not only because of the exclusion and stigma, but due to the physical, mental and emotional inconveniences (including pain and suffering) it causes, and in this sense it is not like race or sex, as it necessarily affects the well-being of a person, even if in a perfect societal setting of inclusion, accommodation and equality.

The term *disability* covers a vast range of conditions and illnesses, and each of these includes various types, forms, and manifestations: congenital or adventitious losses of limbs, senses, and bodily functions; progressive neurological conditions like multiple sclerosis; chronic diseases like haemophilia or asthma; conditions of decreased cognitive capacities, like dyslexia; as well as psychiatric disorders. The lack of similarity between all these various states and conditions[239] may also raise questions about the justifiability of the common concept, or umbrella-approach, to the point of doubting whether the concept of disability is a

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[238] The violence, abuse and cruelty that people with disabilities suffer are not the subject of this paper, as they are a separate enormous concern. For the abuse of people with disabilities see “Abuse of women with disabilities”; “The Unacknowledged Crisis of Violence against Disabled People.”; and especially the vast meta-analyses Hughes, K. at al. April 2012, and Jones, L., at al. 2012.

[239] It can be argued that “… there is at least as much variation among ‘disabled’ people with respect to their experiences and bodily states as there is among people who lack disabilities” (Wasserman, Asch, Blustein, and Putnam, 2016). However, the fact that there is such variation within both groups does not mean that there is no difference between the two. Being able-bodied with x-types of experiences is different from being able-bodied with y-types of experiences; and being disabled with p-types of experiences is different from being disabled with q-types of experiences, and yet the common denominator remains the able-bodiness, or disability, respectively. The experience of multiple sclerosis, for example, differs vastly from the experience of a congenital lack of a limb, but both share certain traits that do not pertain to the life-experience of persons unaffected by these conditions. Being late with this paper due to symptoms of multiple sclerosis is unlike being late because of symptoms of schizophrenia, for example, but it is more extensively, and on significantly more levels unlike being late because of other engagements and/or procrastination unrelated to forms and symptoms of disability and illness.

fruitful area for philosophical work.[240] If this problem of observed lack of similarity cannot be overcome by a suitable baseline for a minimum definition of disability (not an all-encompassing blob-concept or a cluster of only vaguely related biological facts, social implications and life experiences, although this, too, should be an adequate inspiration for philosophical work), thus hindering any productive philosophical research, the concepts, issues, implications and even existential questions of disability remain to be tackled by sociology, medicine, social work, art, and other human endeavours.[241] On another note, the versatile nature of different disabilities, the varying experiences of disability, and the nature of questions surrounding it, make it a great area for pluriperspective and multidisciplinary research, and therefore, a great topic of bioethics. However, since disability has not been in the focus of bioethics for a considerable time, there is vast

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[240] Wasserman, Asch, Blustein, and Putnam (2016), reference Beaudry (2016), at first glance as if he directly refers to the varying functional or experiential states of people with conditions labelled as disabilities, but his point in this particular section of the paper is not focused on the multitude of variations of disability-experiences, but on the justifiability of a neutral social approach to disability (and thus, only indirectly to the plausibility of the umbrella-conception). He does, in fact, start off with the problem of a neutral definition of disability, but it is not as clear whether he means that the multitude of various conditions makes disability unsuitable for philosophical work, or if he refers, as this formulation stands several paragraphs later, to the neutral model of disability. Beaudry identifies the problem of causation (biology or society) of disability as the fundamental dissension on the matter of a neutral definition, remarking that such a definition would make it easier for an ontological disagreement to progress. He allows for an example of a neutral definition to frame disability not only as a limitation, but also one that most people do not have (based on species-related statistics), is long-lasting or recurrent, and affects people with an impairment understood as a biological dysfunction (remarking that social modelists have no problem granting this last part, that disability only affects biologically impaired people – which is certainly true, but only a part of the framework of social modelling). Beaudry thinks that such a definition would always be incomplete, because disability undoubtedly has a normative dimension, because it calls for a medical, social, or other response. The knowledge about the suitable response to disability comes from knowing its roots; knowing how to address it means knowing what causes the aspects that need to be addressed. What seems to bother him most is that as long as it has the idea of causality as its key, disability will remain an essentially contested concept. He points out Silvers' (2003) concept of a neutral, value-free model of disability, as overly optimistic for its plausibility and feasibility.

[241] However, the fact that there are too many variations of the supposed issues to the point of over-saturation, over-broadening, overloading, and thus, blurring the line of where the set ends and of what content it holds, should not pose as a threat to any systematic philosophical approaches to disability. While it is true that researchers in philosophy with personal involvement might have their judgement clouded and their objectivity diminished by their own experiences of disability, it does not mean that they, precisely because they have their own immediate perspective on the issue, cannot largely contribute to raising awareness, not only about the obstacles of disability, but of the obstacles of including and interpreting disability within philosophical discourses.

room for improvement. Disability has been a shadow issue for bioethics (Oullette, 2011, xiii), but it is gaining traction.[242]

The physical, social and environmental factors in affecting disability experiences and outcomes are also acknowledged in the ICF, and should be recognised in any serious endeavour of pluriperspective study of disability. Functioning and disability should always be viewed as a complex interaction between the health condition of the individual and the contextual factors of the environment, for only through this interplay can the attempt at understanding of the factors and dimensions of "the person in his/her world" be suitably made. This is why the option of framing disability based only on social exclusion and stigma does not distinguish it from race, gender, ethnicity etc. (Bickenbach, 1993), thereby not just failing to clarify what disability is, but also obfuscating other issues. The ICF underlines that disability is a "dynamic interaction between health conditions and environmental and personal factors", which does justice to its complexity.

In definitions of disability, two common aspects, or features, are usually emphasised: a physical of mental characteristic perceived and labelled as *impairment* or a dysfunction; and a personal or social limitation caused by, or associated with that impairment.[243] The labelling of physical or mental characteristics and variations as impairments or dysfunctions is based on statistical data (consider-

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[242] While "disability perspective" was a formulation rarely heard in discussions of bioethics, disability is nowadays a part of the conversation. However, for Oullette, these transformations are only a basis for what she is hoping for, which is bioethics that incorporates disability as a central issue and engages disability experts in the enterprise, which cannot be achieved only in theoretical. Within the context of disability as having a social location and reproduction (and not just pertaining to the individual as an isolated tragedy), Newell looks at the power relations associated with bioethics and its largely uncritical use of the biomedical model (see Newell, 2006). Goering looks at several examples that demonstrate what she sees as a cause for concern – the troubling tendency in much of mainstream bioethics to discount the views of disabled people. Adhering to a stance of humility and sensitive inclusion for people who have been marginalized, she recommends that bioethicists adopt a presumption in favour of believing, not discounting, the claims of disabled people. Her main point is that bioethicists may learn an important lesson about human fragility and resilience, by taking the claims of disabled people at face value and engaging with them over impairment and disadvantage in open dialogue (Goering, 2008). On critical disability studies as an emergent field of academic research, teaching, theory building, public scholarship, and something she calls "educational advocacy", and their relationship with bioethics (see Garland-Thomson, 2017). The field of bioethics is presented as an appropriate arena of knowledge-building and practice, into which critical disability studies can be brought. The author offers a speculative proposal for developing a practice called *disability cultural competence* that can be developed as a component of the emergent field of disability bioethics, and explores how and why interdisciplinary critical disability studies can be applied to both the knowledge and practice of biomedicine and healthcare.

[243] See World Health Organization (1980; 2001), the U. N. Standard Rules on the Equalization of Opportunities for People with Disabilities, and, since much of the disability rights movement has originated in the United Kingdom, see the Disability Discrimination Act (U. K.) 1995.

ing the average in certain reference groups), biological features (according to the theory and expectations of human functioning), or normative dimensions of envisaged human flourishing.

Impairments are usually considered characteristics, or traits, of the individual who has them, they are not (strictly) transitory, or easily alterable. Seeing them as attributes, or traits, does not mean that they constitute the entire identity of the person of whom they are characteristic – the impairment or chronic illness does not define the impaired/chronically ill person.

Biological and social approaches to disability have been contested (see Hedlund, 2000, for Sweden; Mann, 1967, for Canada), but there has been a shift since 1970, and references to social restrictions, environments, and contextual attitudes have started to emerge (Shakespeare attributes this to the first stirrings of disability activism, the civil rights and feminist movements, and the academic dominance of labelling theory, as well as others in sociology – Shakespeare, 2006, 19-20). Silvers (2003) warns against drawing a sharp line between impairment and disability, as some social model adherents have wanted, thinking of impairment as a natural (because biological) fact, as opposed to disability, an artificial social classification. However, there is nothing about social model theory, however, Silvers remarks, that entails or otherwise calls for this dichotomization. Impairment itself has no fixed standard - what counts as being physically, perceptually or cognitively impaired is relative to the abilities and limitations taken to be typical of the species or its members who belong to a particular society/prominent social group (2003, 24-25).[244]

As Shakespeare frames it, "… the benefits of the social model approach are that it shifts attention from individuals and their physical or mental deficits to the ways in which society includes or excludes them" (Shakespeare, 2006, 29). The social model is social creationist or social constructionist (in this passage he refers to Oliver, 1990), not biologically determinist, it shows that the experience of disabled people is influenced by society, with varying presentations in different times and cultures. This means, however, that since disability is not biological, but socially constructed and depending on social constellations, it can be reduced or altogether surpassed.

Impairment and disability are sometimes interchangeably used, but it should always be clear that they refer to different things, and that the distinction between them is in the core of the social model: impairment, as it was mentioned, is de-

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[244] Also see Barnes, who underlines that disabilities are not merely physical or related to the body, for disability is both a biological condition and a social construct (Barnes, 1999, 578).

fined in biological terms, while disability is a social creation.[245] The impairment is an individual biological situation, but disability makes this impairment a problem. Within the social model, this means that disability is the totality of social obstacles and oppression, which can be transformed with research, and change of consciousness (like through campaigning). Examples about participation or exclusion by disabled people are sometimes rather obvious: if no ramps are built, the structure is wheelchair inaccessible; if no interpreters for sign language are available, the hard of hearing people cannot participate in the general discourse. However, the discomfort, pain and concurrent emotional reactions caused by impairments should not be overlooked. In fact, pain is very often the result of interplay of physiological, psychological and socio-cultural factors, making it difficult to distinguish between purely individual psycho-physical experience, and the broader, social context (Wall 1999), especially since constant or frequent pain and discomfort have serious implications on the way disabled people function in the world.

Impairment is the conditio sine qua non of disability (without an impairment, there is no experience of disabling obstacles and limitations).[246] It is also important to acknowledge that impairments, although biological, are often caused by social arrangements (Abberley, 1987). Poverty, malnutrition, access to proper public health care services, etc., are all caused by collectively imposed social processes, which is why Abberley suggests that impairment itself could be conceptualised as socially created. Shakespeare thinks that since not all impairment is

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[245] There is the claim that many individuals who would be said to qualify as “disabled” in society would still be disabled in a Utopian discrimination-free society (see Terzi, 2004), and this is true in a sense that a biological dysfunction creates limitations (even if we abstract from society, a blind person still faces obstacles in orientation, for example). In simplified terms, the main difference is between impairment and disability. The social model’s stance is that a blind person is impaired or limited, not disabled; a blind person is disabled when he or she is disabled by society. However, disability should not be debased by mocking the very concept of inability – being deaf or hard of hearing is very different from being tone-deaf as demonstrated in bad singing, no matter how obviously unpleasant for the others the latter is. In a society that only communicates through song/music, tone-deafness would be very similar to actual deafness, having rendered the person unable to communicate. Sometimes, the classification of traits as impairments is dependent on societal perception, which is why there is the danger of characterising as impairments the unwanted variations most disadvantageous in a certain context, and therefore most prone to prejudice and stigma,(this might account for at least a part of the normative fluctuation of the classification of impairments).

[246] The difference between a biological impairment and a social limitation, on a normative and policy-making level influences whether the aspect to be addressed and modified is the disabled person, or his or her social and contextual environment. The motto “Nothing about us without us” (see the eponymous book, Charlton, 1998), voices the demand for constant inclusion of actual disabled people in research of disability, and all matters concerning them in policy making. Only their clear and unmediated perspectives truly grasp their needs, and should therefore be included in all matters concerning their conditions and the social replies to (Charlton, 1998; Stone, 1997).

caused by social arrangements, this argument works not to uphold, but to undermine the social model (2006, 35). It should be kept in mind, however, that if impairment is defined as biological, and disability - as social, there is the risk of leaving impairment as an essentialist category (Shakespeare, ibid); which is why some authors think that impairment is not a pre-social or pre-cultural biological substrate (Thomas, 1999, 124).

Some definitions imply (or seem to imply) that biological impairments are the only cause for limitation (the definitions in the WHO's International Classification of Impairment, Disability, and Handicap from 1980, and the United Kingdom's Disability Discrimination Act-DDA), some appear opposite, by attributing the limitations that disabled people face to contemporary social organisation (the definition in the UK'S Union of the Physically Impaired Against Segregation in 1976, which is not surprising for the disability rights organisation that established the principles that led to the development of the social model of disability).

In addition, there is disagreement on the need for two categories of limitations – one involving personal activity, and the other social or political participation (see Wright, 1983; Edwards, 1997; Nordenfelt, 1997; Altman, 2001).

Models of disability

The concept of disability is multifaceted, far-raging and fit for an investigation with multidisciplinary approaches. Disability can be considered a biological/physical impairment or dysfunction, or a personal and social limitation caused by, or associated with that impairment. Within some disability studies, disability is seen as a form of social oppression, a form of stigmatization, experienced by people with impairments. The models of disability refer to either the physical or mental attributes that some institutions, medicine in particular, view as needing to be remedied – this is the medical model, or to limitations imposed on people by the expectations and restrictions of an ableist society – this is the social model.[247]

The models of disability provide definitions of disability, based on (perceived) needs, in order to guide the formulation and implementation of policies, they are not value neutral, they determine (and in some instances, narrow down) which academic disciplines apply to people with disabilities, they shape the self-identity of disabled people (which, albeit on some level useful, could lead to additional problems), and can cause prejudice and discrimination (for the purposes that the different models serve see Smart, 2004, 25-29, also see Smart, 2009).

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[247] The exclusion of people with physical and mental characteristics from major domains of social life manifests not only in deliberate segregation, but in the environment and social activity organised in such a manner that they prevent or restrict the participation of people with disabilities.

There are several models of disability. The following list summarises the typology offered by Retiefl & Letšosa (2018), using many of their carefully picked useful references. The religious model, typical for the Judaeo-Christian tradition, sees disability as an act of God, either as a repercussion for a transgression/sin, or as a special test for the person suffering. This belief in divine punishment sometimes equates disabilities with sacrilege, mixes chronic illness with issues of impurity and danger, and explains mental illness with evil possession (McClure, 2007, 23; Henderson & Bryan, 2011); the punishment is executed directly on the person, or indirectly, to members of the persons' family, even throughout generations, thus emphasising the negative impact of this view in the sense of continuous exclusion from ritual and social participation in the communities (for a comprehensive approach to these issues, see Rimmerman, 2013). The belief in disability and suffering as a test of faith, piousness and endurance means that some individuals or families get to prove their worth and resilience, and remain pure, thus attaining grace and redemption; similarly, disability can be viewed as character-building, and, as most forms of suffering, granting a unique view of the inexplicability of the divine ways, and the relationship between the believer and the deity. In cultures with religious or magical worldviews, where the religious (or moral/religious) model of disability is still the predominant view (Karna, 1999, 13; Dunn, 2015, 10), disabled people are often severely marginalised, stigmatised, attacked.

The identity model (or affirmation model) of disability is closely related to the social model, but while it shares the stance that the experience of disability is socially constructed, it slightly differs in claiming disability as a positive identity (Brewer et al., 2012). The point is that within the identity model disability is a marker of membership in a minority identity, much like gender or race, defined by a certain type of social or political experience in the world. This model, while sharing the identification of social obstacles with the social model, is more interested in forging a positive definition of disability-identity based on experiences and circumstances that constitute the minority group of people with disabilities (Brewer at al 2012, 5); however, this could be a problem, if it is taken to lead to pressure to identify with a specific group culture (Fraser, 2003).

The human rights model takes disability as a human rights issue, which, again, is quite similar to the social model, to a point that some researchers treat them interchangeably. The differences between them identified by Degener are the following: the human rights model moves beyond explanations offered by the social model, outlining a theoretical framework for disability policy that emphasises the human dignity of people with disabilities; includes both first and second generation human rights (civil and political rights, as well as economic, social and cultural rights); is more accommodating to the facts of pain and suffering of some disabilities, underlying the need to take them into account in the development of social justice theories; gives space to minority and cultural identities, as opposed to the lack of attention the social model pays to the importance of identity politics – although this could be said for the identity model as well; underlies the importance of properly formulated policies for the prevention of disability as an example of human rights protection;[248] does not stop at merely explaining why so many disabled people live in poverty, like the social model, but also proposes ways for improvement of their life situations (Degener, 2017, 47-54).

The cultural model of disability, developed in the North American context, thanks to interdisciplinary approaches, especially by the social sciences and humanities (Michalko, 2002; Titchkosky, 2007 in Retief1 & Letšosa, 2018, non vidi), does not define disability in any specific way, but rather focuses on how different notions of disability function in the context of a specific culture (Retief1 & Letšosa 2018). Junior and Schipper (2013) explain that the cultural model differs from the medical and the social model in that, while they each focus on only one factor in their approach to disability, the cultural model focuses on a range of cultural factors, which may include medical and social factors, but are not limited to them (in Retief1 & Letšosa, 2018, non vidi).

The charity model of disability considers people with disabilities victims of their circumstances of impairment, who should elicit pity, and whom should be treated in special manners, due to their suffering and inabilities. This model is often criticised for portraying disabled people as tragic, helpless, impotent, which leads to the proliferation of harmful prejudices and stereotypes (Seale, 2006, 10).[249]

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[248] See footnote 18.

[249] This is important in the sphere of educational possibilities for disabled students – they should not be treated like victims, but merely given equal opportunities to learn and prosper. Seale focuses on the fact that, while most practitioners know that e-learning should be made accessible to students with disabilities, it is not clear exactly how this should be done, and examining the social, educational and political background behind making e-learning accessible in higher and further education, comprehensively considers the role of key stakeholders - lecturers, learning technologists, student support services, staff developers, senior managers - involved in e-learning provision, and provides advice for them. While cooperation between the parties involved in the facilitation of education is still difficult, an aspect that could be easily improved is the development of learning technologies for students with disabilities. The Faculty of philosophy, through the Erasmus+ Project "Fostering Accessible Study Technologies: Accessible Learning Management System in Humanities and Social Sciences" is working on the development of a learning management system, wherein students with disabilities (deaf and hard of hearing, visually impaired, students with specific learning disabilities such as dyslexia and students with mobility issues), are a vital part. This should potentially accommodate most of the specific educational needs of students with disabilities and should therefore be a huge step towards a

The economic model depicts disability as a challenge to productivity, highlighting the various disabling effects of an impairment on a person's capabilities, and in particular on labour and employment capabilities, mainly focusing on benefit-cost analyses, and is often used for reference in governmental formulation of disability policies (Retief1&Letšosa 2018).

Retief1&Letšosa continue with the limits model, a distinctly theological model of disability developed by Creamer (2009), which sees disability as embodied experience and emphasizes the importance of people accepting the fact all human beings experience some level of limitation in their everyday lives (Creamer, 2009, 109), and some varying degrees during all the phases of life (Creamer, 2009, 118), making the limits (which might/will be faced) a matter of fact, a common aspect of being human (Creamer, 2009, 31) – for an extensive summary of this model (see Retiefl & Letšosa, 2018).

The medical and the social model of disability

The medical model is rarely defended, but often adopted by medical and health care professionals, bioethicists, and philosophers who downplay the influence of social and environmental factors to the obstacles and limitations faced by people with disabilities. The social model (in different versions) seems to be the dominant paradigm for understanding disability in legislation, social-sciences, and humanities.[250]

A number of social models (or variations of the social model) are accepted by researchers of disability and activists (both in and outside of philosophy and bioethics). The aforementioned stance from the UPIAS definition from 1976, associated with the British social model, seems to negate the causal role to impairment in disability,[251] a denial that, while countering the prevailing, and sometimes exaggerated focus on the biological causes of handicap, might be considered as somewhat limiting the scope of disability to the categories and implications of exclusion and discrimination (see Beaudry, 2016).[252]

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full inclusion of students with disabilities in the entire process (see "Fostering Accessible Study Technologies: Accessible Learning Management System in Humanities and Social Sciences").

[250] Silvers thinks that neither the ostensible medical model nor the so-called social model actually models disability, nor could any other set of claims of a similar nature do so (Silvers, 2003, 20). She reminds us that a model is a standard, example, image, simplified representation, pattern etc., often executed in miniature so that its components are easy to discern. Since the components of disability are not empirically discernable or represented, neither the medical nor the social model, she purports, presents a replica or representation of disability.

[251] Beaudry, for example, claims that impairment is closely, but not causally related to disability. He claims that it is a vector of it; characterizing the victims of social oppression (Beaudry, 2016).

[252] The strength and the reductionist tendencies of the British social model have been subject to criticism, in terms of the need to distinguish disability discrimination from other types of dis-

Models that treat the inadequate relationship between atypical embodiment and typical environment as a point de départ, see disability as an interplay between biological and social causes (neither of which has priority), and as having an interactive character, while maintaining the emphasis on the social aspects (see Bickenbach, 1993; Altman, 2001).

As it was shown, disability can be analysed through two ways in which society inflicts problems on disabled people by imposing limitation – either through exclusion of people with impairments, who are seen as a minority, which is the minority group model, or through the reality of how society is organised, meaning that the contemporary societal organisation fails to accommodate people with disabilities, which is the human variation model. The former view purports that people with disabilities face exclusion and discrimination in ways similar to those experienced by racial or ethnic minorities, for which the proper reactions are in the forms of which civil rights protections and laws against discrimination (Hahn, 1997; Oliver, 1990). According to the latter view, the obstacles that disabled people face are not directly stemming from their intentional exclusion, but are by-products of the fact that their features and the physical and social environment are just not adequately matched. Disability is an extension of the variety of attributes, physical and mental, and society's inability to routinely respond to them (see Scotch and Schriner, 1997).[253]

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crimination (Bickenbach, 1993), the need for impairments to be recognised as an objective foundation for classification, and not denied or understated as sources of disadvantage (Anastasiou & Kauffman, 2013; Terzi, 2004, 2009; Shakespeare, 2006 certainly stresses this throughout the book). Beaudry (2016) finds that such criticism fails to see that the British social model does not deny the importance of impairments, but simply restricts the notion of disability to social exclusion and oppression.

[253] The responses to disability of these models are, accordingly, different. The medical model seems to reinforce the medical intervention and correction of the biological variation (condition); the minority group model supports measures of elimination or reduction of unjust instances of exclusion and oppression; the human variation model favours a reconstruction of the physical and social environment to make it more accommodating to the varieties of human functions (this could work also as a baseline for antidiscrimination measures of the minority group model), underlying the suitable social responses to disability where exclusion and oppression are not an issue. The allocation of resources, certainly plays a role in the arguments for and against the adoption and implementation of some models, and the rejection of others. If the accent is on adjusting the environment for the needs of the disabled – if disability is in the circumstances of the environment and not in the people who inhabit them – then, more funds will go into environment transformations, and fewer will be allocated to resources directly applicable to the medical aspects of disability. Another, related, danger of the intense application of the social model would be the implication of the acceptance of the biological dysfunctions by the disabled people – the more people happily live with disabilities and thrive in an environment increasingly adapted to their inclusion, the more the risk-benefit ratio for the medical intervention on biological dysfunctions will shift, and, resources might be removed from healthcare, and with that, from disability prevention.

Some objections to the medical and the social model of disability, or rather, different versions of the same objection, focus on the (perceived) fallacious dichotomy between biological impairments and social limitation: ether through the stance that since disability is such a complex phenomenon, impairment and exclusion and/or oppression are intertwined and difficult to disassociate, or through the dismissal of the treatment of disability as a (strictly) biological condition.[254]

Tremain argues that impairments " … must no longer be theorized as essential biological characteristics (attributes) of a 'real' body on which recognizably disabling conditions are imposed" (2001, 632), but rather understood as an integral part of the social process of disablement. The dichotomy is, therefore, seen as oversimplified and downright futile by some researchers, and even if one claims that the impairment classification works in biomedical terms, one cannot deny that such biological variations are subject to discrimination (especially since it can be seen as a reaction to objective biological traits).

It was briefly mentioned that Silvers (2003) argues for a model of disability that is value-free, identifying atypical forms and functions only through descriptive criteria. Silvers places the medical and social models as foils, and on some accounts antitheses (Silvers, 2003, 19). The medical model takes disability to be a problem which requires medical intervention, and as such, a responsibility of the medical professionals, while the social model understands disability as a political problem, calling for a transformation of people's attitudes and a reformation of societal practices. Scully underlines, however, that the strong social model is just not that interested in the subjective experience of the impaired person, or its psycho-emotional aspects, or the processes through which disability is constructed by cultural representations (Scully, 2008, 27). Abstracting from the subjective experience of impairment would prevent from fruitfully tackling, theoretically or politically, the problem of the marginalisation of disabled people (Scully, 2008). Scully (2008, 28-29) and Crow (1996) see the social model as too amenable to the traditional Cartesian mind-body dichotomy, artificially splitting the person-

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[254] For the first version see Martiny, 2015; Anastasiou & Kauffman, 2013. The second version regards impairment as a social construction, no less than the obstacles faced by impaired people, and sheds doubts on the assumed stable biological basis for the classification of certain variations as impairments. It should not be overlooked that the changes to the classification, by the medicalization or demedicalization of some conditions, change the status of the variations - a thing once considered as impairment ceases to be so, and vice-versa. Sometimes, it is precisely the social environment that not only identifies, but also creates impairments. For example, in a non-literate society, dyslexia would not be a learning disability (see Cole, 2007; Davis, 2002; Tremain, 2001; Amundson, 2000 and indubitably Shakespeare, 2006). See Wasserman, Asch, Blustein, Putnam (2016) for the summary of the argument – what is seen as an impairment may depend on which variations appear most disadvantageous, or most susceptible to social prejudice, which makes it difficult to establish the objectivity of the classification of impairments by appeal to unambiguous and uncontested biomedical norm.

al and the political apart, and thus failing to acknowledge that embodied perception disassociates the experiences of disabled people from those of the able-bodied. Silvers claims that this line of criticism does not discount the social dimension of disability, and, despite returning focus to some of the matters that, for the medical model are the essence of disability, should still not adopt the values that drive the medical model (Silvers 2003, 20). She believes that by explaining disabled people's limitations in terms of conditions that are subject to political action, the social model has empowered disabled people to achieve more freedom of social participation (30).

In a pluralistic society, we should expect that different models of disability will be appropriate to incorporate and realize different values, and that these will be as compatible, or as antithetical, as the values they serve, suggests Silvers, and since contention between models can be traced to tension between values, it cannot be expected that science confirms (or refutes) any model of disability. For a pluralistic society, many models of disability are better than one (Silvers, 2003, 35).[255]

Some of the most obvious issues with defining, framing, and discussing disability were outlined in this text, as were the main characteristics and implications of the medical and the social models of disability. Perhaps time will come when a bioethical model of disability will fix some of the problems of the established models, and we can only hope that the integrativity of bioethics lives up to its expectations.

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[255] She welcomes the fact that the social model's entrenchment may be approaching the medical model's, striving for a practical balance between adjusting diverse people and uniform environments to one another. However, unwelcome news is that the philosophical struggle to align the fundamental values that these two models express is nowhere near to achieving accommodation or resolution. Still, an encouraging step is that people with disabilities appear to become less and less marginalized when philosophical investigation of these values in the context of medical ethics and health care justice take place (Ibid.).

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БИОЕТИКА ЈАПАНСКИХ БОРИЛАЧКИХ ВЕШТИНА

Апстракт

Рад сагледава развој биоетике јапанских борилачких вештина: од џиу џице до џудоа, каратеа и аикидоа. На ратничку вештину која је за циљ имала савладавање противника по сваку цену (џиу џица) утицала је Меиђи реформа и етички принципи просветитељства увежени са Запада. Настанком џудоа, каратеа и аикидоа борилачке вештине преузимају други однос према телу и физичком напрезању који у себи садржи и елементе спорта и елементе древних јапанских борилачких вештина, који су провејани зен будизмом. У поменутим модерним јапанским борилачким вештинама однос према телу је комплексан али доминантно рационалан. Последично, њихова трансформација у спортове је била и очекивана (осим аикидоа). У којој мери је рационалан однос према телу присутан и данас у овим вештинама, тема је овог рада.

Кључне речи: борилачке вештине, џудо, карате, аикидо, биоетика

BIOETHICS OF JAPANESE MARTIAL ARTS

Abstract

The paper analyses the development of bioethics of Japanese martial arts: from jujutsu to judo, karate and aikido. The martial art of warriors, that for its sole purpose had overcoming of the opponent at any cost (jujutsu), was influenced by the Meiji reform and the ethical principles of Enlightenment that came from the West. By their making, judo, karate and aikido martial arts take different an approach towards the human body and physical exercise with elements of sport and elements of ancient Japanese martial arts, which are influenced by Zen Buddhism. In the aforementioned modern Japanese martial arts the relationship towards the body is complex, but dominantly rational. Consequently, their transformation into sports was expected (except for aikido). To what extent is this rational approach to the body still existing in these martial arts today is the topic of this paper.

Key words: Martial arts, Judo, Karate, Aikido, Bioethics

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Порекло борилачких вештина и даље представља енигму за историчаре. До сада, најсигурнији наводи сугеришу да су преко Индије дошле до Кине, а преко ње до Јапана. У свакој од ових држава развијале су се са својим специфичностима које су произашле из друштвених околности које су владале у њима. Данас представљају културно богатсво човечанства са мноштвом различитих стилова, филозофија и са различитом праксом (Ćirković i Jovanović, 2002: 13).

Преко Кине као сегмент богате кинеске културе, борилачке вештине стигле су до Јапана преко загонетног Бодидарме (Rid i Kraučer, 2007: 20, 21). На тлу јапанских острва формирале су се са својим специфичностима, опет проистеклим из специфичности државне и друштвене историје Јапана. Један од кључних фактора за то формирање била је ратничка класа самураја, врло слична ратничкој класи европских витезова. Ипак, на пољу филозофије случност се губи с обзиром да је темељ етике европских витезова у хришћанству, уз упливе примитивних елемената (Хојзинга, 1991: 109) док је код самураја у зенбудизму. Суштину те филозофије сумирала је књига Бушидо или „пут самураја“ која у себи садржи етичке принципе које би сваки самурај морао да поштује. Фанатично одани своме феудалцу (дамјоу) свој живот подредили су вежбању ратничких вештина и примени истих у интересу свога господара. Изабрана вештина најчешће је била вештина мачевања (кенђуци) с трима орижуја: катаном, вакизашијем и тантом (Kliri, 2006: 61).

До које мере је оданост своме дамјоу била животни императив самураја сведочи прича „47 ронина“, тачније рецепција те приче. Наиме, 46 самураја, уз једног одбеглог, починило је ритуално самоубиство на гробу свога господара у част, како су они перцепирали, његове незаслужене смрти. С једне стране, прича сведочи о пожртвованости и служењу а са друге о сулудој фанатичности (Simić, 2007: 123-129). С јапанске стране, акценат је на пожртвованости и служењу и зарад тога су се и неговале борилачке вештине.

Вештине су диктирали владајући услови бојног поља. Циљ је био једноставан и јасан: победити противника што пре и по сваку цену. У том процесу од употребе убојитих сечива се не преза већ напротив: настоје да се употребе маскимално ефикасно без обзира по последице које противник може претрети. У бити, једна ратничка вештина која је с обзиром на професију професионалног ратника која је кључно обележије самураја, настала је и развијала се с обзиром на своју употребну вредност на бојном пољу. Самурај наспрам себе на бојном пољу имао је другог ратника, секунде су одлучивале победника а цена је био сам живот. Свакако у тим условима дубљу етику борилачке вештине (кенђуце) било би наивно очекивати. Парадоксално, етичност кенђуце могла би се пронаћи у њеној неетичности.

Меиђи реформа и борилачке вештине

Дубоко затворен унутар природних граница својих острва, Јапан је имао свој изоловани развој током средњег века и модерне. Читаво друштво развијало са минималним додирима с спољашњим светом и у свом развоју досегло уникатне специфичности.

Промена је дошла 1868. године и свеобухватном реформом друштва спроведеном за време цара Меиђиа (1867-1912) која је по њему и добила име: Меиђи реформа (или рестаурација). Идеја је била да се Јапан модернизује прихватајући моделе развоја тадашњих светских сила услед чињеница да уколико одбије да се модернизује завршиће као колонијални плен тих истих сила. У том процесу неопходна је била трансформација јапанског друштва до средњовековног које је своје домете за разлику од Европе проширила и дубоко у модерну (Stojanović, 2015: 57; Istorija Japana, 2008: 115).

Самураје је очекивала дубока промена. Као ратничкој класи није им било предвиђено место у грађанском друштву какво је Јапан настојао да постане. Низом декрета ратничкој класи су дрмани темељи да би коначно забрана ношења перчина директно ударила на специфичан кодекс части и симболику коју је перчин у њему представљао. Гинчин Фунакоши, оснивач Шотокан каратеа, наводи да када се испред оца појавио са одсеченим перчином, отац рекао: „Шта си то урадио од себе? Ти, син једног самураја?!“ (Funakoši, 1988: 18).

Наравно, није прошло без отпора: последње самураје окупио је Саиго Такамори и у јуриши на пушке и топове послао ову ратничку класу на сметлиште историје (Simić, 2007: 177).

За борилачке вештине пресудни утицај имао је декрет забране ношења мача, тј. катане. За самураја мач је био интегрални део личности и етичности и од њега се није раздвајао па је овај декрет напао бит самурајске класе. Услед немогућности употребе мача борилачка вештине која је ту употребу неговала (кенђуцу) пада у други план. У први план испливала је вештина борбе без оружија или са употребом предмета који се могу наћи на месту сукобу. Вештина знана као џиу џицу (тачније транскрипција би била ђу ђуцу) имала је исте етичке принципе, тј. недостатак истих, као и кенђуцу. Циљ је савладати противника без обзира по његов живот или здравље (Janjić i Gigov, 1983: 37, 99).

У раној фази Меиђи реформе џиу џица доживљава нагли успон. Услед немогућности употребе мача, самураји, тачније преостали остаци те класе, своје окршаје решавали су голим рукама или са приручним оружјима. С обзиром да вештина није имала јасно дефинисан корпус техника, нити етичких принципа, поделила се у мноштво стилова и као јединствена, тј. једна вештина џиу џица, није ни постојала. Ипак, за све стилове заједничка карактеристика била је ефикасност и убојитост.

Биоетика џиу џице била је симплификована и огољена. Према телу противника није било никаквог обзира - напротив. Водећи се принципом максималне ефикансти зарад савладавања противника нападане су управо најслабије тачке људског тела, најчешће зглобови. Такве технике оставиле би трајне последице по противника. С друге стране, однос према сопственом телу опет је био детерминисан природом борилачке вештине. Вежбало се у свакдоневној одећи уз идеју да ће потенцијални сукоб свакако уследити у ситуацијама у којима је појединац обучен „нормално“. Тренинзи вештине нису били тренинзи у правом смислу те речи: недостајао им је физички аспект. Вежбало се без загревања опет уз идеју да сукоб се догоди ненадано и да појединац нема могућност да се пре сукоба адекватно загреје. Он мора реаговати одмах па се на тај начин и вежбање изводило, да буде што приближније реалним ситуацијама употребе вештине.

Даљим током Меиђи реформе која је трансформисала јапанско друштво из средњовековног у модерно, и џиу џица нашла се на удару. У уређеном друштву за физичке окршаје који су се неретко завршавали смрћу противника места није било. Потребно је било и реформисати и смртоносну борилачку вештину не би ли се уклопила у модерно друштво или нестала заједно са ратничком класом самураја. Ток нимало захвалног задатка прихватио се Џигоро Кано.

Биоетика џудоа

Професор универзитета Џигоро Кано вежбао је код највећих мајстора џиу џице и самиградио име као један од запаженијих сенсеиа (учитеља) те вештине. Дубоко прихватајући реформе прихватио се задатка и транформације џиу џице у модерну борилачку вештину коју би могао да практикује свако и која би за циљ имала допринос друштву уместо најефикаснијег савлађивања противника.

Кано је избацио суфик „џицу“ (тачније „ђуцу“) који значи „прилагодљиво“ и сугерише ефикасност те борилачке вештине. Уместо тога убацио је дубоко филозофски суфикс „до“, тј. пут. Префикс „џиу“ (тачније „ђу“) је задржао и тиме створио џудо (De Majo, 2010, str. 96). Иза замршене семантике крије се кључна промена која је спасла борилачке вештине од заборава. Творећи џудо Кано је створио и борилачку вештину која се одлично уклопила у модерно друштво и ишла у корак са Меиђи реформом. Од употребљивости вештине акценат се померио ка „савршенству форме“ (Rid i Kraučer, 2007: 180).

Кано је у борилачке вештине на велика врата увео физичко вежбање. Прво, као спортску опрему увео је кимоно беле боје ради хигијене али и униформисања вежбача. Слично као у медицинској пракси, вежбач би требало кимоно да користи искључиво у сали као и лекар свој бели мантил. Уз појас који рефлектује одговарајући ниво вештине код појединца, бели кимоно чини јединствену униформу и, као и медицинској пракси, продужетак појаве џудоке/лекара, тј. његовог неуптиног ауторитета (Radenović, 2012: 189). Пре преласка на конкретно вежбање борилачке вештине следило је загревање али и физичко вежбање ради неговања мускулатуре и свеопштег здравља вежбача. Кано је с једне стране придавао значај физичком вежбању као методу неговања здравља и незаобилазног сегмента целокупног човека али је исто тако упозоравао на опасности прекомерног физичког вежбања. Развијену мускулатуру за коју је утрошено значајно време и енергија а која нема јасну сврху (осим себе саме) Кано је видео као залудну. Залагао се за свестрано развијеног вежбача са мускулатуром коју бисмо могли да окарактеришемо као здраву и употребљиву (Kano, 2007: 51-58).

С друге стране стоји тело противника. За почетак, Кано инстистира на термину „партнер“ јер вежбачу он даје могућност да унапреди своју технику. Исто тако тај вежбач партнеру омогућава напредак. Пре борбе (рандориа), или вежбања технике, партнери се један другом поклоне као вид давања захвалности управо за могућност унапређења техника чиме се џидо суштински разликује од осталих борилачких спортова (Kano, 2007: 102-105).

У своме арсеналу џудока (практикант џудоа) није имао све технике, напротив. Увиђајући опасност техника џиу џице Кано је извршио њихову строгу селекцију и у џудо уврстио само оне које се могу извести на тај начин да противник из сукоба изађе не повређен. На тој линији забранио је полуге на свим зглобовима осим на зглобу лакта али и опасне ударце, бодења, чупања, полуге итд. Отишао је и корак даље: древне смртоносне технике џиу џице прилагодио је на тај начин да њиховом употребом противник би био потпуно онеспособљен али и неповређен. Као последица тога џудо је претворио и у борилачки спорт и ушао у изабрану групу олимпијских спортова 1964. године (Kudo, 1969: 128).

Од практичне манифестације џудоа у сали за биоетику далеко је значајнија етичност џудоа, тј. његов крајњи циљ. Подсећања ради, настао је од џиу џице која је за циљ имала максимално ефикасно савладавање противника. Џудо, с друге стране, ослања се на исти принцип максималне ефикасности али свој циљ види даље, далеко од физичког обрачуна. Крајњи циљ џудоа је допринос друштву. Преко првог нивоа, физичког вежбања, затим рада на себи као другог нивоа џудока треба да се посвети највишем нивоу џудоа: доприносу друштву. Тај допринос свакакако далеко је од савладавања или повређивања противника (Kano, 2007: 26, 62, 102).

Овом филозофијом Кано је ударио темељ развоју модерних јапанских борилачких вештина. Древне смртоносне вештине самураја сада су могле бити адаптиране и наћи своје место у модерном друштву не само Јапана него и читавог света, о чему сведочи историјат ширења и развоја џудоа. Кано није био усамљен, његовим путем кренуо је и раније споменути син самураја – Гинчин Функоши.

Биоетика каратеа

Као што смо већ навели, Гинчин Фунакоши прихватио је Меиђи реформу што се код њега манифестовало на личном нивоу у виду одсецања перчина. Тиме је Фунакоши раскрстио са самурајском прошлошћу и укључио се у ток модернизације. Готово симболично рођен је 1868. – прве године Меиђи реформе.

Карате је учио код највећих окинављанских мајстора Итосуа и Азатоа а усавршавање је наставио и у Токију. Основао је своју школу где је на линији Џигоро Кана на карате додао суфикс „до“ и тиме створио каратедо. Касније тај стил каратеа назван је Шото кан, а „до“ се ретко пише и изговара и уместо тога преовладава термин карате. Сам Фунакоши инсистирао је на термину каратедо, тј. „путу празне шаке“, и читавој филозофији која се крије иза тог суфикса.

Фунакошијев приступ тренингу врло је сличан као и Канов. У каратеу користе се бела кимона, нешто тањи него у џудоу али из истог разлога: хигијене и униформисаности. Физичком тренингу Фунакоши прилази озбиљно и са каратеа скида вео мистичности и религизности наводећи да је свако уз довољан број тренинга у стању да мастерира карате: „Истина је да карате мајстор има моћ да разбије дебелу даску или неколико наслага црепова једним ударцем руке, али уверавам читаоца да је свако способан да изведе исту ствар након што се подвргнуо довољном броју тренинга. Не постоји ништа натприродно у таквом постигнућу“. Својим ученицима је поручивао: „Да нема живог човека који може да колико год да вежба и тренира, да превазиђе природне границе људских моћи“ (Funakoši, 1988: 20-21).

Међутим, за разлику од џудоа каратека (практикант каратеа) поседује арсенал убојитих техника. Најчешће се користе ударци који дуготрајним вежбањем су у стању да положе и тест технике разбијања познат као тамешивари. Уколико је каратека у стању да нпр. руком разбије низ бетонских блокова сасвим је јасно колику би штету произвео тај ударац уколико би се нанео противнику – врло вероватно исход би био смртан. Фунакоши је тога био свестан: „јер када се једном примени знање каратеа, проблем постаје питање живота и смрти“ (Funakoši, 1988: 83).

Ипак, Фунакоши је итекако карате прожео етиком поштовања тела противника. Наиме, за циљ узео је савлађивање противника али на такав начин да противник из сукоба изађе неповређен. За практичну примену тог принципа Фунакоши наводи неколико епизода из сопственог живота у којима је одреаговао на тај начин да сукоб избегне. У тим ситуацијама чак се повиновао нпр. захтевима уличних бандита које је свакако са лакоћом могао савладати. Осим тога наводи и ситуацију у којој је већ као старац погрешно одреаговао и одбранио се од пљачкаша карате ударцем али као негативан пример и поуку да је етичке принципе каратеа неопходно константно неговати (Funakoši, 1988: 25-26, 52-53, 96).

Овако формиран карате се првобитно проширио Јапаном где је кључну улогу одиграо Џигоро Кано који је препознао да са Фунакошијем дели заједничке идеје, тј. погледе на филозофију борилачких вештина. Фунакоши директно и наводи да је на њега и на његов карате велики утицај извршио Кано (Funakoši, 1988: 65-66). Потом, карате се као борилачка вештина, убрзо и као спорт, шири светом где се његови практиканти броје у милионима (Simić, 2005: 207-210).

Биоетика аикидоа

Мајстор џиу џице, Морихеи Уешиба, прошао је сличан пут развоја као Џигоро Кано. За разлику од научног приступа који је Кано неговао, Морихеи је био прожет религиозношћу и мистиком. Био је ученик једног од најбруталнијих мајстора џиу џице – Сокаку Такеде. Ако је био и један од најбруталнијих, засигурно је био последњи брутални мајстор ове вештине који није презао од њене употребе која се врло често завршавала смртним исходом по противника.

Уз сенсеиа Такеду, Уешиба је овладао смртоносним техникама џиу џице и постао један од најистакнутијих мајстора те вештине. Међутим, после низа мистичних, готово натприродних догађаја у његовом животу (који су под сумњом с обзиром да нам је једини извор сам Уешиба) он креће другим путем. Оснива своју борилачку вештину коју назива аикидо – пут љубави или умеђе мира. Опет на линији Кана ставља суфикс „до“ којим сугерише да је суштина вештине у путу а не у физичком обрачуну (Uješiba, 2008a: 18, 54; Uešiba, 2008b: 29, 57).

Канову линији Уешиба је пратио и у домену спортског аспекта вештине. Слично као и Кано, инсистирао је на физичком вежбању и белим кимонима. Загревање, истезање и релакс саставни су делови сваког аикидо тренинга и указују на поштовање сопственог тела и његово неговање.

У односу према противниковом телу аикидо се надовезао на Бушидо али га и превазилази: „Бушидо није учење о томе како умрети. Бушидо је учење о томе како живети, како заштити и унапредити живот“ (Uešiba, 2008a: 24). Императив је да сваки сукоб мора бити без последица по нападача. Морихеи је врхунски принцип аикидоа назвао „љубав“ за који наводи да је и суштина вештине. Уједно то је и „материјализација принципа врхунске етике – да је борба љубав“ (Obradović, 2016: 122). Врхунски мајстор вештине, по Уешиби, је онај који је би у евентуалном случају физичког обрачуна савладао противника али на тај начин да противник из сукоба изађе неозлеђен. Тиме, принцип неповређивања противника у јапанским борилачким вештина досегао је врхунац управо у аикидоу (Mijatov, 2017: 98).

Уешиба није ту стао, отишао и корак даље: основао је нову религију а себе је сматрао њеним пророком. Потпуно огољено и директно оснивач ове вештине наводи: „Практиковање „Умећа мира“ је чин вере“, „Умеће мира је облик вере која производи светлост и топлоту“ а технике аикидоа је видео као манифестације „милосрдних дела“ богиње самилости Канони (Uešiba, 2008a: 43, 56, 105). Аикидо тиме не само да није физички обрачун, не само да није борилачка вештина већ је религија која само своју први манифестни облик има у сали. Ова религија започета у интеракцији два тела, борби два противника, данас има мноштво поклоника где нпр. у Србији део мајстора ове вештине негује Уешибину мистику, док други део вештини прилази секуларно (Mijatov, 2014: 90).

Закључак

Развој диктиран друштвеним условима средњевековног Јапана, формиран доминантно условима који су владали на бојним пољима, првобитно је детерминисао борилачке вештине као вештине најефикаснијег савладавања противника, по сваку цену. О телу противника се није водило рачуна, напротив. Оно је коришћено као метод за савладавање где се најчешће нападале њене најслабије тачке. Преломи па чак и смртни исходи била су честа последица ових сукоба.

Однос према сопственом телу такође је био детерминисам природом потенцијалних сукоба. Вежбање се изводило у свакодневној одећи и без загревања, тј. без назнака спортских аспеката што сугерише да је изостајало неговање сопственог тела. Оно је било пуко оруђе за савладавање противниковог тела, оруђе које не само да није презало од употребе најубојитих техника већ се уско специјализовало управо за њухову употребу.

На крилима Меиђи реформе борилачке вештине реформисао је Џигоро Кано који је у њих увео спортске елементе којим се радикално променио однос према сопственом телу где је вежбање вештине обогаћено физичким тренингом. С друге стране, однос према противником телу се такође мења где се као коренита промена етаблирао етички принцип неповређивања противника који је променио саму бит вештине. Око овог принципа, генералне линије коју је Кано установио, реформише се и каратедо под Гинчин Фунакошијем и формира се аикидо као реализација идеја Морихеиа Уешибе.

Овако трансформисане јапанске борилачке вештине су се прошириле светом где код џудоа и каратеа је томе допринела и њихова трансформација у спортове. Своје поклонике налазе широм света и данас представљају један истински планетарни феномен. Као такав завређује истраживања, где биоетика представља само један сегмент али значајан. Кроз однос према сопственом и противником телу формирала се етика ових вештина и спортова а ту етику свакодневно упражњавају милиони. Вежбајући технике ових вештина појединци на своме путу („до“) усавршавају се од почетничких појасева до мајсторства где је читав тај пут доминантно детерминисан етиком.

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Review article/Прегледна научна статија

KOMUNIKACIJA, SPORT I BIOETIKA U PREVENCIJI NASILNIČKOG PONAŠANJA DECE I OMLADINE[258]

Apstrakt

Cilj rada je razmatranje prevencije nasilničkog ponašanja dece i omladine kroz sadržaj seminara pod nazivom “Komunikacija i sport u prevenciji nasilničkog ponašanja dece i omladine” koji je realizovan od 2016. do 2018. godine i akreditovan od strane Zavoda za unapređivanje obrazovanja i vaspitanja (ZUOV), Beograd. Ciljevi seminara su: stvaranje tolerantne sredine za razvoj svakog pojedinca uz zaštitu od nasilja kroz školski sport i unapređivanje komunikacione kompetentnosti nastavnika za rad sa decom nasilničkog ponašanja; upoznavanje nastavnika sa mogućnostima primene etičkih principa u sportu na vaspitni rad sa decom i omladinom i sa školskim sportom kao merom prevencije nasilničkog ponašanja dece i omladine; razvijanje komunikativne kompetentnosti nastavnika za rad sa decom i mladima nasilničkog ponašanja i razvijanje empatijske i nenasilne komunikacije i rešavanja konflikata u školi. Autori obrazlažu ishod seminara i upućuju na razmatranje prevencije nasilničkog ponašanja dece i omladine kao nezaobilazne bioetičke teme.

Ključne reči: komunikacija, sport, bioetika, nasilje

COMMUNICATION, SPORT AND BIOETHICS IN THE PREVENTION OF VIOLENT BEHAVIOR OF CHILDREN AND YOUTH[259]

Abstract

The aim of the paper is to consider the prevention of violent behavior of children and youth through the content of the seminar under the title “Communication and Sport in the

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Prevention of Violent Behavior of Children and Youth", which was realized from 2016 to 2018 and accredited by the Institute for the Advancement of Education (ZUOV), Belgrade. The goals of the seminar are: creating a tolerant environment for the development of each individual with the protection from violence through school sports and improving the teacher's communication skills for work with children of violent behavior; introducing the teachers with the possibilities of applying ethical principles in sports to the educational work with children and youth and with school sports as a measure of preventing violent behavior of children and youth; developing the communicative competence of the teachers for work with children and young people of violent behavior and developing empathy and non-violent communication and conflict resolution at school. The authors explain the outcome of the seminar and point to the considering the prevention of violent behavior of children and youth as an unavoidable bioethical topic.

Key words: communication, sport, bioethics, violence

1. Uvod

Prevencija nasilničkog ponašanja dece i omladine jeste nezaobilazna bioetička tema jer se odnosi na svakodnevni život pripadnika pomenute populacije i njihove brojne interakcije. Nasilje sāmo se promišlja kao kompleksan bioetički problem, tačnije, svi njegovi oblici, proces normalizacije nasilja, počevši od reprodukovanja nasilja u sredstvima masovne komunikacije, pa sve do različitih manifestacija nasilja u svakodnevnom životu (Radenović, 2012). Prema dosadašnjim istraživanjima prisutnosti nasilja u osnovnim i srednjim školama u Republici Srbiji, agresivno i nasilničko ponašanje predstavlja ozbiljan sociološki i vaspitni problem (Radenović, Mijatović, 2017; Savović, 2002; Savović, 2004). Pri tom, nasilje među učenicima i nasilje nastavnika nad učenicima jesu dva najzastupljenija oblika nasilnog ponašanja (Zaštitinik građana, 2001; Radenović, Mijatović, 2017).

Uprkos donošenju određenih strateških dokumenata sa ciljem suzbijanja i prevencije nasilja nad i među učenicima osnovnih i srednjih škola i gimnazija u Republici Srbiji, prema dosadašnjim istraživanjima, stepen nasilja u školama je ostao nepromenjen u odnosu na period pre donošenja i sprovođenja strateških dokumenata (Zaštitinik građana, 2001; Radenović, Mijatović, 2017). Otuda su autori seminara čije ćemo ciljeve i zadatke obrazložiti, uvideli mogućnost osmišljavanja seminara za nastavnike u okviru kojeg bi se školski sport koristio kao vid prevencije nasilničkog ponašanja dece različitog uzrasta u osnovnim i srednjim školama.

2. Komunikacija i sport u prevenciji nasilničkog ponašanja dece i omladine

Seminar za nastavnike osnovnih i srednjih škola i gimnazija u Republici Srbiji pod nazivom „Komunikacija i sport u prevenciji nasilničkog ponašanja dece i omladine“ (kataloški broj programa 841, autori: Branka Savović, Sandra Radenović) do sada je realizovan za 90 učesnika u periodu od 2016. do 2018. godine[260].

Opšti ciljevi seminara jesu: 1. stvaranje tolerantne sredine za razvoj svakog pojedinca, uz zaštitu od nasilja, kroz školski sport i 2. unapređivanje komunikacione kompetentnosti nastavnika za rad sa decom nasilničkog ponašanja. Specifični ciljevi seminara jesu: 1. obuka polaznika za stvaranje tolerantne sredine za razvoj svakog pojedinca, uz zaštitu od nasilja, kroz školski sport; 2. upoznavanje polaznika sa mogućnostima primene etičkih principa u sportu na vaspitni rad sa decom i omladinom; 3. upoznavanje polaznika sa školskim sportom kao merom prevencije nasilničkog ponašanja dece i omladine; 4. razvijanje komunikativne kompetentnosti polaznika za rad sa decom i mladima nasilničkog ponašanja i 5. razvijanje empatijske i nenasilne komunikacije i rešavanja konflikata u školi.

Teme programa koje je seminar obuhvatio odnosile su se na sledeće oblasti: 1. oblici nasilja i mere prevencije i uloga školskog sporta u prevenciji nasilničkog ponašanja mladih; 2. etika sporta u rešavanju konflikata; 3. pojmovna određenja komunikacije, agresivne komunikacije, odnos komunikacije i agresivnog (nasilničkog) ponašanja učenika u školi i 4. komunikacija sa učenikom nasilničkog ponašanja.

Kako je navedeno, ciljna grupa kojoj je seminar namenjen jesu: nastavnici razredne nastave, nastavnici predmetne nastave – osnovna škola, nastavnici predmetne nastave – gimnazija, nastavnici opšteobrazovnih predmeta – srednja stručna škola, nastavnici stručnih predmeta – srednja stručna škola, nastavnici opšteobrazovnih predmeta – u srednjoj umetničkoj školi (muzičke, baletske, likovne), nastavnici stručnog predmeta u osnovnoj/srednjoj umetničkoj školi (muzičke, baletske, likovne), nastavnici izbornih i fakultativnih predmeta, vaspitači u predškolskoj ustanovi, vaspitači u domu učenika, stručni saradnici u predškolskoj ustanovi, stručni saradnici u školi, saradnici (pedagoški, andragoški asistent i pomoćni nastavnik).

Rad sa nastavnicima baziran je na principima poststrukturalističke, diskurzivne pedagogije (Savović, 2011). U osnovi, predstavnici diskurzivnog pedagoškog pristupa podrazumevaju da je vaspitanje proces putem kojeg svaki vaspitač, u našem slučaju nastavnik:

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[260] http://katalog2016.zuov.rs/Program2015.aspx?katbroj=841&godina=2014/2015 pristup 10.02.2019. u 22:31.

1. Razume diskurs vaspitanika, tj. osposobljen je da gleda svet „očima deteta“ bez predrasuda i nepotvrđenih pretpostavki, a uz uvažavanje konteksta situacije. Mitrović (2006) je naglasila da je »...najzad opšteprihvaćeno u nizu nauka da je značenje ograničeno kontekstom a da je kontekst, pri tom, potencijalno neograničen» (isto, 14). U kontekstu (prevencije) nasilja u školi na svakog, pa i na agresivnog učenika se gleda kao na osobu originalnog i jedinstvenog diskursa, a time i ponašanja. Jedinstvenost osobe se ne pretpostavlja, ona se otkriva. Otkrivanje osobenosti podrezumeva otkrivanje skrivenih, implicitnih motiva – pokretača učenikovog delanja u određenom kontekstu. Tako, nastavnici se obučavaju da ponašanje učenika agresivnog i/ili potencijalno nasilničkog ponašanja procenjuju sa stanovišta egzistencijalnog konteksta iz kojeg učenik dolazi i nedostatka osvešćenih (implicitnih) saznanja učenika o socijalno prihvatljivim načinima izražavanja svojih stavova, mišljenja, osobenosti. Rečju, učenik agresivnog i/ili nasilničkog ponašanja je, posmatrano sa diskurzivno-pedagoškog stanovišta, jedinstvena osoba koja ne ume ili ne može da se u određenom životnom kontekstu ponaša na socijalno prihvatljiv način, dakle osoba kojoj (pored podrazumevane sankcije) treba pružiti stručnu vaspitnu pomoć.

2. Stvara zajedničko polje značenja sa vaspitanikom služeći se empatijskom i neverbalnom komunikacijom. Rečju, nastavnici se ohrabruju da kontekstualno, u razgovoru sa agresivnim i/ili potencijalno nasilnim učenikom primene saznanja o empatijskoj i neverbanoj komunikaciji. Na taj način osposobljavaju se da formiraju odnos međusobnog poverenja sa učenikom (Savović, 2018). Ovaj „pročišćen komunikacioni kanal“, predstavlja suštinski uslov za izgradnju zajedničkog polja značenja.

3. Pomaže vaspitaniku da konstruiše novi diskurs (novo, osobeno i jedinstveno polje značenja) iz kojeg će razumeti sebe i svet oko sebe (Ber, 2001). Tehnikama usvojenim na seminaru, učeniku agresivnog i/ili potencijalno nasilničkog ponašanja nastavnik pomaže da otkrije i kontekstualno primeni socijalno i vaspitno adekvatne tehnike rešavanja problema, izražavanja svojih stavova, mišljenja, osobenosti.

Seminar je od strane učesnika ocenjen najvišim ocenama i preporučen kolegama kao veoma koristan u unapređivanju nastavničkih kompetencija za rad sa decom koja ispoljavaju elemente nasilničkog ponašanja.

3. Etika sporta i školski sport kao mera prevencije nasilničkog ponašanja dece i omladine

U ovom delu rada ćemo obrazložiti mogućnost shvatanja i primene etičkih principa u sportu kroz školski sport kao oblik mere prevencije nasilničkog ponašanja dece i omladine.

Glavni etički principi u sportu odnose se na poštovanje protivnika, fer plej (*fair play*), nekorišćenje doping sredstava i princip striktne odgovornosti sportiste (sportista je uvek odgovoran za ono što dospe u njegov/njen organizam) (Sajmon, 2006).

Sport je po svojoj prirodi aktivnost puna vrednosti i ako se sprovodi pravilno, takav sport sadrži fer plej, poštovanje protivnika, običaja i vrednosti koje su srž tog sporta.

Fer plej i sportska pravila su ustanovljena sa željom da nas nauče pozitivnim vrednostima, veselju u pobedi, dostojanstvenom prihvatanju suparnikove nadmoćnosti kada se gubi, a takođe i skromnom prihvatanju pobede, a ne ponižavanju suparnika. Fer plej je odreći se nepravedno stečenih prednosti, imati jednake šanse, obzirno se ponašati i poštovati svog suparnika i takmičiti se sa njim pod istim uslovima, uz oslanjanje samo na veštinu. Pored navedenog, fer plej podrazumeva i dobre odnose unutar svoje ekipe, a odnose se na usklađivanje ličnih potreba i interesa sa potrebama i interesima ekipe, kluba i reprezentacije.

Zbog toga u sportu treba razlikovati zabranjeno i poželjno ponašanje. Zabranjeno ponašanje treba kazniti ili sankcionisati, dok poželjno treba ohrabriti, ali njegovo neizvršavanje ne podleže kažnjavanju (Feezell, 1986). U literaturi se fer plej tumači na nekoliko načina: fer plej kao skup vrlina, fer plej kao igra, fer plej kao fer takmičenje (bez varanja), fer plej kao poštovanje pravila, fer plej kao međusobni dogovor i kao najzastupljenije stanovište, fer plej se posmatra kao poštovanje prema igri (Butcher & Schneider, 1998). Najbolje je za sport ako se fer plej posmatra kao poštovanje prema igri jer se u tom slučaju povećava intrinzična motivacija takmičara.

Takođe, fer plej podrazumeva i poštovanje sudija, čije je prisustvo od presudnog značaja za svaku sportsku priredbu. Oni imaju neprijatnu ulogu i zaslužuju puno poštovanje sportista. Stoga, fer plej podrazumeva prihvatanje svih odluka sudija, bez pretnje njihovom integritetu, a od sudija se zahteva detaljno poznavanje svih pravila i njihovo pošteno primenjivanje. Nažalost, svedoci smo čestih neprijatnih scena na sportskim takmičenjima na kojima se igrači verbalno sukobljavaju sa sudijama, pa čak i fizički nasrću na njih (Fraleigh, 2003). Čuveno načelo Pjera de Kubertena (*Pierre de Coubertin*) „važno je učestvovati, a ne pobediti“ jeste jedan od etičkih principa u sportu nasuprot principu „pobede po svaku cenu“. Posvećenost i ljubav prema sportu jesu jedan svojevrstan princip etike sporta koji ukazuje da bez kulture vrednog rada i truda u sportu nema uspeha preko noći (Radenović, 2017).

Smatramo da bi etički principi poput poštovanja protivnika i fer pleja mogli biti inkorporirani u sistem školskog sporta i na taj način bi doprineli smanjenju stepena nasilja među učenicima u školama. Naime, prema dosadašnjim istraživanjima, edukacija iz oblasti poznavanja etičkih principa, tačnije slušanje predavanja o etičkim principima u okviru nastave na Fakultetu sporta i fizičkog vaspitanja Univerziteta u Beogradu, doprinosi promeni određenih etičkih stavova studenata (Marković, 2016). Možemo pretpostaviti da bi i u okviru osnovnoškolskog i srednjoškolskog sistema obrazovanja određeni korpus saznjanja o etičkim principima u sportu, te inkorporiranje potonjeg znanja u sistem školskog sporta doprineo promeni određenih etičkih stavova učenika, pa i stavova prema rešavanju konflikata i nasilju sāmom.

Što se sāmog školskog sporta tiče, on predstavlja nezaobilaznu kariku u promociji aktivnog načina života, razvoju sporta i vrhunskog sportskog rezultata. U okviru školskog sporta, predviđeno je da škole imaju centralnu ulogu. Neophodno je obezbediti da se nastava fizičkog vaspitanja u potpunosti realizuje po usvojenim planovima i programima i da se sportske sekcije realizuju kako je propisano. Cilj bi trebalo da bude da se deca animiraju da se bave fizičkim vežbanjem, kroz zabavu i igru, i da se zadovolje osnovni prioriteti školskog sporta: sveobuhvatnost, prepoznavanje talenata i zdravstveni aspekti. Glavni cilj školskog sporta mora biti fizički, intelektualni, moralni, socijalni i kulturni razvoj svih učenika. Kada su u pitanju školska sportska takmičenja, prioritet su takmičenja unutar škola i na nivou jedinica lokalne samouprave. Potrebno je, takođe, organizovati sportske aktivnosti dece za vreme raspusta, posebno putem sportskih kampova. Posebno je značajno preduzimanje aktivnosti koje bi trebalo da dovedu do toga da deca ne plaćaju članarinu u sportskim organizacijama, ili da ona bude primerena mogućnostima roditelja. Kako bi se povećalo učešće dece u sportu, nacionalni sportski savezi bi trebalo da obezbede da sportski klubovi uz seniorske ekipe obavezno imaju i dečje ekipe. Cilj Republike Srbije je da deca i mladi usvoje potrebna znanja o zdravim oblicima fizičke aktivnosti i o zdravim stilovima života i izgrade pravilne kretne navike (Strategija razvoja sporta u Republici Srbiji za period 2014–2018, 2015: 17).

Kako je navedeno, glavni cilj školskog sporta mora biti fizički, intelektualni, moralni, socijalni i kulturni razvoj svih učenika. Otuda etički principi u sportu poput poštovanja protivnika i fer pleja koji mogu biti inkorporirani u školski sport, mogu biti i model za nenasilno rešavanje konflikata među učenicima u svakodnevnoj komunikaciji u školskoj sredini.

Imajući na umu navedeno, autori seminara “Komunikacija i sport u prevenciji nasilničkog ponašanja dece i omladine“ su osmislili zadatak za učesnike seminara u vidu kreiranja svojevrsnog etičkog kodeksa koji bi nastavnici zajedno sa učenicima kreirali na časovima odeljenske zajednice. Ovi kodeksi bi imali funkciju svojevrsnog sistema vrednosti i pravila ponašanja za sve učenike određenog odeljenja te bi mogli da koriguju ponašanja određenih učenika koji pokazuju izvesne elemente nasilnog karaktera. S obzirom na veliku popularnost sporta, naročito fudbala kao specifičnog socio-kulturnog fenomena (Milovanović, 2017), autori seminara su naveli primer skupa pravila fudbalskog kluba Real, koja mogu biti veoma prijemčiva učenicima različitiog uzrasta i primenjiva ne samo za fudbalski teren ili salu za fizičko vaspitanje, već i za ponašanje u učionici i školi. Pravila koja se navode jesu: 1. svi fudbaleri su obavezni da na vreme dolaze na stadion; 2. da budu bliski sa navijačima; 3. da poštuju sve selekcije kluba; 4. da promovišu kulturu napornog rada i truda; 5. da izbegavaju situacije koje mogu izazvati povrede; 6. da zaborave noćne izlaske; 7. da poštuju dres kluba; 8. da sarađuju sa klupskim strukturama i 9. da sarađuju sa medijima (Nešić, Radenović, 2016). Dolazak na vreme na stadion se može transponovati na dolazak na vreme na časove, bez kašnjenja; poštovanje svih selekcija kluba se odnosi na poštovanje svih učenika međusobno bez obzira na uzrast; pravilo izbegavanja situacija koje mogu izazvati povrede bi trebalo da bude primenjivano ne samo u sali za fizičko vaspitanje, već i u svakodnevnim situacijama; poštovanje dresa kluba se može odnositi na uvažavanje i poštovanje školske uniforme ako škola insistira na nošenju uniformi kako nastavnika, tako i učenika, dok se saradnja sa klupskim strukturama može odnositi na saradnju sa direktorom i psihološko-pedagoškom službom itd.

Kao primere dobre prakse pomenućemo iskustva nekih učesnika seminara koji su kao nastavnici razredne nastave osmislili slične etičke kodekse pre pohađanja seminara iako ih nisu nazvali tim imenom i iako nisu jasno naznačili poštovanje protivnika i fer plej kao sastavne elemente ovih kodeksa. Ovi učesnici seminara su naveli pozitivna iskustva kroz primenu sličnih etičkih kodeksa kao spiska pravila ponašanja za vlastito odeljenje u radu sa učenicima koji su bili skloni konfliktima, tačnije, nasilnom rešavanju konflikata. Naime, odličan primer jeste kodeks ponašanja za učenike koji je kreirao nastavnik razredne nastave zajedno sa učenicima primerenog ponašanja koji je usaglašen sa Pravilnikom o vaspitnoj odgovornosti učenika i Zakonom o srednjoj školi, naročito odredbe koje se odnose na lakše i teže povrede obaveza učenika, zanemarivanje i zlostavljanje učenika. Glavni povod za kreiranje ovog kodeksa bile su situacije na časovima koje su izlazile iz okvira primerenog ponašanja učenika gimnazije poput: bacanje petarde u učionici, kidanje ili čupanje sifona lavaboa u učionici, sviranje, zviždanje ili slično na nekim časovima. Posebno problematična situacija ticala se igre “Zuce” u kojoj dečaci svom snagom udaraju jedni druge, stavljaju stolice na prozor učionice gde sede, bacaju pernice na visoka neonska osvetljenja, a onda skidaju zaštitne maske kabla od klime i skidaju pomenute pernice, guraju se, trče i neoprezno padaju itd. Pomenuti kodeks ponašanja je kreiran zajedno sa primerenim učenicima odeljenja koji su uočili navedene probleme, svakodnevno je stajao na oglasnoj tabli učionice, za čuvanje kodeksa bili su odgovorni redari, dok je sa celokupnom situacijom bio upoznat direktor škole i psihološko-pedagoška služba. Kako navodi nastavnik, kodeks je u roku od nekoliko nedelja uticao da se opisani problemi reše, te su učenici počeli da poštuju kodeks i ponašaju se primereno (Karić, 2016).

4. Zaključak

S obzirom na visok stepen nasilničkog ponašanja dece i omladine kako u Republici Srbiji, tako i u regionu i svetu, razmatranje i analiza mera prevencije nasilničkog ponašanja dece i omladine jesu nezaobilazna i aktuelna bioetička tema. Na primeru realizovanog seminara pod nazivom „Komunikacija i sport u prevenciji nasilničkog ponašanja dece i omladine“, data je mogućnost sagledavanja i primene etičkih principa u sportu poput poštovanja protivnika i fer pleja kroz sistem školskog sporta u cilju prevencije nasilničkog ponašanja dece i omladine. Smatramo da su potrebna dalja istraživanja mogućnosti primene etičkih principa u sportu kao mere prevencije nasilničkog ponašanja dece i omladine, te nenasilnog rešavanja konflikata koji su prisutni u svakodnevnom životu navedene populacije u školskoj sredini.

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СУРОГАТ МАЈЧИНСТВО ВО РЕПУБЛИКА СЕВЕРНА МАКЕДОНИЈА

Апстракт

Сурогат мајчинството е една од новините на биомедицинските репродуктивни технологии, која предизвикува низа морални и правни дилеми.

Имајќи предвид дека сурогат мајчинството претставува договор помеѓу две страни во кој жената – сурогат мајката се обврзува да носи и да роди дете за другата договорна страна, многумина сметаат дека концептот на сурогатство ја претворил биолошка функција на женското тело во комерцијален договор. Воведувањето на финансискиот аспект во процесот на сурогатство, ја налага потребата за законско регулирање на сурогатството, а со цел да се заштитат правата и интересите на сите лица вклучени во постапката.

Во Северна Македонија, во 2014 година е усвоен Законот за изменување и дополнување на законот за биомедицинско потпомогнато оплодување, со кој се воведува можноста за раѓање на дете за друг (сурогатство). Концептот е втемелен на алтруистичко сурогат мајчинство, со забрана за комерцијалното сурогатство. Но, дали со легализирањето на сурагат мајчинството се решени сите дилеми, имајќи го предвид социо-економскиот и културен контекст во кој ова законско право треба да се реализира? Оттука, целта на овој труд е преку една дискурзивна анализа да ја претстави состојбата во Северна Македонија на планот на законското регулирање на сурогат мајчинството, со акцент врз неговата етичка и правна оправданост.

Клучни зборови: сурогат мајчинство, биомедицинско потпомогнато оплодување, репродуктивни слободи и права, етички и правни дилеми

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SURROGATE MOTHERHOOD IN THE REPUBLIC OF NORTH MACEDONIA

Abstract

Surrogate motherhood is one of the latest innovations in biomedical reproductive technologies which cause a series of moral and legal dilemmas.

Surrogate motherhood is an arrangement between two parties in which one contracts a woman (a surrogate mother) to gestate a child for the other party, who ultimately want to become the parents of that child. Taking this into account, many consider that the concept of surrogacy has transformed the biological ability of the female body into a commercial contract. The introduction of the financial aspect of the process of surrogacy, impose the need for legal regulation of surrogacy in order to protect the rights and interests of all persons involved in the procedure.

In 2014, Macedonian legislators adopted a new modified Law for biomedical assisted fertilization that introduces the possibility to gestate someone else's child (surrogacy). The legal concept of surrogacy in this law is based on an altruistic surrogate motherhood and prohibits commercialization of the process. But has legalizing surrogate motherhood resolved all doubts, considering the socio-economic and cultural context in which this legal right should be realized? Using a discursive analysis of the situation in N. Macedonia, this paper aims to depict the efforts of regulating surrogacy judicially in the country, with focus on their ethical and legal justification.

Key words: surrogate motherhood, b*io*-m*edically assisted fertilization, r*eproductive freedom and rights, ethical and legal dilemmas

Вовед

Со векови наназад биолошката попреченост да се има свое дете се припишувала на судбината – божја волја, така требало да биде. Но, човекот не би бил човек ако само се покорува, прилагодува и пасивно ја прифаќа судбината или божјата волја. Во стремежот не да се покори, туку да покори, да го смени она што природата го дала, човекот со развојот на техниката/технологијата успева да се спротивстави на природната зададеност и да ги видоизмени природните закони, да и им даде друг правец, насока. Невозможното станува можно. Не може по природен пат да се зачне дете – тука е вештачкото оплодувањето. Не успева ни тоа – тука е сурогат мајчинството. Доволно е да се најде жена – „инкубатор“, која ќе ја реализира потребата (исконска или наметната) да се стане родител.

Потребата пак на родителите да имаат свои генетски деца во современи услови е изразена со термините репродуктивни слободи и човекови права. Слобода и право е да се биде родител или не; слобода и право е да располагате со своето тело. Но, токму тоа што сурогат мајчинството претставува договор во кој сурогат мајката се обврзува да носи и да роди дете за родителите нарачатели, многумина сметаат дека со концептот на сурогатство, биолошка функција на женското тело се претвора во комерцијален договор. Денес сме сведоци како службите за сурогатство се рекламираат, сурогат мајките се „регрутираат“, а агенциите кои се занимаваат со организирање на овој процес прават голем профит. Тука се и стравувањата од појава на црн пазар и продажба на бебиња, од претворање на сиромашните жени во „фабрика за производство на бебиња“ и од можноста за селективно одгледување на деца.

Договорите за сурогатство претставуваат еден од најконтроверзните начини за формирање на семејство и предизвикуваат низа етички и правни дилеми поврзани со сурогат мајката, детето и потенцијалните родители. Оттука и потребата за законско регулирање на сурогатството, за да се заштитат правата и интересите на сите лица вклучени во постапката, што пак е во дослух со меѓународните конвенции за заштита на човековите права и достоинство во областа на применетата биологија и медицина.

1. Новите репродуктивни технологии и редефинирањето на општествено културните востановени претстави

Биомедицнското потпомогнато оплодување (БПО) е поим кој опфаќа различни репродуктивни технологии, кои се применуваат во случај кога зачнувањето на дете не е возможно по природен пат, а е условено од различни причини. Во биомедицинскиот дискурс неплодноста/стерилитетот се дефинира како биолошка неможност на зачнување и раѓање на дете по пат на редовни сексуални односи, без примена на контрацептивни средства во текот на една година (World Health Organization [WHO], 2012). Според Светската здравствена организација неплодноста е сериозен здравствен проблем кој бележи пораст,[262] и се поврзува со современиот начин на живот, стресот, гојазноста и возраста, т.е трендот на стапување во брак и раѓање дете на постари години (ESHRE, 2012; Okhovati, Zare, et al, 2015)

Сè до 30-те години на минатиот век, во научните медицински кругови преовладувале вкоренетите патријархални и религиски верувања дека главни „виновници“ за неплодноста се жените, кога научно се докажува дека со проблемот на стерилитет подеднакво се соочуваат и мажите, па стерилите-

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[262] Европското здружение за хумана репродукција и ембриологија во „Светскиот извештај за асистирана човекова репродукција“ од 2012 година наведува дека секој шети пар во светот се соочува со потошкотии при зачнувањето (48,5 милиони двојки низ целиот свет) (European Society of Human Reproduction and Embryology [ESHRE], 2012).

тот се дели на машки и женски (Kričković, 2014). Како одговор на зголемената стапка на неплодност, репродуктивната медицина, својот подем го бележи во последната четвртина на XX век. За разлика од оплодувањето по природен пат, БПО е целосно контролиран и посебен начин на оплодување (спојување на женски и машки полови клетки), наменет за случаите во кои не е пожелно (пренос на тешки наследни болести на потомството) или не е можно да се оствари природна прокреација (Morgan, Lee, 1990). Веќе од осумдесеттите години на минатиот век, технолошки софистицираните методи овозможуваат раѓање на дете кое е биолошки поврзано со двата или барем со еден од родителите[263].

Новите, т.н. асистирани репродуктивни технологии (АРТ) не внесуваат промени само во медицинскиот аспект на стерилноста, туку воедно, длабоко продираат и во општествено-културните воспоставени обрасци за мајчинството, бракот, семејството, родителството и родовите односи (Encyclopedia of Bioethics, 2004; Kričković, 2014; Courduriès, Herbrand, 2014). Со можноста да се зачне и роди дете без сексуални односи, како и со учеството на повеќе од еден маж и една жена во процесот на оплодување, новите биотехнолошки и медицински постапки нè соочија со нови феномени (сурогат мајчинство, замрзнување и донирање на јајце клетки и ембриони, постхумна репродукција).Тие ги менуваат постојните културни конструкции на поврзаноста и сродство, ја замаглуваат границата меѓу биолошката и општествената основа на сродството, и иницираат нови видови на општествени односи во кои се редефинираат границите на поврзаноста и сродството (Taylor, 2005: 189). Воедно, АРТ им даваат можност и на хомосексуалните парови, на трансродовите поединци и на жените во период по менопаузата, да добијат потомство. Детето родено со помош на асистираната репродуктивна технологија може да има пет „родители“ (донатор на сперма, донаторка на јајце клетки, сурогат мајка и двојката кој го посакува детето). Чие е детето и кои се „вистинските“ родители? Во сродството формирано преку сурогатството се нарушува „светоста на биологијата и гените“, преку еден систем кој, според Дороти Робертс и Марта Филд, лесно може да кулминира во претворање на генетските врски во стока за широка потрошувачка - сурогат детето станува стока за продажба, а сурогатството се комерцијализира (Roberts, 1995; Field, 1992). Тука се и Интернет можностите да се одберат

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[263] На 25 јули 1978 година во Велика Британија е објавено раѓањето на Лујза Браон, првото „бебе од епрувета“, зачнато вон телото на мајката со помош на *ин витро* фертилизација (ИВФ -вонтелесно оплодување). Оттогаш ИВФ е широко прифатена постапка во лечењето на неплодност и до 2018 година со ИВФ се родени повеќе од 8 милиони бебиња (ESHRE, 2018)

потенцијалните донатори/ки на сперма и јајце клетка или ембрион, или на сурогат мајка која ќе го роди детето.

Сурогатството е еден од најконтроверзните облици на „донаторство“ во репродукцијата, токму поради постоењето на трета личност - сурогат мајка, која се обврзува да носи и да роди дете за другата договорна страна. Самиот збор „сурогат“ (од латинскиот збор *surrogatus*) во буквална смисла значи „замена“, и во секојдневниот говор, сурогат мајка е жената која е најмена да го носи детето кое по раѓањето им го предава на луѓето кои ја најмиле. Во улога на родители најчесто се јавуваат брачни двојки кои имаат проблем со плодноста на сопругата, или кога поради медицински проблеми бременоста и породувањето се ризични, невозможни или пак непожелни. Социјални родители можат да бидат и лица кои не се во брачна заедница, а сепак сакаат да имаат биолошко потомство, како и парови од ист пол или самци кои сакаат да имаат потомство. Сурогат мајката може да биде генетска (биолошка) мајка која е вештачки оплодена со сперма на идниот татко или на друг донор (традиционално сурогатство – со користење на јајце клетки од сурагат мајка), или да не биде биолошки поврзана со детето (гестациско сурогатство), пришто и јајце клетката и спермата се екстрахираат од донори и по пат на ин витро (вонтелесно) фертилизација се имплантираат во матката на сурогат мајката („Surrogate motherhood: history and concept“).

Сурогат мајчинството ги менува традиционалните претстави за мајчинството и се говори за „фрагментацијата на мајчинството“, поради вклучувањето на повеќе „мајки“ во самиот процес - мајки кои ги обезбедуваат јајце клетките (*ovarian mothers*), оние кои ја износуваат бременоста и се породуваат (*uterine mothers*) и оние кои го одгледуваат детето (*social mothers*) (Neyer, Bernardi, 2011). Во таа насока се и критиките на радикалните феминистки, според кои новите асистирани репродуктивни технологии се уште едно средство за контрола на женското тело под закрила на пронаталистичкиот патријархален концепт (Franklin, 1995). И додека првично се чинело дека репродуктивните технологии им нудат можност на жените да бидат ослободени од биолошките ограничувања поврзани со репродукцијата (Firestone, 1972), новите медицински практики, поддржани од фармацевтската индустрија (Burfoot, 1990), отвораат ново поле за репродуктивна контрола и за нов општествен притисок врз жената да стане мајка.

Патријархатот ја прокламира прокреацијата, а неплодноста или нераѓањето по сопствен избор се дочекува со „сожалување и/осуда од страна на околината“ (Kričković, 2014: 17). И покрај тоа што под влијание на АРТ се менува претставата за мајчинството како „дар од бога“, она што не се менува е претставата за мајчинската улога како најважната улога во животот на жената, како сосема „природна“ и „вродена“ улога на жените. И токму новите репродуктивни технологии се тука да понудат различни можности на биолошки попречените жени да се реализираат во нивната „најважна улога“ како мајки. Да се биде мајка се смета и за општествена обврска, секако со различните дискурси за добра (култ на мајчинство) и лоша мајка, како и за неплодните (јалови) жени (Kričković, 2014). Така што, техниките на АРТ се, всушност, „повеќе техничка поправка на социјалната состојба на неплодност, отколку на биолошката состојба на неплодност“ (Crowe, 1990: 38). Идеологијата за мајчинството се конституира и одржува со помош на патријархалната култура, религијата и доминантниот систем на вредности, креирајќи пожелни културни обрасци, кои оставаат малку простор за личен избор на жените. Затоа за феминистките мајчинството не е некоја вродена потреба на жените, туку е општествено, историски и политички конструиран образец (Neyer, Bernardi, 2011), кој со векови, во различни варијации, се негува во долгата патријархална традиција.

Феминистичките критики на новите асистирани репродуктивни технологии, всушност, се надоврзуваат на раните феминистички критики, фокусирани врз мајчинството како патријархална институција, медикализацијата на бременоста од страна на медицинската професија во која доминираат мажите и патријархалната желба за контрола на репродуктивниот процес (Franklin, 1995). Во натамошниот феминистички дискурс, фокусот е ставен врз женското тело и контроверзните прашања за влијанието на АРТ во зајакнување на патријархалната медицинска контрола и хетеронормативните очекувања. За добар дел од феминистките, асистираните репродуктивни технологии се уште еден „инструмент на патријархално угнетување”, кои им овозможуваат на мажите да интервенираат и да вршат поголема контрола над женското тело (Courduriès, Herbrand, 2014: xxi). Со широката палета на новите репродуктивни можности да се стане мајка/родител, женското тело се претвора во „машина за раѓање на деца“ и е во функција на општествената моќ и доминација, која директно се гради од женските тела. Женските тела се на располагање на медицината, технологијата и фармацијата, а неплодноста на двојката речиси „систематски се обработува“ преку медицински третман на женското тело, дури и кога се работи за машки фактор на неплодност (Courduriès, Herbrand, 2014). Тука е и трговијата со јајце клетките, ембрионите и матките која станува сè поприсутна и ја зголемува економската, расната и класната експлоатација на сиромашните и необразовани жени.

Како што се зголемува достапноста и примената на новите репродуктивни технологии, така се засилуваат етичките и социо-антрополошките прашања поврзани со индивидуалното и општествено значење на овие практики. Можностите за нивна злоупотреба и кршење на човековите права, ја налагаат потребата од правно, законско регулирање на биомедицинското потпомогнато оплодување. Меѓутоа, и во земјите во кои постои правна рамка за БПО, сѐ уште не се надминати контроверзиите и дилемите, како во однос на самите национални законодавства, така и во однос на различните пристапи во нормирањето на БПО од држава до држава. Така на пример, сурогатството во некои земји (иако мал по број) е дозволено, во други забрането; во некои земји е озаконето комерцијалното сурогатство, а во други алтруистичкото сурогатство[264].

Нашата држава, следејќи ги современите трендови, а со цел да обезбеди законска рамка за остварување на правото на БПО, уште во 2008 година го донесе Законот за биомедицинско потпомогнато оплодување (ЗБПО). Во овој првичен закон, со член 27, сурогат мајчинството беше забрането. Со стриктната одредба за забрана на договорите за раѓање на дете за друг и за предавањето на роденото дете по раѓањето со паричен надоместок или без надоместок (ЗБПО, 2008, член 27), овој закон не оставаше простор ниту за комерцијалното, ниту пак за алтруистичко сурогатство. И само по шест години, со измени и дополнувања на Законот за БПО, во 2014 година се воведе можноста за раѓање на дете за друг (сурогатство), но само од алтруистички побуди. Законот се донесе, но етичките и правни дилеми сѐ уште се присутни. Колку овој закон реално функционира во нашата држава, имајќи го предвид социо-економскиот и културен контекст во кој алтруистичкото сурогатство треба да се реализира?

2. Законската рамка за сурогат мајчинството во Република Северна Македонија (етички и правни дилеми)

Во 2014 година, по одржани четири јавни дискусии и неколку дебати на тема сурогат мајчинство, на кои учествуваа психолози, психијатри, правници и припадници на верските заедници, но не и со испитување на јавното мнение, беше усвоен Законот за изменување и дополнување на законот за биомедицинско потпомогнато оплодување, кој го означи легализирањето на алтруистичкото сурогатството во РМ.

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[264] Во поголемиот број држави во ЕУ сурогатството е забрането. Во Русија, Украина и Грузија е дозволено комерцијалното сурогатство за хетеросексуални парови, додека пак алтруистичкото е дозволено во Велика Британија, Португалија и Грција (Cuddy, 2019). Во светски рамки, комерцијалното сурогатство е дозволено во Индија (само за државјани на Индија) и во некои држави во САД. Во Нов Зеланд, Австралија и Канада сурогатството е генерално забрането, но се дозволени некои форми на алтруистичко сурогатство. (Srivastava, 2019).

Меѓу клучните аргументи произлезени од дебатите за легализирање на сурогатството беа: („Македонија ќе дозволи сурогат мајчинство“, 2014)

- Да им се помогне на оние парови коишто не можат да имаат потомство, односно да им се отвори „патот“ да се реализираат како родители.
- Посвојувањето деца како алтернативно решение станува сѐ потешко, а некои двојки претпочитаат да најдат сурогат мајка за да може нивното дете да ги наследи барем гените на таткото.
- Сурогат мајчинството може да биде единствен излез во случаите кога жената не е во можност да го износи бебето, односно да ја издржи бременоста, па затоа сурогат мајката треба да го замени тој процес само во периодот на бременост.
- Сурогат мајчинството им овозможува на брачните двојки кои поради медицински причини не можат да го користат вештачкото оплодување или ин витро оплодување, да добијат дете кое е генетски поврзано со едниот или двајцата свои родители.
- Гестациското сурогатство е еден од начините да се добијат целосно генетски поврзани деца.

Се веруваше дека со обезбедување на законска рамка за сурогатството ќе се постигне рамнотежа помеѓу придобивките за семејствата и општеството, од една страна, и здравствената и етичката загриженост поради опасноста од трговија со репродуктивната способност на жените и нивна експлоатација за комерцијални цели, од друга страна. Во таа насока е забраната на комерцијалното сурогатство и во законот се предвидени низа мерки со кои ќе се контролира можната злоупотреба на сурогатството.

Од двата вида сурогатство (традиционално и гестациско), во нашата држава е дозволено гестациското сурогатство, со можност и за автологно и за алогенеичко БПО[265], но со забрана на традиционалното сурогатство. Имено, со член 6, став 2, во Законот за БПО (2014) е забрането користење на јајце клетка од жената - гестациски носител. За да не се нарекува „мајка“ жената која родила дете за друг, и по примерот на повеќе други држави,[266]

терминот „сурогат мајка“ е заменет со „гестациски носител“, со прецизни одредби за условите кои треба да ги исполнуваат и двете страни вклучени во процесот на сурогатство. Согласно законските одредби, „гестацискиот носител“ може да биде жена во добра психофизичка и општа здравстве-

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[265] Предност се дава на автологното (вонтелесно) оплодување со користење на сопствени полови клетки на брачната двојка, додека алогенеичко оплодување, со донирани јајце клетки и сперматозоиди, е дозволено во случај кога не е можно користење на сопствени полови клетки (ЗБПО,2014, член 6-а, алинеа 1,2,3).

[266] Образложение на Никола Тодоров, екс министер за здраство на РМ („Македонија ќе дозволи сурогат мајчинство“, 2014)

на состојба, на возраст од најмалку 25 години, сè до возраст во која здравствената состојба и овозможува здрава бременост и раѓање на здраво дете; да биде мајка на најмалку едно дете во моментот на започнување на постапката на биомедицинско потпомогнато оплодување (член 4, став 5; член 6-а, став 5, 6); и како гестациски носител има право само еднаш да роди едно живо дете (член 12-г). Од друга страна, право на поведување на постапка на оплодување со гестациски носител имаат само маж и жена кои се во брачна заедница (што подразбира исклучиво заедница меѓу една жена и еден маж, член 4, став 6) и се исклучени лицата во вонбрачна заедница или во било која друга форма на партнерство (член 12-а). Притоа и гестацискиот наситед и брачната двојка треба да се државјани на РМ.

Тука се и одредбите со кои се предвидува задолжително психолошко советување на брачната двојка и гестацискиот носител, во текот на три месеци со најмалку две средби месечно (член 11-а), како и нивно задолжително правно советување (член 11-б). Со посебни членови се уредени начинот на водење евиденција и регистар на потенцијалните брачни двојки и жени–гестациски носители (член 6-б, став2), начинот на поведување постапка за БПО и правата на брачната двојка (член 12-а). Брачната двојка, која ги исполнува предвидените услови, има право да поведе две постапки за сурогатство, кои успешно би завршиле со раѓања на по едно живородено дете. Исто така, обврска на брачната двојка е да ги преземе сите деца родени од повеќеплодна бременост и доколку детето е родено со попреченост.

Во Закон за БПО (2014), прецизно се регулирани родителските права и должностите и на брачната двојка и на гестацискиот носител. Гестацискиот носител, согласно членот 12-в, нема ниту родителски права, ниту должности спрема детето кое ќе го роди и со дадената изјава за согласност се откажува од признавање на мајчинството по раѓањето на детето. Сепак, во истиот член се предвидени и одредени, специфични околности во кои гестацискиот носител може да биде запишана како мајка на детето, но само со претходно поведена постапка за посвојување на детото и притоа да ги исполнува условите за посвојување согласно со одредбите на семејното право.

Со член 12-г од овој закон се регулирани односите меѓу брачната двојка и гестацискиот носител. Брачната двојка има обврска да ги покрива материјалните трошоци потребни за правилна и здрава исхрана, вежбање и психофизичка подготовка на гестацискиот носител, а кои не се сметаат за паричен надоместок. Овие трошоци, како и трошоците поврзани со отсуството од работа или настава за време на контролите и примањето терапија, според член 18, став 5, не може да го надмине износот од две просечни плати. Во материјални трошоци се вклучени и прегледите и породувањето во приватните здравствени установи, надвор од мрежата на здравствени установи, кои не смее да го надминат износот од една просечна плата, и со обврска за редовно приложување на докази за направените трошоци (член 12-г, став 12). Тука е и одредбата со која брачната двојка не смее на сурогат мајката да ѝ даде подароци кои надминуваат вредност од 100 евра во денарска противвредност во текот на целата постапката. За примање паричен надомест од семејството, како и за секаков вид на изнудување и на брачната двојка и на гестацискиот носител се предвидени строги санкции (член 27).

Предноста на овој Закон, како што истакнуваше тогашниот министер Тодоров, е што за проширување на потомството повеќе нема да се патува во странство, и да се плаќаат високи суми, што значи дека македонските семејства, и оние кои немаат доволно финансиски средства, ќе може да го реализираат родителското право[267]. Според зборовите на Тодоров, овој концепт „е полезен и за општеството да се создаваат што е можно побројни генерации и за родителите“ („Два брачни пара со помош на сурогат мајки ќе добијат потомство“, 2016). Кој не би рекол дека е ова одлична можност, но за кого, за потенцијалните родители или сурогат мајката?

Не оспорувајќи ја потребата да се има свое дете, како и „голготата што ја поминуваат семејствата без деца“, како што велат лекарите - гинеколози, најголемите поборници за овој концепт, најпроблематичниот момент во сурогатството и во целата кампања што се водеше кај нас, е токму ставањето акцент на потребата на родителите. Родителите пак, според нашиот закон треба да се во брачна заедница, и потребно е само да се најдат „хумани жени“ кои би им помогнале „да се реализираат во најзначајната животна улога – улогата на родители“ („Два брачни пара со помош на сурогат мајки ќе добијат потомство“, 2016). Ваквиот концепт предизвикува дилеми од повеќе аспекти:

1. Зарем потреба да се реализираат како родители имаат само брачни двојки, а не и оние кои живеат во вонбрачни заедници, самци, итн.?! Очигледно, родителското право е право, но не и за сите. Од друга страна, ваквата одредба се коси со член 2 во самиот закон, кој ја нагласува заштитата на човековите права при спроведувањето на БПО, и е спротивна на Универзалната декларација за човекови права, како и на низа други меѓународни документи во доменот на човековите права. Имено, во член 2, алинеја 2 се вели: „БПО се врши со цел да се постигне оплодување согласно на научно технич-

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[267] Во С. Македонија, првото бебе од сурогат-мајка е родено со посредство на украинската агенција „Successful Parents“, во 2014 година, а цената била 39 950 долари („Добредојде за првото бебе од сурогат мајка во Македонија“, 2017). Се проценува дека во Украина секоја година се раѓаат 500 деца од сурогат мајки („(Video) da bi pobegle od bede, masovno postaju surogat majke“, 2018).

киот напредок, медицинската наука и искуства, со посебен акцент врз човековите права“ (ЗБПО, 2014). Сепак, нашиот законодавец си зел за право по свое видување да ги селектира човековите права, доделувајќи го правото на сурогатство единствено на брачните двојки. Ваква една одредба е во духот на традиционалните и патријархални сфаќања за семејството и бракот кои превладуваат во нашата држава, заедно со претставите претворени во митови за „лоши“ мајки и неподобни родители, и имплицира дека сите оние кои не се во брачна заедница не спаѓаат во категоријата на подобни родители. Или пак, ако се оди уште подлабоко, дали тоа значи дека самците, оние кои живеат во вонбрачни заедници, хомосексуалците, итн., не се сметаат за припадници на човековиот род, па затоа ги немаат истите човекови права?

2. Дополнителна дилема - што е сурогат мајката? Како замена за генетската-биолошка мајка**,** дали и таа во овој процес исто така ќе ја реализира својата животна мајчинска/родителска улога? Па така, уште еднаш се соочуваме со двојни етички стандарди. За едните – жени кои се попречени, најважно е да се реализираат како мајки, за другите сурогат-мајките, важно е да заборават на мајчинството, и само да ја позајмат својата матка. И за да не се „меша жената која родила дете за друг“ со „мајка “, во нашиот закон терминот „сурогат мајка“ е заменет со „гестациски носител“, со стриктната одредба: „нејзина обврска е да носи ембрион или фетус кој бил зачнат со постапка на БПО, поведена од брачна двојка и ќе го предаде детето на брачната двојка по неговото раѓање“ (ЗБПО, 2014, член 4, став 1, точка 5; член 6-а став 4). Сосема јасно - од сурогат-мајка/гестациски носител не се бара да биде мајка, туку инкубатор. И повторно во духот на патријархалната традиција, жената како субјект е ставена на втор план, на преден план се истакнува нејзината репродуктивна улога, а врв на нејзината доблест ќе биде ако им помогне на оние брачни парови кои не може да се репродуцираат. Па и не е дека се бара „нешто посебно“, само девет месеци да износи едно дете; а и самиот чин на раѓање „не е ништо“ (па и животните се котат, некои и по двапати годишно, па што?); и притоа сосема „нормално“ не треба да се приврзе со детето, бидејќи не е генетски поврзано со неа, а и така е пропишано со законските норми. А познато е дека само генетската поврзаност не нè прави ниту мајки, ниту родители. Но, во законот се мислело и на тоа, па гестациски носител треба да биде мајка на најмалку едно дете, и психофизички здрава, веројатно под претпоставка дека доколку има свое генетско дете полесно ќе го предаде сурогат детето на друг. Исто така за сложената постапка која сурогат мајката треба да ја помине при процесот на гестациското оплодување, ниту збор. Накратко, самата хируршка интервенција бара неколку седмици подготовка - примање на контрацепција и хормонски инјекции за

да се потисне циклусот на сурогат мајката, естроген инјекции за да се формира слузницата на матката, и прогестерон инјекции, за да се одржи бременоста. Тоа се лекарства кои честопати даваат значителни споредни ефекти, а тука е и ризичната бременост и поголемата стапка на спонтани абортуси. Во случај на неуспешен трансфер, обично мора да се чека неколку месеци пред повторно да се направи обид. (Beski, Gorgy, at al, 2000) Така што сурогат мајката не може да биде исклучена ниту физиолошки, ниту психолошки од создавањето на нов живот. За тоа е потребно, како што велат психолозите, „посебно ментално подесување“ за да се износи бременоста како што треба, квалитетно да се породи, за да на крајот го даде бебето кое го родила („Teško se može majčinski instinkt vezati normama“, 2018)

Но, изгледа дека е доволно мајчинството да се стави во законски рамки, а од сурогат мајките се бара да бидат хумани и солидарни - етичко начело кое никој не го оспорува. Но, колку е реално жените да се изложат на можните ризици само од хумани причини, и тоа за некој што не го познаваат? Законски загарантираната анонимност на сурогат мајката[268], што како правна регулатива е во ред, не дозволува да излезе на виделина вистинската побуда на сурогат мајките, т.е. гестацискиот носител, и може да создаде лажна претстава дека алтруистичкото сурогатство „заживува и функционира“ во нашата држава[269]. Така на пример, кога во 2017 година одекна веста за првата сурогат-мајка која на 44-годишна возраст се нафатила да ја износи бременоста, иако високо ризична, затоа што биолошката мајка немала матка, неофицијално се откриваше дека таа го носела бебето за својата ќерка.

Од друга страна, во наши услови со низок економски стандард и со висока стапка на невработеност, не е исклучено дека мотивот да се биде сурогат мајка може да бидат и двете просечни плати наменети за покривање на основните материјални трошоци, плус 100 евра предвидени за подароци и можеби некои дополнителни финансиски средства кои би се давале „под рака“. Исто така, ако се има предвид висината на материјалните трошоци кои треба да ги исплаќа брачната двојка и кои може да надминат две просечни плати, а добар дел од семејствата во РМ живеат со една или две просечни плати, повторно се наметнува дилема – дали сурогатството како алтернативен начин за добивање дете е наменето за сите брачни парови, или пак е

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[268] Законот предвидува целосна заштита на идентитетот и на сите лични, медицински и генетски податоци на гестацискиот носител, брачната двојка и детето родено од гестацискиот носител (ЗБПО, 2014, член 17, став 2).

[269] Министерот Тодоров, две години по усвојувањето на Законот за БПО од 2014 година, изјави: „податокот што веќе има два брачни пара со две сурогат мајки е показател дека овој концепт веќе заживува и има реални услови добро да функционира“ („Два брачни пара со помош на сурогат мајки ќе добијат потомство“, 2016).

само финансиско олеснување за оние, материјално добро ситуирани двојки, за да не плаќаат високи суми во странство. Така што, при носењето на една ваква законска одредба, нашиот законодавец, свесно или не, го заобиколил социјалниот и економски контекст во кој ова право треба да се реализира, па оттука и правото наменето за брачните двојки, не е и за сите брачни двојки.

Имајќи го предвид токму социо-економскиот и културен контекст во кој е донесен и во кој треба да се реализира Законот за БПО (2014), како и дилемите кои ги покренува овој закон, се наметнува впечатокот дека алтруистичко сурогатство повеќе наликува на убава бајка, отколку на реалност. Не одрекувајќи дека може да има и жени кои од чисто алтруистички причини би се нафатиле да бидат сурогат мајки, сепак, можеби пореално ќе беше ако во законот освен од алтруистички побуди, се дозволеше и сурогатство за финансиски надомест, што пак може да се оправда со различни аргументи. Може да се повикаме на етичкото начело на Џон Стјуарт Мил „корист за себе и корист за другите“ (Mil, 1960), па сурогатството да биде добитна ситуација и за двете страни - договорните родители го добиваат она што го посакувале долго време, а сурогат мајките профитираат. Дополнителен аргумент би бил повикањето на родовата еднаквост и на репродуктивната слобода и право на жените да располагаат со своето тело. Како што вели Маргарет Џејн Радин, ако мажите можат да донираат сперма за пари, зошто и сурогатството да не биде исто така дозволено, како аналогна трансакција за жените (Radin, 1988). Либерален аргумент - автономија и слободен избор, само што во практиката честопати принуденоста и маката влијаат врз степенот до кој поединецот има слободен избор. Во нашето сè уште патријархално општество, во кое реалната родова рамноправност е далеку зад законски обезбедената еднаквост, прашање е колку слободниот избор на жените да бидат сурогат мајки, па и на тој начин да заработуваат (мое тело, мое право), ќе биде нивен избор или ќе биде под присила на мажите, партнерот или други членови на семејството. Така што која страна да се завземе, во нашата држава сè уште не се созреани условите, ниту за вистинско функционирање на алтруистичкото сурогатство, ниту пак за комерцијалното сурогатство како сопствен избор на жените.

Заклучок

Како што сурогат мајчинството станува сè попознато во пошироката јавност, така сè повеќе се зацврстува како легитимно и законски достапно алтернативно решение за оние лица кои се објективно попречени да имаат дете. Со Законот за изменување и дополнување на законот за биомедицинско потпомогнато оплодување од 2014 година, нашата земја влезе во редот на оние малубројни држави со легализирано алтруистичкото сурогатство. И покрај намерата со овој закон да се постигнат двојни придобивки – и за општеството и за семејствата, и притоа да се заштитат правата на сите лица вклучени во постапката за сурогатство, подалабоката анализа на законот говори за сè уште постојните и нерешени дилеми токму во однос на доделените права, како и за примената на двојни етички стандарди при изготвување на законот. Од една страна, при носењето на одредени законски одредби евидентно е влијанието на традицијата и патријархалните сфаќања, особено за бракот, семејството и мајчинството; од друга страна, по потреба, тие се занемаруваат. Па така, во име на зголемување на наталитетот, мајчинството, како традиционална вредност, не важи за сите, особено не за сурогат мајките. Тука важи современото и родово начело - репродуктивна автономија и избор, а во име на хуманоста како етичко начело. Од една страна патријархални норми, од друга страна европски стандарди и занемарување на социјалниот, економскиот и општествено културниот контекст во кој овој закон треба да се имплементира. Така што проблемот не е во самото сурогатство како нов метод за потпомогната репродукција, туку во социјалниот и дискриминаторски контекст во кој треба да се применува.

Затоа, воспоставувањето на рамнотежа помеѓу индивидуалните права на репродуктивна автономија и избор и етичките стандарди, и понатаму ќе биде најголемиот предизвик за нашето општеството, кое од една страна треба да се бори да го зголеми наталитетот, а од друга страна концептот за сурогатство, треба да се применува во една сè уште конзервативна и патријархална средина.

Но, ние никако да ја напуштиме практиката, прво да се носат закони и да се гордееме дека се тие по европски стандарди, прогресивни и либерални, а како тие ќе се имплементираат во нашата средина, не е ни важно.

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Review article/Прегледна научна статија

BLACK MARKET ORGAN TRANSPLANTATION AND BIOETHICS

Abstract

Nowadays, a new bioethics vocabulary for organ transplantation has appeared, nurtured by severe organ deficiencies and characterized by controversy generated through asystolic protocols, donation by living persons and, most recently, the problematic issue of applying market forces to organ donation.

This article highlights illustrations of human exploitation include the obtaining of organs from live donors and unethical forms of medical research. Ultimately, discrimination and exploitation are similar, despite the varying contexts of bioethics, because they both entail the instrumentalization of human beings.

This paper looks precisely at black market organ transfer which is the consequence of a gross imbalance between supply and demand. Another issue challenging the ethical boundaries of voluntary donation was the commercialization of donation or selling organs. Considerations of this commercialization of organ trafficking has led to questions of who truly benefits from this practice? Clearly, the organ recipient benefits, as do the brokers, hospitals, and doctors who participate. Does the donor generally benefit from this practice? Who ends up making the money? Who carries the greatest risk and burden?

To some extent market force in the area of organ donation-regardless of how negligible-will quickly fail into "black market" commodities trading. The cruelty of organ donation has been the rule and not the exception in many countries where money is offered in exchange for transplantable organs.

Key words: bioethics, black market, organ transplatation, human exploitation.

1. Introduction

While the trade in human organs remains largely in the darkness as it is hardly reported, detected or scientifically researched, a range of key institutional stakeholders, professionals, policy makers and scholars involved in this field show remarkable high levels of moral condemnation and share a rather unanimous prohibitionist line. Some have equated this phenomenon to genocide or talk about

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‘neo-cannibalism’, others present it as dominated by mafias and rogue traders (Ambagtsheer, 2017). However, organ trafficking takes very different shapes, each one with their own ethical dilemmas.

Despite strategies to increase the donor organ pool such as adopting presumed consent systems, broadening deceased donor criteria and increasing the number of living (mainly kidney) donations, the worldwide organ shortage persists. Under these circumstances patients seek strategies to obtain organs from outside their home countries. With organs’ increased value comes their increased potential profitability, causing some people to trade and sell. Hence, next to altruistic procurement systems of organ supply, black markets exist to meet the demand that altruistic systems fail to fulfil (Budiani-Saberi, Delmonico, 2008).

2. Scope and use of terms / Different forms of trafficking in organs

The term ‘trafficking in organs’ groups together a whole range of illegal activities that aim to commercialise human organs and tissues for the purpose of transplantation.

It encompasses the trafficking of persons with the intent to remove their organs (THBOR); transplant tourism where patients travel abroad seeking an (illegal) transplant with a paid donor; and trafficking in organs, tissues and cells (OTC), which refers to commercial transactions with human body parts that have been removed from living or deceased persons (Bos, 2015).

Trafficking in Organs, Tissues and Cells (OTC)

Trafficking in OTC may be defined as: ‘The handling of any human organ, tissue or cell obtained and transacted outside the legal national system for organ transplantation’. In contrast to THBOR, the term ‘trafficking in OTC’ focuses on the trafficking of human body parts deriving from either living or deceased persons (donors). This kind of trafficking has a wide scope: it may occur as buying and selling of organs/tissues from living persons, but also as stealing organs/tissues from deceased persons (at autopsy, in the morgue). It is clear that this form of trafficking does not fall under the definition of trafficking in persons, as described in the UN Palermo Protocol. Consequently it is not an act punishable as a crime in the sphere of trafficking of persons (THB). However, trafficking in OTC does imply the selling and buying

of body parts (organs), and as such falls under the universal prohibition of gaining profit from the human body and its parts (commodification and commercialisation), which is prohibited and punishable under international conventions, (Council of Europe, 2006) as well as under national transplant legislation.

Transplant commercialism is a policy or practice in which an organ is treated as a commodity, including by being bought or sold or used for material gain.

Travel for transplantation is the movement of organs, donors, recipients or transplant professionals across jurisdictional borders for transplantation purposes. Travel for transplantation becomes transplant tourism if it involves organ trafficking and/or transplant commercialism or if the resources (organs, professionals and transplant centers) devoted to providing transplants to patients from outside a country undermine the country's ability to provide transplant services for its own population (Declaration on organ trafficking and transplant tourism, 2008).

***Trafficking in human beings for the purpose of organ removal (THBOR*)** is defined and prohibited in Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings (Council of Europe, 2005) and the Directive 2011/36/EU of the European Parliament and of the Council (Directive EU, 2002). THBOR is also criminalized in Article 3 of the United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereafter Palermo Protocol) which supplements the UN Convention against Transnational Organized Crime (UNODC, 2000). THBOR is further prohibited by the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (UN Protocol, 2000). In this report the definition is used as laid down in Article 3 of the Palermo Protocol. This protocol defines THBOR as:

Article 3 Palermo Protocol "For the purposes of this Protocol: a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

This definition includes 3 key elements:

- an action (e.g. recruitment and transfer),
- a means (e.g. coercion and deception) and
- a purpose (exploitation).

These elements have to be present in order for an act to constitute THBOR. If the victim is a child however, the presence of these means does not have to be proven (UNODC, 2013). The definition does not prohibit the trade in organs per se. In order to be classified as a criminal act it is not so much the intended sale and purchase of organs, but the exploitative actions and means used to remove a person's organs that count (Ambagtsheer at all, 2013).

3. Trends and patterns

Recurring trends and patterns of organ trafficking generally occur around a group of 'donor-exporting' countries (Egypt, China, India, Pakistan and The Philippines), 'demand' countries (us, Canada, Israel, UK and some other European countries) and countries where the transplants take place including the us, Israel and South Africa (Allain, 2012).

The cases presented in this paper do not fully reflect the current global status quo of the human organ trade. Investigations and convictions of (suspected) networks took/take place in China, India, Greece, Ukraine, Singapore, Jordan, Bulgaria, Turkey, Moldova, Belarus, Costa Rica, Spain and Brazil. These countries are not addressed in this paper, but are presented, amongst others, by the Organization for Security and Co-operation in Europe in its report on trafficking in human beings for the purpose of organ removal in the OSCE Region, (OSCE, 2013) in the United Nations Office on Drugs and Crime (UNODC) Case Law Database (2014) and in the media. According to Organs Watch, networks also exist in Argentina, Cyprus, Honduras, Panama, Philippines, Ecuador, Bolivia, Colombia, Syria, Iran (where brokers infiltrate a regulated system of organs trafficking), Vietnam, Cambodia, Nepal, Thailand, the Philippines, Pakistan, Egypt and Albania.

Furthermore, recent research reveals that indications and suspicions of organ trafficking occur in many European countries, that are/have not been investigated. For instance, the HOTT project's second report (Ambagtsheer at all, 2014) illustrates that patients travel abroad from Sweden, The Netherlands and Republic of Macedonia to purchase kidney transplants in China, Pakistan, India, Iran and other countries.

Macedonia

Pre transplant stage and motivation

The practice of transplant tourism is very well known among the Balkan countries especially in the last 20 years. Common destinations are India, Pakistan, Russia and Egypt. The motivation to go abroad and to buy a kidney is caused by a lack of regular transplant activity in most of the Balkan countries. Unfortunately there are many other important reasons such as recent civil wars, a full economic collapse after the introduction of a market economy and change of the political system. Regarding the motivation of the Chronic Kidney Disease patients to go abroad to buy a kidney it can be concluded that there is a lack of regular transplant activity in most of the Balkan countries. For example in the recently founded Republic of Kosovo there is still not any transplantation as a medical procedure. Therefore, for the Kosovo patients no options were suitable to get a kidney. Although the conditions in Macedonia are different, the number of transplants per year is far from sufficient. It can be also one of the reasons for patients to go abroad and to get a kidney.

Most of the patients describe the time of dialysis as very depressing, complicated and hopeless. Especially when taking into account other everyday additional living problems such as unemployment and mostly catastrophic economic situation in the country. Anyway, the decision to go abroad was supported by the members of the closed families despite the confidence in the local health system and dialysis conditions. Among 10 transplants performed in Pakistan and India, 2 were pre-emptive (Refyk and Nazife) and 8 (Basri, Zeliha, Nusret, Ismet, Bajram, Agim, Muidin, Nijazi) were regular living paid supplier transplantation after 1 up to 12 years of dialysis time. Except 2 patients from Kosovo, there was no support from the local medical staff. Regarding education there are 3 patients with a university degree (Zeliha is high school teacher, Muidin is Muslim theology and priest-hodja and Refyk is economist and university professor). Six patients had a primary school education. Four patients from Kosovo are unemployed with very bad social and living conditions. Only one patient (Bajram) is unemployed among the patients from Macedonia. All other patients are employed according to their qualifications. Most of the unemployed patients in Kosovo receive social monthly help (up to €50,-) whereas Bajram (unemployed from Macedonia) got €75,-. Most of the unemployed patients received some help from the relatives who work abroad (such as from Germany and Switzerland). All interviewed patients are Muslims (9 Albanians and 1 Bosnian) and 7 of them were transplanted in Pakistan, 2 in India and 1 in Russia. The information for the possibility to go abroad and buy the kidney usually came from the patients that were already transplanted in those countries. (HOTT Project, 2014).

Four patients tried to get a kidney from their relatives but it was not possible because 2 suppliers were ABO incompatible and another 2 faced serious health problems.[271]

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[271] Two other patients had no suitable supplier and 4 did not want to “sacrifice” their family members for living donation. Six patients (Refyk, Bajram, Nusret, Agim, Nijazi, Muedin) got a telephone number from a doctor in charge: 4 in Pakistan (3 in Jinnah Hospital, 1 in Lahore) and 2 in New Delhi. Four patients had brokers or intermediaries (Zeliha, Ismet and Muedin in Lahore) and Basri (Moscow). Only one patient (Nazife) used internet as a communication to contact the hospital in Karachi (HOTT Project, 2014).

Payments

The payment was predominantly done directly to the doctor in charge (Nusret, Bajram, Agim, Refyk, Nijazi), 3 patients paid a broker (Muedin, Zeliha, Ismet), 1 by Bank – Transfer (Basri) and 1 to the hospital (Nazife).[272]

Ethics

Regarding ethical aspects, only 3 recipients (Refyk, Zeliha and Muedin) showed some reflections and "guilty conscience" about the morality and justification of the act of paid donation and use of the poverty of the suppliers. But all agreed that in the moment there was a solution for their desperate and hopeless situation. Unfortunately there was no any other option in that moment. All of them found the health system and government responsible because of the lack of introduction of a real transplant program in their country.

4. The crime's organizational model

The organizational model of organ trafficking addresses some features of the theoretical disorganized crime hypothesis; the underground transplant industry is populated by numerous criminal networks, in which exclusivity is not required and positions and tasks are interchangeable. Former donor victims can become recruiters and actors such as transplant surgeons could also operate as brokers or may directly take part in accompanying recipients and/or donors to and from the location of the transplant surgery. The interchangeable roles within networks is comparable to characteristics of criminal networks associated with other forms of human trafficking (European Commission, 2016) and other common types of organized crime (Paoli, 2002). Furthermore, in line with the disorganized crime theory, most of the relations between network members are arms-length buyer-seller relationships. The case studies did reveal, however, that long-term partnerships have been established which have maintained a certain degree of stability because law enforcement authorities did, and in some instances still do, not (effectively) intervene in their activities. An example is the long-lasting collaboration between the transplant surgeons Zaki Shapira and Yusuf Sonmez.[273]

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[272] The amount of money was as follows: Basri (Moscow) - € 45.000 + travel costs Zeliha (Lahore) - € 22.000 + travel costs Ismet (Lahore) - € 22.000 + travel costs Muedin (Lahore) - € 26.000 + travel costs Niazi (Rawalpindi) - € 10.000 + travel costs Refyk (Rawalpindi) - € 11.000 + travel costs Agim (Rawalpindi) - € 12.500 + travel costs Nazife (Karachi) - € 26.000 + travel costs Bajram (New Delhi) - € 22.000 + travel costs Nusret (New Delhi) - € 22.000 + travel costs (HOTT Project, 2014)

[273] The transplant surgeons Zaki Shapira and Yusuf Sonmez, who are considered to be key players by law enforcement officials, have been working together for 10 to 20 years. Once, in 2007, Shapira and Sonmez have been arrested together in a Turkish clinic. In this clinic, the Turkish police found an Israeli and South African recipient who had each paid more than US$200,000 and two

But even though some features of the disorganized crime theory are applicable, organ trafficking networks appear to operate on the illegal market with a high degree of organization. A close examination of the criminal cases studied reveals loose, flexible combinations of numerous criminal networks and actors that joined forces to facilitate illegal transplants on a global level in an extremely wellorganized manner. After all, the preparation and performance of organ transplantations is a complex undertaking which requires careful coordination of numerous logistics; blood and tissue matching, travel-related documents, transportation, accommodation, translation, fraudulent consent documents and financial transactions (OSCE, 2013). The high degree of organization is evidenced by the speed with which the procedure of recruitment and transfer of multiple recipient-donor-matches from different counties into an operating theatre in a third country is executed. Within the Netcare case, for example, groups of Israeli recipients have been transplanted with groups of donors from Israel, Romania and Brazil at a time, through the collaboration of local recruiters and brokers in all four countries, a private hospital group in South Africa, medical professionals and translators from Israel and South Africa, and the facilitation of a blood bank in South Africa and health insurance companies in Israel. Another example of the degree of organization is the capacity to relocate the venue of an operating theatre within a short time frame when interrupted by law enforcement efforts by using existing networks of recruiters and clinics in various countries (Jong, 2017).

The results show that recipients and donor victims have been exploited using illicit acts and means with the purpose of organ removal. They have been recruited in foreign countries and transported to the country where the transplant centre is located and/or transferred to an accommodation or directly to a medical facility, where they have been received and/or harboured until the organ transplant surgery has been realized. The criminal actors could accomplish these activities by abusing their position of vulnerability, as recipients and donor victims were either driven by life threatening illness or inescapable poverty in their ‘choice’ to purchase or sell an organ. Their vulnerable position is further evidenced by the respectively high and low amounts of money they have been obliged to pay and promised to receive and the complete absence of any awful enforcement mechanism to obtain their payment in case (part of) it is withheld or to retrieve their money if the transplant failed. Furthermore, many of them have been discharged shortly after the surgery in a weak physical state, after which some of

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Arab-Israeli donors who had been paid about $10,000 to undergo the kidney transplant surgery, facilitated by the Israeli broker Moshe Harel. One of the donors was a young girl forced by her husband to sell her kidney, so he could pay off his debts (Organ Traders). After three months in prison Shapira and Sonmez were released, as the charges were dropped.

them suffered from post-operative complications and a (further) deterioration of their health and most of the donor victims did not have access to proper aftercare.

The organizational model of organ trafficking answers to some features of the theoretical disorganized crime hypothesis; the underground transplant industry is populated by numerous criminal networks, in which exclusivity is not required and positions and tasks are interchangeable. Organ trafficking networks, however, appear to operate on the illegal market with a high degree of organization. Organ trafficking networks appear to operate on illegal markets in a more organized way than the average criminal networks, because they appear to 'easily' cope with Paoli's constraints of product illegality (Paoli, 2002). In many instances, the lack of systematic trust experienced in illegal marketplaces is replaced by a mutual trust between network members based upon common ethnic or religious backgrounds, through which criminal partnerships have been established and maintained. The effective risk of arrest, another constraint of product illegality, is strongly reduced by the successful concealment of the illegal nature of the transplants, the silence maintained by recipients and donors, the lack of awareness and enforcement of the crime by society and state authorities, and the involvement or bribing of transplant professionals and/or law enforcement officials. Finally, the international scope of the crime brings along considerable advantages for criminal networks and important constraints for the detection and prosecution of the crime, as foreign recipients and donors have no knowledge of local legislation and policies and could easily be deceived about the transactions' illegitimacy, are not able to communicate with local medical staff, depend on their traffickers, and are difficult for local law enforcement officials to track down outside their jurisdiction (Jong, 2017).

Lessons learned from the Iranian model constitute a solid basis for the exploration of a regulated system of incentives for organ donation, which should include principles such as protection, oversight, transparency and anonymous donation.

The fuzzy line between legal and illegal corporations is referred to as black markets. A black market is an underground economy of both legal and illegal goods and services that exists parallel to legal markets. Another essential element of black markets is that licit and illicit exchanges overlap. In this regard Passas argues: "If the goods or services happen to be outlawed, then illegal enterprises will emerge to meet the demand. In this respect, there is no difference between conventional and criminal enterprises (Passas, 2002). Very often, all that changes when the business is illegal are some adjustments in modus operandi, technology and the social network involved. In some cases we have a mere re-description of practices to make them appear outside legal prohibitive provisions" (Paoli, 2002).

Black markets do not merely flourish because goods or services are or have become outlawed. They also exist because there may be a scarcity of legal goods. This happens when the demand for a good exceeds the supply, such as with human organs for transplantations. Black markets thrive because there is a remaining demand for what they offer.

Worldwide, there is a mismatch between the increase in the number of those waiting and the increase in those identified as potential donors. Kidney transplant wait lists grow most prominently (Shafran at all, 2014).

Eurotransplant's wait list has an average waiting time of 3-5 years. About 15-30% of the patients die before receiving a kidney (Eurotransplant International Foundation, 2013). Also in other parts of the world such as in the United States of America (USA), the number of candidates on the kidney wait list is increasing. Between 1980 and 2009 the list increased by 600% (Shafran at all, 2014). Yet, the number of annual donors between 2004 and 2011 remained relatively stagnant at 13.000, making the gap between organ supply and demand even larger. The list in the USA now has a median wait time of over 4 years (OPTN, 2012). An estimated 10 people in the European Union die every day waiting for an organ. Annual mortality rates range from 15% to 30%. (European Commission, 2007).

The activity of organ transplantation worldwide is less than 10% of the global need (GPDT, 2014). Furthermore there are substantial disparities in access to transplantation, not only globally, but within countries as well (Roodnat at all, 2010). For this reason Taylor has argued that, "if we are concerned about reducing the abuses of the black market for human kidneys, we should favour the legalisation of kidney markets, not their continued prohibition." (Taylor, 2006). Organ recipients travel across the world for transplantation, the most common being live kidney transplantation (Tsai at all, 2014). Although travelling abroad does not imply an illegal transplant purchase, it is commonly perceived to be an illegal and/or immoral endeavour involving health risks (Delmonico, 2009). Ambagtsheer and Weimar emphasize the resilience of demand-driven crime to prohibition. They claim that prohibition of organ trade may drive up prices, provides illegal income, displaces crime to other regions and may go underground, resulting in higher crime rates and victimization (Ambagtsheer, Weimar, 2012).

It is impossible to give a reliable estimate of the profitability of the global organ trafficking industry.

However, it is obvious that organ trafficking is a profitable business with millions of dollars changing hands (Bilgel, 2011). Organ brokers play an important role in facilitating the trade (Yea, 2010) and are claimed to financially benefit the most from these transactions. In most instances, pricing is fixed or negotiated by brokers, who benefit from their own greater knowledge of the market and the incapacity of organ sellers and buyers to transact directly (Mendoza, 2011). Brokers use all kinds of tactics to maximize earnings and are criticized for paying substantially less than what they have promised and keeping a large share of the payment themselves. Their presence is likely to enhance exploitation of hope on the one hand and hopelessness on the other (Awaya at all, 2009).

The crime's scope and mechanisms

The clandestine and illegal nature of the organ trade, the lack of enforcement and the absence of consistent statistics and criminal reports makes it difficult to gather reliable data about its scope (UNODC, 2015). At present, the only 'official' data that is available on the scope of the organ trade comes from the World Health Organization (WHO).

Based upon this 'official' estimation and one media article which claims that the price of an illegal kidney transplant is approximately US$150,000 (Interlandi, 2009), Global Financial Integrity estimates the trade in kidneys generates illegal profits between US$514 million and 1 billion per year; ranking the crime on number ten of the twelve illegal activities studied in terms of illegal profits made (Haken, 2011).

For instance, Moniruzzaman, who describes how "wealthy buyers (both recipients and brokers) tricked Bangladeshi poor into selling their kidneys; in the end, these sellers were brutally deceived and their suffering was extreme" (Moniruzzaman, 2012), explores these acts through the concept bioviolence. Scheper-Hughes, who wrote many articles about patients, donors, brokers, surgeons and other actors involved in illegal organ transplants, describes these practices in the context of modern neoliberal globalization and its global economy, through which, she argues, the bodies of the poor increasingly have been turned into commodities (Scheper-Hughes, 2016). "The poor have become a spare-parts bank for the well-to-do" (Smith, 2011).

5. The existing bioethical framework for obtaining organs and tissues

The existing bioethical framework for obtaining organs and tissues is based on four key values – respect for individuals, autonomy, consent and altruism. The notion that organs or tissues can be removed for the purposes of transplantation, whether the individual concerned is alive or dead, without voluntary consent is one that has not been accepted except in highly unusual circumstances (i.e., unclaimed bodies at morgues in some countries). Individuals are recognised as having an interest in controlling their bodies in life and upon death. They are to be treated with dignity and not merely used to serve the health needs of others. So even though someone might well benefit from obtaining my liver or receiving bone marrow from my body, these organs and tissues ought not to be removed from me without my permission. To do so is to commit an assault upon a living person or to desecrate the body of a newly deceased person. Part of the notion of treating individuals with dignity is that they have control over what is done with their own bodies and their parts. Another core element of the existing bioethical framework is that the body and its parts must not be made the subject of trade. The prohibition of slavery and of trafficking in persons for prostitution is based upon the ethical principle that human beings ought not to be bought and sold as objects, and transplantation has incorporated this view in the prohibition of trading in body parts for profit. In part, this is a bioethical view that rests upon the fundamental dignity of individuals. In part, it is a principle that reflects the huge dangers that would loom for human health and welfare if trade for profit in human body parts from the dead or the living were permitted. Altruism is the bioethical foundation as reflected in the use of the term “donation” for obtaining organs in a manner consistent with human dignity. In order to obtain organs and tissues from the living, there is agreement that, from an ethical standpoint, it is necessary to have a legally competent individual who is fully informed and can make a voluntary, uncoerced choice about donation. In cases where organs and tissues are sought from the deceased, the notion of voluntary consent has been extended in many countries to the recognition of donor cards or, for those not wishing to donate, the recording of objections in computer-based registries. While various policies about who is responsible for giving consent exist throughout the world, from a bioethical perspective, it is voluntary, informed consent that is crucial in making organ and tissue procurement ethical.

Proposals to increase the supply of organs must be weighed up very carefully against this existing bioethical framework which has long been effective in protecting the interests of prospective donors. Changes in the relevant values might well alienate the public who have grown used to the existing bioethical framework, major religious groups who have long supported it or healthcare workers, the majority of whom firmly believe that the current bioethical framework is the right one for governing organ, tissue and cell procurement for transplantation purposes (Caplan at all, 2009).

6. Conclusion

Black market organ transfer is the outcome of a gross disparity between supply and demand. The waiting list of patients who are in need of an organ vastly outnumbers the organs being donated.

The question of focus here is whether we as a society should begin paying people for donating their own or their loved one's organs. However, the relatively small financial compensation should not be the basis for our complaint against organs being bought and sold on the black market. Even if the donor were to receive large sums of money ethical difficulties would remain and the notion of global social justice would not be advanced.

The hallmark ethic of organ donation has always been *informed consent.* The ethics of informed consent are already under serious assault and would likely be further compromised by providing financial compensation for donated organs. One of the darkest sides of the organ trade is the physical abandonment of the donors. Once the recipient has the organ, the profiting parties tend to lose all interest in the donor.

The ethical debate revolves around the questions whether a regulated system of incentives for donation would be ethically justifiable and would increase the supply of organs. A continuing high demand for organs will make it difficult to restrain the underground market by means of future repressive action, whereas a properly controlled regulated system has the potential to increase living and deceased donation, while reducing or eliminating the harms associated with illegal markets.

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СТАГИРАНИН И НЕ-ЉУДСКА ЖИВА БИЋА

Апстракт

У раду се анализира Аристотелово разматрање животиња, а у средишту ауторовог истраживања била су три питања: присуство *лоīоса* код животиња, могу ли животиње деловати вољно и јесу ли животиње одговорне за оно што чине. Стагиранинов генерални став је да животиње немају уверења, мнења, расуђивања, мишљења, разума и ума. Проучавањем његових списа утврђено је, затим, да животиње могу деловати вољно. Одговор на дилему да ли су животиње одговорне за оно што чине зависи од разумевања појма одговорности код Аристотела. Ако се одговорност разуме као регулисање свих оних активности које су учињене хотимично тј. вољно, животиње се тада могу сматрати одговорним. С друге стране, ако се опсег одговорности ограничи на моралну евалуацију нечијег делања, у коју је укључена активност *лоīоса*, животиње ће бити изузете из овако разумљеног појма одговорности. Аутор је, на Стагираниновом трагу, закључио да пошто животиње могу имати *phantasiu* да оно што раде јесте исправно или погрешно, оне за своје чини требају бити награђене односно кажњене.

Кључне речи: Аристотел, поимање, не-људска жива бића, људи, *лоīос*, „воља”, одговорност

THE STAGIRITE AND NON-HUMAN LIVING BEINGS

Abstract

The paper analyses the Aristotle’s treatment of animals and the author’s research focuses on three issues: the presence of *logos* in animals, if animals can act voluntarily and if animals are responsible for what they do. Stagirites’ general standing point is that animals do not have beliefs, opinions, discernment, thinking, understanding and reason. By studying his volumes it has been determined, subsequently, that animals can act voluntarily. Resolution to the dilemma whether animals are responsible for what they do

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depends on the understanding of the Aristotle’s concept of responsibility. If responsibility is understood as regulating all of those activities which were undertaken on purpose i.e. voluntarily, animals can be considered responsible. On the other hand, if the scope of responsibility is limited to the moral evaluation of acts, including the activity of *logos*, animals will be excluded from thus understood concept of responsibility. The author has, following in Stagirites’ footsteps, concluded that since animals can have *phantasia* that what they do is right or wrong, they should be either rewarded or punished for their acts.

Key words: Aristotle, concept, non-human living beings, humans, logos, “will”, responsibility.

Аристотелово генерално становиште је да животиње немају уверења (πίστις), мнења (δόξα), расуђивања (λογισμός), мишљења (λόγος), разума (διάνοια) и ума (νοῦς). Овакву тезу он брани у многим својим списима: *О души* (404б4-6, 414б18-19 са 32-33 и 415а7-8, 428а19-24, 433а12, 434а5-11), *О деловима животиња* (641б7), *Еудемова етика* (1224а27), *Политика* (1332б5), *Никомахова етика* (1098а3-4), *Метафизика* (980б28), *Памћење и сећање* (450а16).[275]

Истина, у неким другим или чак у истим његовим списима могу се пронаћи места која, на први поглед, релативизују претходно изречени став. У VIII и IX књизи дела *Историја животиња* нпр., животиње се доводе у везу са одређеним техничким знањима и мисаоним активностима. У параграфу 616а4 овог дела каже се да је гнездо птице сенице направљено с великим умећем (τεχνικῶς). У *ХА*620б10-11 стоји да се код бића која живе у мору могу уочити многе домишљате творевине (τεχνικὰ) које су прилагођене њиховом начину живота. У *ХА*612б20, затим, пише да птице које граде гнезда користе разум (διανοίας). У *ХА*610б22, на концу, говорећи о карактеристика различитих животиња, Стагиранин каже да се оне разликују по плашљивости, нежности, храбрости, питомости, глупости и умности (νοῦν). Не треба журити са закључком па рећи да ипак постоје места у *Историји животиња* у којима Аристотел приписује одређене специфично људске способности животињама, већ ове техничке термине радије треба сагледавати у контексту програматских упозорења које он даје на почетку осме и деве-

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[275] Значајни сегменти овог чланка преузети су из: Ž. Kaluđerović, „Aristotelovo razmatranje *logosa*, „volje” i odgovornosti kod životinja”, у: *Filozofska istraživanja*, 122, god. 31, sv. 2, Zagreb 2011, str. 311-321. Измене садржинског и стилског карактера вршене су ради сажимања текста, растерећења од повремених дигресија и неопходних прецизирања узрокованих ауторовим накнадним увидима, због доступне додатне литературе и, овога пута, сопствених преводилачких решења битних филозофских термина и појмова, као и ради прегледнијег и течнијег излагања.

те књиге самог списа. Осим тога, Стагиранин у *ХА*631a27 додаје информацију, изречену у кондиционалу, да слични термини вреде за делфине, *ако* они уопште рачунају или размишљају (ἀναλογισάμενοι) о томе колико дубоко треба да удахну пре него што зароне.

Одређење с почетка *Метафизике* још чешће је, од наведених речи из *Историје животиња*, апострофирано у смислу приписивања животињама неких *логоских* способности. Стагиранин сматра да се животиње по природи рађају обдарене опажањем али да једне на основу њега не доспевају до памћења док друге доспевају. И баш зато су ове последње разборитије и поучљивије од оних које не могу да памте. Разборите су без учења оне које не могу да чују звуке (као пчеле и неке сродне животиње), док уче оне које поред памћења имају још и то чуло.[276]

Све остале животиње живе по представама и сећањима и њихов удео у искуству је незнатан. Употреба φρόνιμος-а на два места у *Метафизици* побуђивала је асоцијације на разборитост која, на основу пасажа из *ЕН*1140б20-21, по нужности мора бити способност чињења људских добара, истински и према разуму. И *Phronesis* је појам који се многоструко исказује, па се његово присуство код животиња мора разматрати у ширем смислу, и он код њих не подразумева никакво присуство *логоса*. Овај шири аспект разматрања разборитости одређује се у разлици њеног поимања код људи и животиња. У *ЕН*1141a22-28 Аристотел напомиње да свака врста назива разборитим онога ко добро разматра оно што се тиче ње саме, па стога и неке животиње могу бити разматране као разборите, уколико имају моћ предвиђања ствари које се тичу њихових живота.

Стагиранинов градуализам у биологији пажљиво је успостављен тако да омогућава дистингвирање између животиња и људи. Ова поступност у настајању најпотпуније је изражена у списима *О деловима животиња* и *Историја животиња*. Када се боље осмотри у *ПА*681a12-28 се, у ствари, говори о линији која раздваја биљке и животиње, док се у *ХА*588a18-31 разматра граница између животиња и људи. У првом поглављу осме књиге *Историје животиња*, поступност у развоју врста не приписује се њиховом разуму, већ њиховој природи и начину исхране. Када се каже да већина животиња има трагове (ἴχνη) људских карактеристика, то је илустровано примерима њихове сличности с људима у неким душевним својствима. Али када се пређе на говор о интелектуалним могућностима, помиње се једи-

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[276] *Мет.*980б21-25. Под *„неким другим таквим родом животиња”* (κἂν εἴ τι τοιοῦτον ἄλλο γένος ζῴων ἔστὶ) (*Мет.*980б24) Стагиранин можда мисли на мраве (*ПА*650б25-27). У *ХА*608a17-19 он наводи и да животиње које имају чуло слуха могу да уче али и да поучавају, како једне од других тако и од људи.

но сличност (ὁμοιότητες) животиња са разумевањем односно расуђивањем. Неке разлике између животиња и људи, даље, само су квантитативне природе, друге су пак израженије јер су повезане једино по аналогији. Разлике по аналогији показане су на примерима умећа, мудрости и расуђивања, које су својствене људима, док су сродне друге природне способности особене одређеним животињама. Ово је стандардно приказивање аналогије код Аристотела и оно у датом случају подразумева да животиње имају неке друге способности мимо умећа, мудрости и расуђивања. Постоји, другачије речено, континуитет у питању душевних карактеристика између животиња и људи, док се у стварима *логоса* може говорити једино о аналогији.

Становиште које је изложено на почетку девете књиге *Историје животиња* има сличну конотацију. Способности које се приписују животињама доводе се у везу са страстима (παθημάτων) душе. Оне, дакако, нису *логоске* природе, премда се помиње и разборитост (φρόνησιν) као једна од њих. Додаје се, такође, да неке животиње поседују моћ примања или давања инструкција, због тога што могу разликовати не само звукове већ и знакове (σημείων). Већина овога речено је и у анализираном пасажу из *Метафизике* (980б21-25), док је о способности да се користе знакови посведочено у списима *О души* (420б32) и *Политика* (1253а9-14). У спису *О души* глас се, наиме, одређује као значењски (σημαντικὸς) звук, док се у *Политици* разграничава говор (λόγον), који је својствен једино људима,[277] и глас (φωνὴ), који је знак (σημεῖον) бола, па га поседују све остале животиње и могу га означити (σημαίνειν) једне другима.

Порицање поменутих *логоских* способности животиња није никаква успутна ствар у различитим Аристотеловим списима, већ чињеница од круцијалне важности у његовим разматрањима.[278] Оно је спроведено у Стагираниновом *corpusu* на двојак начин. Директно, негирањем животињама да имају било коју од ових способности, и индиректно, наглашавањем да се *логоске* способности могу приписивати искључиво људима. Прва верзија може се пронаћи, рецимо, у трећем поглављу треће књиге списа *О души*, где Аристотел, расправљајући о различитим аспектима представљања, које

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[277] Тврђењем на почетку *Политике* да једино човек има говор међу свим живим бићима (λόγον δὲ μόνον ἄνθρωπος ἔχει τῶν ζῴων, *Пол.*1253а9-10), Аристотел је, у ствари, изложио једно од његова три позната изворна одређења човека. Друго одређење човека је да је он једино живо биће које је способно за разликовање добра и зла (ἀγαθοῦ καὶ κακοῦ), односно праведног и неправедног (δικαίου καὶ ἀδίκου) (*Пол.*1253а15-18). Треће, и свакако најпознатије, Стагираниново одређење човека је да је он по природи социјална или политичка животиња (ἄνθρωπος φύσει πολιτικὸν ζῷον, *Пол.*1253а2-3).

[278] Трагове овог порицања Стагиранин је могао пронаћи и код својих претходника, већ код Платона (*Сумп.*207а-ц; *Реп.*441а-б; *Ном.*963е) или пресократовца Алкмеона из Кротона (**ДК**24А5; **ДК**24Б1а).

по њему имају неке тј. многе животиње, каже да представа (φαντασία) није опажање (αἴσθησις), није знање (ἐπιστήμη) и није умовање (νοῦς). Представа није ни мнење (δόξα) а ни комбинација опажања и мнења, али она претпоставља опажање и настаје као резултат опажања.

Без обзира да ли је реч о разборитости или умности, за блажен[279] живот човека потребно је нешто што је особено за њега самом,[280] а не оно што је заједничко за сва жива бића. Вођен овим постулатом, Аристотел у 3. поглављу II књиге списа *О души* разграничава душе биљака, животиња и људи и паралелно са тим прави разлику између способности да се користи храна, да се осећа, жели, креће у месту и мисли. Одмах затим он додаје да једино људи имају способност мишљења (διανοητικόν), ум (νοῦς), расуђивање (λογισμὸν) и разум (διάνοιαν).[281]

У парадигматичном параграфу из 11. главе VIII књиге *Никомахове етике*, пише да нема пријатељства ни правде између онога који влада и онога над којим се влада, а као примери наводе се занатлија и оруђе, душа и тело, господар и роб. Аристотел додаје и да су оруђа, тела и робови од користи онима који се њима служе, говорећи да нема пријатељства ни онога што је праведно према неживим стварима, те да нема пријатељства и правде ни према коњу или волу, нити према робу као робу.

Разлог зашто нема правде према коњима и воловима тј. према животињама је зато што људи са њима немају ничег заједничког.[282] Да ли овом изјавом Аристотел противречи сопственим речима из *Политике* (1256б23-

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[279] Карактеристично одређење блаженства (εὐδαιμονία) утемељитељ Ликеја изложио је у X књизи своје најпознатије *Етике* (1177а12-13): *„Ако је блаженство дејство према врлини, разумно је да [ће] [то] [бити] [дејство] према највећој [врлини], а то би била [врлина] најбољег [у] [нама]”* (Εἰ δ’ ἐστὶν ἡ εὐδαιμονία κατ’ ἀρετὴν ἐνέργεια, εὔλογον κατὰ τὴν κρατίστην· αὕτη δ’ ἂν εἴη τοῦ ἀρίστου). Прев. Ж. Калуђеровић. Aristotel, *Nikomahova etika*, Hrv. sve. nakl., Zagreb 1992, str. 212, 1177a12-13.

[280] У складу са разликом између разборитости тј. мишљења и опажања из *Де Ан*.417б19-26, Стагиранин при крају 3. поглавља VII књиге *ЕН* прави диференцију између људи и животиња. Људи посредством ума могу да генерализују, док животиње немају општих замисли или претпоставки (καθόλου ὑπόληψιν) него само представу и памћење појединости (καθ’ ἕκαστα φαντασίαν καὶ μνήμην).

[281] Људи се, сматра Стагиранин, разликују од других живих бића и још по читавом низу сигнификантних карактеристика. Људски род, тако, једини или више од свих других живих бића учествује у божанском (θείου) (*ПА*656а8); човек је једино усправно живо биће (μόνον γὰρ ὀρθόν ἐστι τῶν ζῴων ἄνθρωπος) (*ПА*656а12-13); пријемчивост за граматику (γραμματικῆς) је особеност човека (*Топ.*102а20); човек зна да рачуна (ἐπιζάμενον ἀριθμεῖν) (*Топ.*142б26); човек је такорећи једино од живих бића које учествује у сећању (ἀναμιμνήσκεσθαι) (*Мем.*453а8); човек једини има моћ одлучивања (βουλευτικὸν) (*ХА*488б24-25).

[282] *ЕН*1161б3. Демокрит мисли нешто другачије од Стагиранина. У његовим фрагментима 258. (**ДК**68Б258) и 259. (**ДК**68Б259) наводи се да животиње, као и људи, могу *„неправедно наносити штету”* (τὰ πημαίνοντα παρὰ δίκην) и да је зато ствар правде *„убијати их по сваку цену”* (κτείνειν χρὴ ... περὶ παντὸς).

26) да се у лову на дивље животиње треба водити праведан рат против њих? Не нужно, пошто он не сматра да човек праведно кажњава дивље животиње ратујући против њих, већ људи имају право да лове животиње пошто су оне по природи створене за човека. Природа је у основи хијерархизована по степену присуства односно одсуства *логоса*. Једнако тако може се, по њему, утврдити да биљке јесу због животиња, и да све друге животиње јесу због човека. Ако природа не твори ништа несавршено нити узалуд, онда нужно происходи да је природа све то (с)творила због људи.[283]

Аристотелово мишљење је да питоме животиње имају бољу природу од дивљих животиња и да је за њих боље да човек над њима влада, јер их тако штити и одржава у животу. Ова надређеност људи према животиња није Стагиранину потребна због успостављања правде, већ због тога што је таква доминација људи природна и обострано корисна. Душа влада над телом влашћу господара, а ум и део који располаже *логосом* над жудњом другачијом врстом власти, државничком и краљевском, а исто је тако и са човеком и осталим животињама.

Иако Аристотел резонује да животиње немају *логоса* и да према њима не може бити односа пријатељства нити правде, он ипак сматра да оне могу деловати вољно (ἑκούσιος). Стагиранин то утврђује у поступку оспоравања Платонове тезе (*Ном.*863б) о противвољности онога што је узроковано срџбом или жудњом, пошто она искључује целину мотивационог поља вољности. И констатује да ни једно од других живих бића не би деловало вољно, а не би ни деца.[284]

На самом почетку расправе о вољности у трећој књизи *ЕН* Стагиранин наглашава да је раздвајање вољног и противвољног[285] (ἀκούσιος) нужно за

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[283] *Пол.*1256б15-22. О томе да природа (и бог) не творе ништа узалуд детаљније видети: Ž. Kaluđerović, „Stagiraninova *aitiologija*", u: *Znakovi vremena*, God. XVI, broj 59, Sarajevo 2013, str. 73-92. Овај Аристотелов пасаж често је навођен као парадигма доминантне перспективе западне традиције и њеног несумњивог антропоцентризма, на пример у: P. Singer, *Oslobođenje životinja*, Ibis grafika, Zagreb 1998, str. 158.

[284] *ЕН*1111а25-26. Консултовати и: C. C. W. Taylor, Aristotle, *Nicomachean Ethics* Books II-IV, Clarendon Press, Oxford 2006, pp. 149-150. У раду *О кретању животиња* 703б3-4, Стагиранин каже да је и кретање животиња вољно.

[285] Нешто касније уводи се и појам невољног (οὐχ ἑκούσιον). Целокупна Аристотелова дискусија о вољном, противвољном и невољном делању представља директан покушај усаглашавања са сократовским и платоновским диктумом о изједначавању врлине и знања, и тезом да је незнање узрок лошег чињења. На неколико места понавља се да је Сократ рекао или мислио да су врлине знања, или у сингулару да је врлина знање, што је коментарисано и у пасажу из *ЕН*1144б18-21: *„И Сократ је делом исправно истраживао а делом погрешно; погрешио је, доиста, мислећи како су све врлине разборитости, али је исправно тврдио да их нема без разборитости"* (καὶ Σωκράτης τῇ μὲν ὀρθῶς ἐζήτει τῇ δ᾽ ἡμάρτανεν· ὅτι μὲν γὰρ φρονήσεις ᾤετο εἶναι πάσας τὰς ἀρετάς, ἡμάρτανεν, ὅτι δ᾽ οὐκ ἄνευ φρονήσεως, καλῶς ἔλεγεν). Прев. Ж. Калуђеровић. Aristotel, *Nikomahova etika*, Hrv. sve.

оне који проучавају врлину, а да је корисно законодавцима при одмеравању признања или санкција.[286] Хипотеза која се треба размотрити је да ли су животињски акти, пошто су оквалификовани као вољни, самим тим и подложни одговорности, а да се притом задржи раније усвојени став да животиње немају *лоīоских* способности. Оно што је евидентно је да Аристотел сматра да за вољност није потребан *лоīос*, већ неке друге способности које су нижег онтолошког ранга од самог *лоīоса*.[287]

Када се проуче *Никомахова* и *Еудемова еīика*, уочава се да се апострофира неколико аспеката вољности. Подразумева се, најпре, да *arche* неког чињења треба бити иманентан чинитељу. То је могуће да буде и нечија љутња или жудња, али увек својствена чинитељу, пре него да је у питању некакав спољашњи узрок.[288] Други аспект вољности тиче се знања односно незнања. У различитим дефиницијама вољности помиње се да онај који нешто чини зна све појединости свог делања, тј. да оно што чини чини знајући а не незнајући. У 9. глави II књиге *Еудемове еīике* у одређењу вољности каже се да је у нечијој моћи осим да чини нешто и да се суздржи од чињења, као и да је вољно оно што је учињено не-у-незнању. У наредној 10. глави II књиге истог списа пише да пошто неко не-помоћу-незнања чини или апстинира од онога што је у његовој моћи да чини, он тада чини или се суздржава од чињења на вољан начин. Трећи аспект вољности који Стагиранин истиче понекад је укључен у њено одређење (*ЕН*1135а24; *ЕЕ*1225б8, *ЕЕ*1226б31-33), док понекад представља импликацију самог унутрашњег захтева (*ЕН*1110а15-18, *ЕН*1113б19-23, *ЕН*1114а18-19). То је захтев да чињење буде до онога ко чини или да јесте у његовој моћи (ἐφ᾽ αὑτῷ, ἐφ᾽ ἑαυτῷ, ἐφ᾽ ἡμῖν).

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nakl., Zagreb 1992, str. 129, 1144б18-21. Аристотелова критика овог места није усмерена против Сократовог разумевања знања као нужног услова врлине, односно услова стицања појма врлине, које истовремено представља и сам појам врлине. Оно што Стагиранин коментарише је Атињанинову запостављање учешћа алогичке стране душе у врлини, јер одређујући врлину као знање, Сократ није схватио да у њеном постизању осим знања, делују и *pathos* и *ethos*. Аристотел сматра, другачије речено, да без интелектуалног прегнућа није могуће живети честито и да је спознаја оно што успоставља врлину, али да врлина није само знање, него да је потребно и дејство склоности и страсти („воље”), као и деловање обичаја.

[286] *ЕН*1109б30-35, *ЕН*1135а19-23. У *ЕЕ*1223а11 Аристотел наглашава да се не кажњавају чини које су се догодиле по нужности, или случајно, или напросто по природи, већ једино они којима је узрок у чинитељу.

[287] Које понешто варирају од књиге од књиге, о чему треба консултовати, осим првих пет поглавља треће књиге *Никомахове еīике*, и осмо поглавље пете књиге *ЕН*, те треће поглавље седме књиге *ЕН*, као и шесто, седмо, осмо и девето поглавље друге књиге *Еудемове еīике*.

[288] Аристотел наводи пример снажног ветра који узрокује хотимично бацање терета с бродова (*ЕН*1110а8-9).

Аристотел често наглашава да је човек начело или родитељ онога што чини једнако као што је и родитељ своје деце. Он закључује да чинови чије је начело у човеку не могу бити свођени на нека друга начела, него да су они у људској моћи а самим тим и вољни. Стагиранин не каже да ова зависност о ономе ко чини претпоставља рационалног делатника. Напротив, он сматра да чињење може бити произведено и од не-рационалних животиња, јер, као што је наведено, чињење животиња је вољно односно хотимично. Оно што може да се изведе је да постоји изворна могућност за другачије деловање животиња, и да оно зависи од самих животиња.

Где онда *логос* ступа на сцену по Аристотелу? Једино са појмом избора (προαίρεσις).[289] Коментаторима је појам *proairesis* задавао прилично потешкоћа, примарно због ширине његовог семантичког поља. Именица женског рода προαίρεσις осим „(слободан) избор” може да значи и „(слободна) воља”, „одлука”, „склоност”, „започет правац”, „мишљење”; „намера”, „улога”, „разлози”, „значај”; „тежња”, „занимање”, уопште „пут”, „смер”. Бирати, по Стагиранину, наравно, не значи напросто изабрати између постојећих могућности, него бирати „оно што треба изабрати пре других ствари” (ὡς ὂν πρὸ ἑτέρων αἱρετόν).[290]

Ближем одређењу појма избора припада да је његов *genus proximum* појам вољности. Међутим појам вољности шири је од појма избора јер је вољност шира од бирања. Избор је увек вољан, али вољност не значи увек изабрано делање, пошто је могућа код деце и животиња.[291]

У *ЕН*1111а25-26 забележено је да су животиње и деца подстакнути на деловање срџбом и жудњом и да је њихово деловање вољно. Разлог зашто животиње и деца не могу деловати посредством избора је што они не промишљају. На Аристотеловом трагу, може се рећи да животиње не промишљају ни могућношћу, па самим тим ни удејственошћу односно усврховљеношћу, док деца можда не промишљају удејствено тј. усврховљено али имају могућност за промишљање, која ће се у датом животном тренутку удејствити односно усврховити. Чињење и делање животиња и деце није усмерено ка генералним и релативно удаљеним циљевима претпостављеним у промишљању, већ ка непосредним и самим тим ближим задацима представљеним срџбом и жудњом.

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[289] Консултовати: G. E. M. Anscombe, “Thought and Action in Aristotle. What is ‘Practical Truth’”, pp. 143-158, у: *New essays on PLATO and ARISTOTLE* (ed. R. Bambrough), Routledge & Kegan Paul, London and Henley 1979.

[290] *ЕН*1112а16-17. Ова Аристотелова одредница има везе са чињеницом да је προαίρεσις повезано са πρὸ ἑτέρων αἱρετόν.

[291] *ЕН*1111б6-9. О овој теми Аристотел пише и у *ЕЕ*1223б37-1224а4, *ЕЕ*1225а37, *ЕЕ*1226б30.

Прецизност појма избора Аристотел је утврдио тако што га је додатно диференцирао од појмова жудње (ἐπιθυμία), срџбе (θυμός), жеље (βούλησις) и мнења (δόξα). Избор је *par excellence* људска ствар, док жудња и срџба, напоменуто је већ, припадају и животињама и деци. Жудња се односи на угоду и бол док се избор не тиче ни угоде ни бола. Избор такође није ни срџба: „Јер оно што је учињено у срџби најмање је према избору”[292] (ἥκιστα γὰρ τὰ διὰ θυμὸν κατὰ προαίρεσιν εἶναι δοκεῖ). Ни жеља није избор, а оно што их раздваја је податак да постоји жеља за немогућим стварима попут бесмртности, док се избор не односи на немогућности. Жеља се односи и на неког другог, као што је жеља да победи неки глумац или спортиста на такмичењу, док се код избора увек ради о стварима које су у самом човеку. Жеља се више тиче сврхе а избор средстава које служе сврси, и оних ствари које су у људској моћи.[293] Избор коначно није ни мнење, пошто се оно односи на све ствари, како вечне и немогуће тако и оне које су у људској моћи. Мнење се разлучује по истини и лажи, док се избор разлучује по добром и лошем. Избор се тиче настојања и избегавања и похваљује се због онога што треба учинити, а мнење се односи на утврђивања шта је нека ствар, пошто оно тражи склад с истином.

Избор није могућ без наглашене интелектуалне компоненте, без онога што Аристотел назива мишљење (λόγος) и разум (διάνοια). Као што је познато, Стагиранин сматра да се о божанским, физичким и математичким стварима не може промишљати у смислу одлучивати, јер су оне под законом нужности или случајности, али ни о свим практичким стварима, пошто ни оне све нису у људској моћи. Промишљања може бити о ономе што јесте у људској моћи, односно о ономе што, како је већ акцентовано, „може бити и не бити”. Свако промишљање јесте неко истраживање, иако свако истраживање није промишљање, а закључак који из њега произилази је одређујући у избору: оно изабрано је промишљањем учињено таквим, тј. успостављено је као синтеза промишљања и жудње.

Избор је могућ у целовитом корпусу врлина и порока, односно у оном практичком и хотимичном. Избор је Стагиранину потребан и зато што је предуслов за врлину, а у неким случајевима и за порок.[294] За поступке који настају у складу с врлином потребно је, између осталог, да се чине са про-

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[292] Прев. Ж. Калуђеровић, Aristotel, *Nikomahova etika,* Hrv. sve. nakl., Zagreb 1992, str. 45, 1111b18-19.

[293] О неким недоумицама у веѕи оваквих Аристотелових тврдњи писао је Гатри (W. K. C. Guthrie). W. K. C. Guthrie, *A History of Greek Philosophy VI,* Cambridge University Press, Cambridge, 1981, pp. 358-359.

[294] Видети: *ЕЕ*1234а25; *ЕН*1110б31-32, *ЕН*1135б25, *ЕН*1148а17, *ЕН*1150а20, *ЕН*1150б30, *ЕН*1151а7.

мишљеним избором. У *ЕН*1106а3-4, затим, експлицитно се каже да врлине јесу некакви избори или да барем оне нису без избора.[295]

Начело делатности је избор, док је начело избора жудња и *логос*, али у вези сврхе. Избора, по Аристотелу, осим без оног мисаоног, нема ни без одговарајућег карактера (ἠθικῆς). Само мишљење притом није оно покрећуће, нити је то етичко стање, него је то оно што је у жељи жељено. Све људско, једнако као и животињско, јесте покренуто оним што је *pathosko*. Међутим, специфично људски карактер људског остварује се само ако је оно *pathosko* посредовано својеврсном синтезом мишљења и карактера. *Pathosko* мора бити промишљено тј. одлучено из култивисаног људског карактера да се оно што је у жељи жељено испољи као добро делање, да буде делатно изабрано и проведено, и то у сваком посебном случају.

Начело *praxisa* у пуном смислу јесте избор, за разлику од вољних активности животиња.[296] Ово запажање је важно зато што означава да Стагиранин поричући могућност практичког делања животињама не негира да оне могу бити награђиване или кажњаване за оно што чине. И обрнуто, допуштајући да њихово понашање буде вољно он им не допушта делање у пуном смислу.

Да ли, на концу, може да се каже, следећи Аристотела, да су животиње одговорне за оно што чине? Одговор на ово питање зависиће од разумевања појма одговорности у његовим списима. Ако се протумачи да се одговорност тиче превасходно моралне евалуације нечијег делања, у коју је укључена активност *логоса*, несумњиво је да ће онда животиње бити изузете из овако разумљеног појма одговорности. Са друге стране, ако се одговорност код Стагиранина разуме као регулисање свих оних активности које су учињене хотимично тј. вољно, животиње се тада могу сматрати одговорним.[297]

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[295] Ова дубока веза врлине и избора фундирана је у централној дефиницији врлине (ἀρετή) (*ЕН*1106б36-1107а2): *„Дакле, врлина је стање с избором, која се налази у средини у односу на нас, одређена* логосом*, и то тако како би одредио разборит човек”* (Ἔστιν ἄρα ἡ ἀρετὴ ἕξις προαιρετική, ἐν μεσότητι οὖσα τῇ πρὸς ἡμᾶς, ὡρισμένῃ λόγῳ καὶ ὡς ἂν ὁ φρόνιμος ὁρίσειεν). Прев. Ж. Калуђеровић. Aristotel, *Nikomahova etika*, Hrv. sve. nakl., Zagreb 1992, str. 32-33, 1106b36-1107a2. Аристотел о вези врлине и избора пише и у *ЕН*1113б3-7, *ЕН*1139а22-23, *ЕН*1144а19.

[296] Консултовати: *ЕН*1139а31; *ЕЕ*1224а25-30, *ЕЕ*1222б18-20; *Пхус.*197б1-8.

[297] Нема разлога зашто Аристотел не би сматрао нпр. пса одговорним за уједање човека или неког другог живог бића. Пошто пас може, у најмању руку, имати *phantasiu* да оно што ради јесте исправно или погрешно, он стога треба за своје чини бити награђен односно кажњен. То би се слагало и с оним што је тврдио Демокрит пре Стагиранина (рудиментарну верзију идеје да су животиње одговорне Аристотел је могао пронаћи и у Демокритовом

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